Washington State Register

February 5, 2003

OLYMPIA, WASHINGTON

ISSUE 03-03

IN THIS ISSUE

(Subject/Agency index at back of issue)
This issue contains documents officially filed not later than January 22, 2003

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 February 2003 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.

WASHINGTON STATE REGISTER

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Legislative Building
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Olympia, WA 98504-0552

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.

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) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.

(c) **EXPEDITED RULE MAKING**-includes the full text of the rule being proposed using the expedited rule-making process. Expedited rule makings are not consistently filed and may not appear in every issue of the register.

(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].

2002-2003
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			
For Inclusion in -	*File no later than* **12:00 noon -**			*Count 20 days from -*	*For hearing on or after*	*First Agency Adoption Date*
02 - 15	Jun 26, 02	Jul 10, 02	Jul 24, 02	Aug 7, 02	Aug 27, 02	Sep 24, 02
02 - 16	Jul 10, 02	Jul 24, 02	Aug 7, 02	Aug 21, 02	Sep 10, 02	Oct 8, 02
02 - 17	Jul 24, 02	Aug 7, 02	Aug 21, 02	Sep 4, 02	Sep 24, 02	Oct 22, 02
02 - 18	Aug 7, 02	Aug 21, 02	Sep 4, 02	Sep 18, 02	Oct 8, 02	Nov 5, 02
02 - 19	Aug 21, 02	Sep 4, 02	Sep 18, 02	Oct 2, 02	Oct 22, 02	Nov 19, 02
02 - 20	Sep 4, 02	Sep 18, 02	Oct 2, 02	Oct 16, 02	Nov 5, 02	Dec 3, 02
02 - 21	Sep 25, 02	Oct 9, 02	Oct 23, 02	Nov 6, 02	Nov 26, 02	Dec 24, 02
02 - 22	Oct 9, 02	Oct 23, 02	Nov 6, 02	Nov 20, 02	Dec 10, 02	Jan 7, 03
02 - 23	Oct 23, 02	Nov 6, 02	Nov 20, 02	Dec 4, 02	Dec 24, 02	Jan 22, 03
02 - 24	Nov 6, 02	Nov 20, 02	Dec 4, 02	Dec 18, 02	Jan 7, 03	Feb 4, 03
03 - 01	Nov 21, 02	Dec 5, 02	Dec 19, 02	Jan 2, 03	Jan 22, 03	Feb 19, 03
03 - 02	Dec 5, 02	Dec 19, 02	Jan 2, 03	Jan 15, 03	Feb 4, 03	Mar 4, 03
03 - 03	Dec 26, 02	Jan 8, 03	Jan 22, 03	Feb 5, 03	Feb 25, 03	Mar 25, 03
03 - 04	Jan 8, 03	Jan 22, 03	Feb 5, 03	Feb 19, 03	Mar 11, 03	Apr 8, 03
03 - 05	Jan 22, 03	Feb 5, 03	Feb 19, 03	Mar 5, 03	Mar 25, 03	Apr 22, 03
03 - 06	Feb 5, 03	Feb 19, 03	Mar 5, 03	Mar 19, 03	Apr 8, 03	May 6, 03
03 - 07	Feb 19, 03	Mar 5, 03	Mar 19, 03	Apr 2, 03	Apr 22, 03	May 20, 03
03 - 08	Mar 5, 03	Mar 19, 03	Apr 2, 03	Apr 16, 03	May 6, 03	Jun 3, 03
03 - 09	Mar 26, 03	Apr 9, 03	Apr 23, 03	May 7, 03	May 27, 03	Jun 24, 03
03 - 10	Apr 9, 03	Apr 23, 03	May 7, 03	May 21, 03	Jun 10, 03	Jul 8, 03
03 - 11	Apr 23, 03	May 7, 03	May 21, 03	Jun 4, 03	Jun 24, 03	Jul 22, 03
03 - 12	May 7, 03	May 21, 03	Jun 4, 03	Jun 18, 03	Jul 8, 03	Aug 5, 03
03 - 13	May 21, 03	Jun 4, 03	Jun 18, 03	Jul 2, 03	Jul 22, 03	Aug 19, 03
03 - 14	Jun 4, 03	Jun 18, 03	Jul 2, 03	Jul 16, 03	Aug 5, 03	Sep 3, 03
03 - 15	Jun 25, 03	Jul 9, 03	Jul 23, 03	Aug 6, 03	Aug 26, 03	Sep 23, 03
03 - 16	Jul 9, 03	Jul 23, 03	Aug 6, 03	Aug 20, 03	Sep 9, 03	Oct 7, 03
03 - 17	Jul 23, 03	Aug 6, 03	Aug 20, 03	Sep 3, 03	Sep 23, 03	Oct 21, 03
03 - 18	Aug 6, 03	Aug 20, 03	Sep 3, 03	Sep 17, 03	Oct 7, 03	Nov 4, 03
03 - 19	Aug 20, 03	Sep 3, 03	Sep 17, 03	Oct 1, 03	Oct 21, 03	Nov 18, 03
03 - 20	Sep 3, 03	Sep 17, 03	Oct 1, 03	Oct 15, 03	Nov 4, 03	Dec 2, 03
03 - 21	Sep 24, 03	Oct 8, 03	Oct 22, 03	Nov 5, 03	Nov 25, 03	Dec 23, 03
03 - 22	Oct 8, 03	Oct 22, 03	Nov 5, 03	Nov 19, 03	Dec 9, 03	Jan 6, 04
03 - 23	Oct 22, 03	Nov 5, 03	Nov 19, 03	Dec 3, 03	Dec 23, 03	Jan 20, 04
03 - 24	Nov 5, 03	Nov 19, 03	Dec 3, 03	Dec 17, 03	Jan 6, 04	Feb 3, 04

[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;

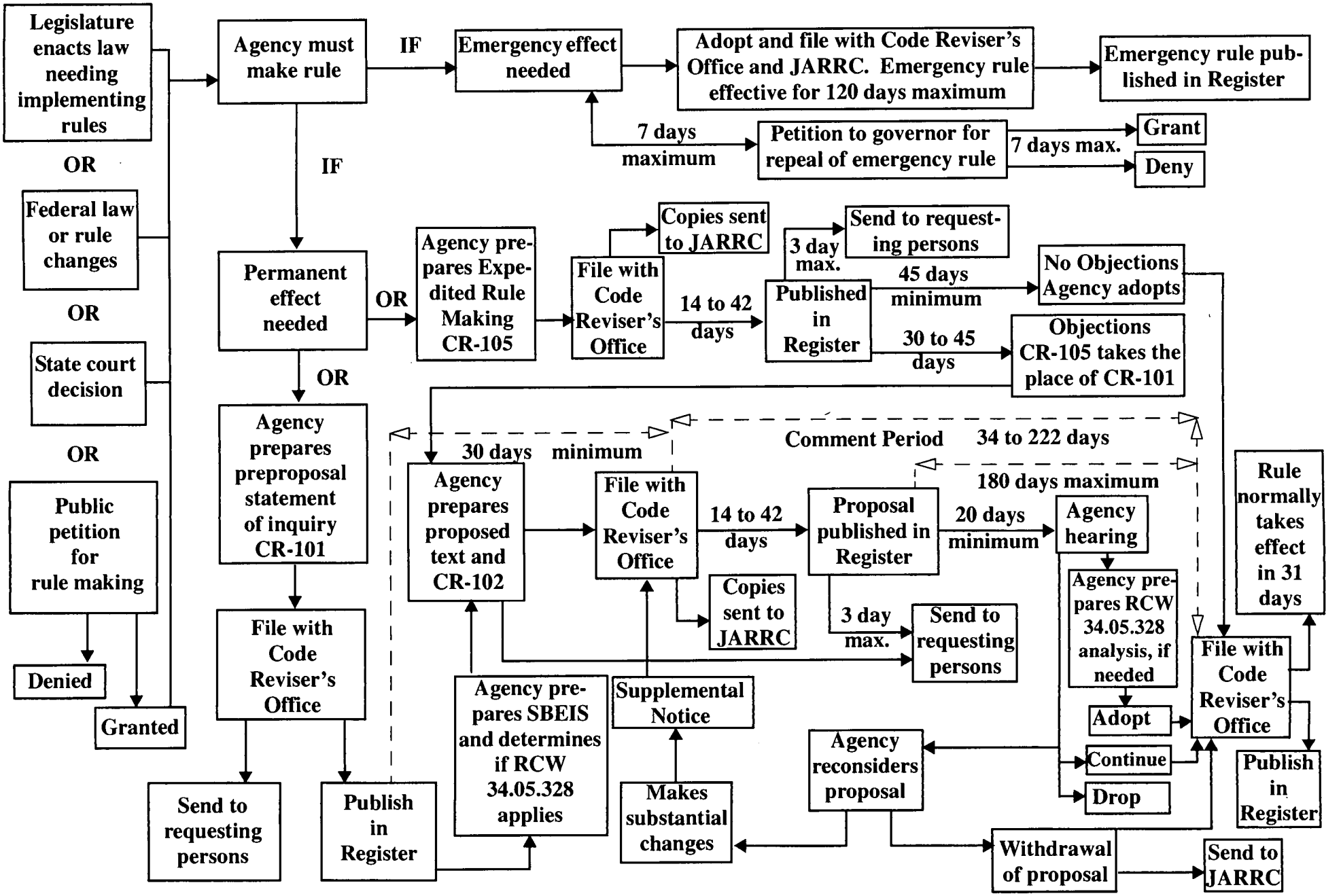
There is less than minor economic impact on business;

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



WSR 03-03-007
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 6, 2003, 3:45 p.m.]

Subject of Possible Rule Making: The Division of Employment and Assistance Programs will amend WAC 388-424-0005 Citizenship and alien status—General eligibility conditions, 388-424-0010 Citizenship and alien status—Eligibility restrictions for TANF and medical assistance programs, 388-424-0015 Citizenship and alien status—Eligibility restrictions for the SFA program, and other WAC affecting immigrant eligibility for federal and state programs.

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The proposed changes are in response to: (1) Changes in federal law and rule, and (2) continued feedback from CSO staff and advocates that current WAC regarding alien eligibility lack precision, clarity, and completeness. For example, the definition of "qualified alien" in WAC 388-424-0005(3) should include "victims of trafficking." Similarly, the summary of Child Citizenship Act of 2000 provisions in WAC 388-424-0010(3) is incomplete and should be moved into WAC 388-424-0005 since it applies not just to TANF and medical assistance (as implied by its current location).

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

Process for Developing New Rule: DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file proposed rules with the Office of the Code Reviser for public comment and a public hearing. A copy of the proposed rules will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Tom Berry, Division of Employment Assistance Programs, Lacey Government Center, P.O. Box 45470, Olympia, WA 98504-4570, phone (360) 413-3102, fax (360) 413-3483, e-mail berrytj@dshs.wa.gov.

January 3, 2003
Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-03-017
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)
[Filed January 7, 2003, 4:11 p.m.]

Subject of Possible Rule Making: WAC 388-502-0010 Payment—Eligible providers defined. MAA recently revised the core provider agreement (CPA), DSHS 09-048 (REV. 06/2002) that medical providers sign in order to participate in medical assistance programs offered by DSHS to needy individuals. The former CPA included certain "hold harmless" language that was inadvertently omitted from the new CPA. This amendment is intended to restore the applicability of that language, so that DSHS and the provider hold each harmless from legal action due to the negligence of either party.

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To avoid further delay in getting the new CPAs signed and the expense of revising the document again, MAA is amending WAC 388-502-0010 to include this "hold harmless" provision.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kevin Sullivan, MAA Rules Coordinator, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1344, e-mail sullikm@dshs.wa.gov, fax (360) 586-9727, TDD 1-800-848-5429.

January 7, 2003
Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-03-019
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF ECOLOGY
[Order 03-02—Filed January 8, 2003, 9:06 a.m.]

Subject of Possible Rule Making: New Shoreline Management Act (SMA) guidelines for development/amendment of master program, executing a settlement agreement amongst litigating parties that implements statutory requirements to update the guidelines consistent with SMA policy, replacing invalidated Parts 3 and 4 of chapter 173-26 WAC; among other things establishing planning and regulatory standards for future shoreline development and uses, requirements for protection and restoration of shoreline ecological functions, guidance on the limitations of regulatory authority and shorelines and Growth Management Act integration.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 90.58, 36.70A, 36.70B RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The shoreline guidelines have not been comprehensively updated since original adoption thirty years ago. The existing guidelines do not recognize: Advancements in science relating to how shorelines should be managed, changes in case law, the character of shoreline development and new innovations in shoreline management practice. In addition, the 1995 legislature directed ecology to periodically review and adopt new guidelines consistent with SMA policy and integrate shorelines and growth management plans and development regulations. Updated guidelines will provide needed direction to local governments and the state in implementing the SMA.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Ecology is the principal state regulatory in this subject area. However, state departments of community, trade and economic development, fish and wildlife, natural resources, agriculture and others are affected and will be consulted during development of the subject rule. The National Oceanic and Atmospheric Administration will also be consulted.

Process for Developing New Rule: Agency study; and ecology will build upon past efforts of the Shorelines Policy Advisory Group, Land Use Study Commission, Shorelines Guidelines Commission, and most recently the negotiating parties in guidelines litigation to develop a new rule. Participants in these efforts have included cities, counties, tribes, ports, forestry, mining, business, agricultural, and recreational interests, shoreline property owners, state agencies and legislators and environmental organizations. Ecology will continue to work with these parties throughout the rule development and adoption process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Ecology will provide a schedule for rule adoption that will indicate opportunities for interested parties to obtain information and comment through the rule development process. For more information, contact Peter Skowlund, Shorelands and Environmental Assistance Program, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6522, fax (360) 407-6902.

January 7, 2003
Tom Fitzsimmons
Director

WSR 03-03-025
PREPROPOSAL STATEMENT OF INQUIRY
HORSE RACING COMMISSION
[Filed January 8, 2003, 1:40 p.m.]

Subject of Possible Rule Making: WAC 260-20-035 Nonparimutuel wagering prohibited.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.16.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule may not be necessary given other rules and statutes governing gambling in Washington.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Washington State Gambling Commission.

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 Robert M. Leichner, Executive Secretary, Washington Horse Racing Commission, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462, fax (360) 459-6461.

January 7, 2003
R. M. Leichner
Executive Secretary

WSR 03-03-026
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed January 8, 2003, 2:36 p.m.]

Subject of Possible Rule Making: General reporting rules, classifications, audit and record keeping, rates and rating system for workers' compensation insurance, chapter 296-17 WAC, and specifically the temporary staffing services classifications WAC 296-17-757 through 296-17-76212.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 51.16.035 and 51.16.100.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Labor and industries is required by law to classify all occupations and industries by degree of hazard (RCW 51.16.035). Labor and industries has encountered issues with the current temporary staffing services classification plan as result of changes within the industry. Business partners have expressed a need to update the existing 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: Labor and industries will use direct mailings and the Internet to share possible rule ideas with participating employers and business associations that have an interest in temporary staffing services. Labor and industries will conduct informal public meetings statewide with customers during March and April 2003 to share draft ideas and solicit input for possible changes to the temporary staffing classification plan. Labor and industries will use this input to formulate proposed changes to the existing rules and advise customers of future rule making by direct mailing and the Internet.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. A letter with ideas on possible rule changes will be sent to all employers. Employers will be encouraged to attend the informal public meetings where the rule ideas will be discussed and draft rules formulated. Employers can

obtain information on our process at the employer services website (www.lni.wa.gov/insurance services/employer services) and can submit comments electronically to blom235 @lni.wa.gov or by mail to Labor and Industries, Attention Classification Services, P.O. Box 44148, Olympia, WA 98504-4148 or by calling (360) 902-4748 or by fax (360) 902-4729.

January 8, 2003
Gary Moore
Director

WSR 03-03-033
PREPROPOSAL STATEMENT OF INQUIRY
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed January 10, 2003, 9:57 a.m.]

Subject of Possible Rule Making: Chapter 392-142 WAC, Transportation—Replacement and depreciation allocation.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Changing market conditions have eliminated the necessity for certain particular school bus categories. The elimination of these categories will be in compliance with RCW 28A.160.195 that requires the Superintendent of Public Instruction, in consultation with the regional transportation coordinators to establish the minimum number of school bus categories. The addition of categories for special needs equipped buses will result in increased competition and lower prices for school districts purchasing these buses.

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, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TTY (360) 664-3631. For telephone assistance contact Allan J. Jones, Director, Pupil Transportation and Traffic Safety Education, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6120, fax (360) 586-6124.

January 9, 2003
Thomas J. Kelly
for Dr. Terry Bergeson
Superintendent of
Public Instruction

WSR 03-03-034
PREPROPOSAL STATEMENT OF INQUIRY
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed January 10, 2003, 9:57 a.m.]

Subject of Possible Rule Making: Chapter 392-143 WAC, Transportation—Specifications for school buses.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.61.380.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The amendment will require all Washington state public school buses to meet all federal motor vehicle safety standards applicable to school buses, that became effective on April 1, 1977. The effective date will be December 31, 2004.

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, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TTY (360) 664-3631. For telephone assistance contact Allan J. Jones, Director, Pupil Transportation and Traffic Safety Education, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6120, fax (360) 586-6124.

January 9, 2003
Thomas J. Kelly
for Dr. Terry Bergeson
Superintendent of
Public Instruction

WSR 03-03-038
PREPROPOSAL STATEMENT OF INQUIRY
HORSE RACING COMMISSION
[Filed January 10, 2003, 11:39 a.m.]

Subject of Possible Rule Making: Handling of samples taken from horses.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.16.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To clarify the collection storage and shipment of samples taken from race horses.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Robert M. Leichner, Executive Secretary, Washington Horse Racing Commission, 6326 Martin

Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462, fax (360) 459-6461.

January 9, 2003
R. M. Leichner
Executive Secretary

WSR 03-03-039
PREPROPOSAL STATEMENT OF INQUIRY
HORSE RACING COMMISSION
[Filed January 10, 2003, 11:40 a.m.]

Subject of Possible Rule Making: Head to head wagering.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.16.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Add a new section to rules to allow for this type of wagering.

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

Process for Developing New Rule: Agency study; and horse industry.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Robert M. Leichner, Executive Secretary, Washington Horse Racing Commission, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, phone (360) 459-6462, fax (360) 459-6461.

January 10, 2003
R. J. Lopez
for Robert M. Leichner
Executive Secretary

WSR 03-03-053
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF FISH AND WILDLIFE
[Filed January 13, 2003, 1:26 p.m.]

Subject of Possible Rule Making: Commercial fishing 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: The sardine fishery is a developing fishery off the Washington coast, and additional rules are needed [to] manage this fishery and the participation in the fishery, and to assure accurate catch accounting.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Phil Anderson, Special Assistant for Intergovernmental Resource Management, 600 Capitol Way North, Olympia, WA 98504-1041, phone (360) 902-2720. Contact by March 6, 2003, expected proposal filing March 7, 2002 [2003].

January 13, 2003
Evan Jacoby
Rules Coordinator

WSR 03-03-056
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)
[Filed January 13, 2003, 3:38 p.m.]

Subject of Possible Rule Making: WAC 388-32-0025 Who may receive FRS services? and 388-32-0030 What FRS services does the department provide?

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.13.0301, 74.08.090, 2002 State Supplemental Operating Budget (section 202, chapter 371, Laws of 2002).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Children's Administration, Division of Program and Policy, has been directed by the state legislature, in the 2002 supplemental budget, to reduce the Family Reconciliation Services program by $1.68 million, effective July 1, 2002. Additionally, the Children's Administration has gone to a statewide, centralized intake for all after-hours services, and will be expanding the centralized intake to twenty-four hours per day, seven days per week, on or about January 1, 2003. Implementation of these directives and initiatives requires amendment of rules in WAC 388-32-0030.

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 welcomes public participation in the development of these rules. At a later date, the department will publish proposed rules for public comment and a public hearing will be held before the rules are adopted as permanent. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Bruce Thomas, Supervisor, Children's Administration, Safety and Early Intervention Unit, P.O. Box 45710, Olympia, WA 98504-5710, phone (360) 902-7953, fax (360) 902-7903, e-mail thbr300@dshs.wa.gov.

January 13, 2003
Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-03-066
PREPROPOSAL STATEMENT OF INQUIRY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
[Filed January 14, 2003, 1:58 p.m.]

Subject of Possible Rule Making: Review of three rules: (1) WAC 391-08-670 concerning citation, publication and indexing of agency decisions; (2) WAC 391-25-216 concerning procedures for intervenors to follow in representation petitions for state civil service employees; and (3) WAC 391-25-426 concerning consolidation of two or more bargaining units of state civil service employees represented by same employee organization.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.-050, 41.59.110, 41.76.060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Amendments to WAC 391-08-670 may be needed to update citation standards and to provide for publication and indexing of agency decisions on agency website. Amendments to WAC 391-25-216 may be needed to allow consolidation of multiple representation petitions seeking same group of employees. WAC 391-25-426 was adopted by commission on January 6, 2003, as emergency rule, and is being proposed as permanent rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. A clientele input meeting will be held at 1:00 p.m. on April 16, 2003, at Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, WA.

The commission will conduct a rule adoption hearing on the proposed changes at 10:00 a.m. on May 13, 2003, at Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, WA.

Written comments may be sent to Mark S. Downing, Rules Coordinator, Public Employment Relations Commission, P.O. Box 40919, Olympia, WA 98504-0919, phone (360) 570-7305, fax (360) 570-7334, e-mail info@perc.wa.gov.

January 14, 2003
Marvin L. Schurke
Executive Director

WSR 03-03-067
PREPROPOSAL STATEMENT OF INQUIRY
HORSE RACING COMMISSION
[Filed January 14, 2003, 2:24 p.m.]

Subject of Possible Rule Making: WAC 260-13-420 Payment of Class A and B license fees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.16.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Current rule conflicts with RCW 67.16.050.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Robert M. Leichner, Executive Secretary, Washington Horse Racing Commission, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462, fax (360) 459-6461.

January 13, 2003
R. M. Leichner
Executive Secretary

WSR 03-03-076
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH
[Filed January 15, 2003, 9:21 a.m.]

Subject of Possible Rule Making: Revising current rules to allow radioactive materials licensees to use dosimetry from providers accredited by the National Institute of Standards and Technology; and to allow well-loggers to use energy compensation and tritium neutron generator target sources. Other changes to the well-logging rule will update requirements to meet federal standards.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 70.98.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules affecting well-logging operations and rules affecting the ability of radioactive materials licensees to use accredited providers of dosimetry services need to be amended to conform to federal standards in order to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation agreement material on a nationwide basis. The state of Washington is an agreement state with the United States Nuclear Regulatory Commission (NRC) and must maintain compatible regulations with the NRC. Amending the rules will bring the state radiation protection regulations into compliance with NRC for radioactive materials regulated under federal Atomic Energy Act as well as under state law.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The United States Nuclear Regulatory Commission sets the federal standards and the state of Washington submits proposed rules to NRC for review and comment prior to final adoption of the rule.

Process for Developing New Rule: The federal rule is used as the basis for the proposed rule and language is added to assure that all radioactive materials, regardless of source, are equally covered by the rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Proposed draft rules can be obtained from and comments sent to Terry C. Frazee, Division of Radiation Protection, P.O. Box 47827, Olympia, WA 98504-7827, (360) 236-

3221, or fax (360) 236-2255, e-mail terry.frazee@doh.wa.gov.

January 13, 2003
Mary C. Selecky
Secretary

WSR 03-03-080
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING
[Filed January 15, 2003, 10:30 a.m.]

Subject of Possible Rule Making: Will amend WAC 308-124H-029 and 308-124H-061(6).

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.85.040 (1) and (4).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To amend rules relating to distance education delivery method approval criteria so as to provide for mandatory student evaluations for each course and to require providers to explain how they arrived at the number of clock hours requested. Will also amend rules for grounds for denial or withdrawal of course approval to include failing to meet the requirements under WAC 308-124H-026 and 308-124H-029.

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 makingand agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jana L. Jones, Real Estate Program, Department of Licensing, P.O. Box 9015, Olympia, WA 98507-9015, phone (360) 664-6524, fax (360) 586-0998.

January 15, 2003
Jana L. Jones
Assistant Administrator
Real Estate Program

WSR 03-03-084
PREPROPOSAL STATEMENT OF INQUIRY
GAMBLING COMMISSION
[Filed January 15, 2003, 3:17 p.m.]

Subject of Possible Rule Making: Bingo operators.

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: Under state law, bingo operators are required to contribute a portion of their gambling proceeds to support their stated purpose, the minimum requirements to be contributed are set forth in gambling rules. Current rules allow for bingo operators that don't meet the minimum requirements to petition the commission for a variance from these requirements and allow time to come back into compliance. There has been much debate over this rule and at the January 2003, commission meeting, the commission requested that this rule be brought forward for discussion and that the variance and petition portion of the rule be repealed.

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 Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Ed Fleisher, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466.

Meeting Dates and Locations: Best Western Aladdin Motor Inn, 900 South Capitol Way, Olympia, WA 98501, (360) 352-7200, on February 13 and 14, 2003 and March 13 and 14, 2003; and at the Hampton Inn/Foxhall, 3985 Bennett Drive, Bellingham, WA 98225, (360) 676-7700, on April 10 and 11, 2003.

January 15, 2003
Susan Arland
Rules Coordinator

WSR 03-03-086
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE
[Filed January 15, 2003, 3:41 p.m.]

Subject of Possible Rule Making: Increase grain inspection program fees by an amount not to exceed the Office of Financial Management (OFM) fiscal growth rate factor for fiscal years 2003 and 2004. The department is considering increasing selected hourly fees and hourly-based unit fees. The department is also considering changing the format of the fee schedule to make it easier to read and understand.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 22.09 and 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The grain inspection program is supported entirely by the fees it generates from the services it provides. Fee increases are necessary to offset inflationary increases in grain inspection program operating expenses. The proposed inspection fee increases will not exceed the OFM fiscal growth rate factor for fiscal years 2003 and 2004, respectively.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service (GIPSA, FGIS) must approve changes in the WSDA grain inspection program's fee schedule.

Process for Developing New Rule: The fee increases will be developed by the grain inspection program staff based

upon program needs and recommendations from the Grain Inspection Program Advisory Committee.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. You can contact the Grain Inspection Program Manager, Randall R. Deike, Commodity Inspection Division, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504, phone (360) 902-1921, fax (360) 902-2085, TDD (360) 902-1996, e-mail rdeike@agr.wa.gov, and/or contact the Grain Inspection Program Advisory Committee. Also, you can submit comments during the public comment period and participate in the public hearing process.

January 7, 2003
Robert W. Gore
Assistant Director

WSR 03-03-100
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF REVENUE
[Filed January 17, 2003, 4:24 p.m.]

Subject of Possible Rule Making: Amending WAC 458-12-060 ((~~Listing of personalty—Burden on taxpayer to list.~~)) Listing of personal property and 458-12-360 ((~~Assessment and evaluation—Notice of value change—Real property~~)) Notice of change in value of real property.

Repealing WAC 458-12-065 Listing personal property—Form and notice, 458-12-070 Listing of personalty—When due—Late filing, 458-12-075 Personalty—Filing by corporations, partnerships, firms or agents, and 458-12-080 Listing of personalty—Manufacturers.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 84.08.010 and 84.08.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 458-12-060, 458-12-065, 458-12-070, 458-12-075, and 458-12-080 provide information about the listing of personal property for purposes of ad valorem taxation. The department anticipates updating and consolidating the information provided in these rules into a single rule, which will provide the information in a more efficient and user-friendly manner.

WAC 458-12-360 explains the requirement of county assessors to provide notice to taxpayers of any change in the true and fair value of real property as provided by RCW 84.40.045. The department anticipates updating this information and incorporating information currently contained in Property Tax Bulletins 91-4 (Notice of Value Change) and 91-18 (Revaluation Notice).

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

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary draft of the proposed changes is available upon request. Written comments on and/or requests for copies of the rule may be directed to Mark Mullin, Tax Policy Specialist Legislation and Policy Division, State of Washington Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6112, fax (360) 664-0693, e-mail MarkM@dor.wa.gov.

Location and Date of Public Meeting: Capital Plaza Building, 4th Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on February 26, 2003, at 1:30 p.m.

Assistant for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TDD 1-800-451-7985 or (360) 570-6175.

January 16, 2003
Alan R. Lynn
Rules Coordinator
Legislation and Policy Division

PRELIMINARY DRAFT—FOR DISCUSSION PURPOSES ONLY. THIS DRAFT IS NOT TO BE CONSIDERED A PROPOSED RULE AND IS ONLY PROVIDED FOR DISCUSSION PURPOSES TO DETERMINE WHAT TOPICS A LATER PROPOSED RULE MIGHT ADDRESS. UNDER NO CIRCUMSTANCES IS THIS DISCUSSION DRAFT TO BE USED TO DETERMINE TAX LIABILITY, QUALIFICATION FOR EXEMPTIONS, OR COMPLIANCE WITH ANY REQUIREMENT IMPOSE BY LAW.

AMENDATORY SECTION (Amending Order PT 68-6, filed 4/29/68)

WAC 458-12-060 ((~~**Listing of personalty—Burden on taxpayer to list.**~~)) **Listing of personal property.** ((~~Every person, firm or corporation regardless of residency who owns or controls personal property not specifically exempted by law located in this state as of 12 noon on the first day of January shall be required to annually submit a personal property listing and statement. Such listing and statement shall be due regardless of whether or not the assessor has provided notice of such listing to the individual taxpayer. (RCW 84.40.190.)~~)) (1) **Introduction.** This rule provides information about the listing of personal property subject to ad valorem taxation, including specific information about the listing of personal property by corporations, unincorporated organizations, trusts, estates, and by agents on behalf of persons required to make a listing of personal property. This rule also provides information about the listing of personal property by manufacturers. For information about the listing of ships and vessels subject to property taxation, refer to chapter 458-17 WAC.

(2) **Who is required to list personal property with the county assessor?** Every person is required to list all taxable (i.e., nonexempt) personal property in the person's ownership, possession, or control. RCW 84.40.185 and 84.40.190. Every person required to list personal property must deliver to the county assessor a form (commonly referred to as a "statement" or "affidavit"), signed and verified under penalty of perjury, listing all of the taxable personal property that was located in the county as of 12:00 p.m. on January 1st of the

assessment year. For purposes of this rule, the term "person" includes natural persons and artificial persons such as partnerships, corporations, limited liability companies, associations, trusts, and estates.

(a) **What if the owner of personal property moves to another county or into this state after January 1st?** The owner of taxable personal property who moves from one county to another between January 1st and July 1st will be assessed in the county whose assessor fist calls upon the owner to make a listing. The owner of personal property who moves into this state from another state between January 1st and July 1st must make a listing of taxable personal property that the person owned on January 1st of the assessment year with the assessor in the county in which the person resides.

If the owner of personal property moves to another county or into this state after January 1st and can satisfy the assessor that the owner's property has been assessed and will be held liable for the tax on the current year in another state or county, the owner cannot be assessed again for the current year. RCW 84.44.080.

(b) **How should property be identified on the personal property affidavit?** Each item of taxable personal property must be listed on the affidavit, and each category of personal property must be separately identified. For example, office equipment must be separately identified as computers, desks, facsimile machines, etc. If deemed practicable, the assessor may permit consolidation of items of personal property with a total value of $1,000 or less in one entry on the affidavit under the heading, "Miscellaneous Items of Personal Property." When this consolidation is made, the cost reported by the taxpayer must be identified as "Miscellaneous Tools and Equipment," "Miscellaneous Machinery" or by similar designation indicating the category of property reported.

(c) **What other information must be included in the personal property affidavit?** In addition to a listing of all items of taxable personal property identified by category, a personal property affidavit must also include:

(i) The date of acquisition for each item of personal property; and

(ii) The total original cost of each item of personal property. For purposes of listing taxable personal property, the total original cost of an item includes all costs associated with making the property operational but excludes sales tax. For example, installation, freight, and engineering charges are costs that may be incurred while placing property into operation. The value of any trade-in is to be included as part of the acquisition cost.

(d) **How to the exemptions for household goods, furnishings, and personal effects and for the head of a family affect listing?** RCW 84.36.110 provides exemptions for the head of a family and for household goods, furnishings, and personal effects. Information about these exemptions and their effect on listing is provided in WAC 458-16-115.

(e) **What if the affidavit is not signed and verified?** A personal property affidavit must contain a written declaration that any person signing the affidavit and knowing it to be false is subject to the penalties of perjury. RCW 84.40.335. The assessor may not accept an affidavit that is not signed and which is not verified under penalty of perjury. RCW 84.40.060 provides that any personal property affidavit that is not signed and verified under penalty of perjury will not be considered in any way to constitute compliance, or an attempt at compliance, with the listing requirements of chapter 84.40 RCW.

(f) **What if the assessor believes that an incomplete or inaccurate listing has been made?** When the assessor believes that an incomplete or inaccurate listing has been made, the assessor has the following remedies:

(i) If the assessor believes that a person listing personal property for himself or herself, or on behalf of a principal (e.g., another person, company, or corporation) has not made a full, fair, and complete listing of such property, the assessor may examine the person under oath in regard to the amount of the property the person is required to list. If the person refuses to answer under oath, the assessor may list the property of that person, or of that person's principal, according to the assessor's best judgment and information. RCW 84.40.-110. Any oath authorized to be administered under Title 84 RCW may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths. Any person wilfully making a false list, schedule, or statement under oath is subject to the penalties of perjury. RCW 84.40.120.

(ii) For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or the assessor's trained and qualified deputy may visit, investigate, and examine any personal property at any reasonable time. For the purposes of this verification, the records, accounts, and inventories, which will aid in determining the amount and valuation of the property, will also be subject to visitation, investigation, and examination. The visitation, investigation, and examination may be performed at any office of the taxpayer in this state, and the taxpayer is required to furnish or make available all the information pertaining to property in this state to the assessor even though the records may be maintained at any office outside this state. RCW 84.40.340.

(g) **When are personal property affidavits due?** Affidavits of personal property are due on or before the last day of April. RCW 84.40.040. A penalty will be added to the amount of tax assessed if a statement is not filed by the due date. RCW 84.40.130. Refer to WAC 458-12-110 for detailed information about the penalties imposed under RCW 84.40.130.

(3) **Assessor's duty to maintain list of persons liable to assessment.** Assessors must maintain an alphabetical list of the names and last known addresses of all property owners in the county who are subject to assessment of personal property. On or before January 1st of each year, the assessor is required to mail a notice to such persons that a listing is required along with an affidavit. The notice and affidavit must be in accordance with forms prescribed by the department of revenue. If practicable, the notice and affidavit mailed to each taxpayer must include a copy of the previous year's affidavit. RCW 84.40.040. Furthermore, a copy of the taxpayer's previous year's affidavit must be provided to the taxpayer upon the taxpayer's request.

(a) **What if I do not receive an affidavit from the assessor?** Property owners who are subject to assessment of personal property and any other person required to list personal property are responsible for filing a personal property affidavit regardless of whether or not the person receives an affidavit in the mail from the assessors.

(b) **What are the assessor' duties upon receipt of a signed and verified affidavit?** Upon receipt of a signed and verified affidavit, the assessor will determine the true and fair value of the property listed in the affidavit and enter one hundred percent of the true and fair value of the property on the assessment roll opposite the name of the party assessed (i.e., the owner of the property). The assessor may, after giving written notice of the action to the person assessed, and to the assessment list any taxable property that should have been included in the list but was omitted by the taxpayer. RCW 84.40.040.

A copy of the completed personal property affidavit containing the assessor's determination of the true and fair value of the property assessed must be provided to the person assessed, or to the person listing the property. RCW 84.40.200.

(4) **Filing personal property affidavits by corporations, unincorporated organizations, trusts, estates, or by an agent.** This subsection provides information about the filing of personal property affidavits by corporations, unincorporated organizations, trusts, estates, or by an agent acting on behalf of a person required to make and provide an affidavit.

(a) **Corporations.** A personal property affidavit required to be submitted by a corporation must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to so act. RCW 84.40.190.

(b) **Unincorporated organizations.** A personal property affidavit required to be submitted by a partnership or other unincorporated organization must be signed by a partner or a responsible and duly authorized member or officer having knowledge of the organization's affairs. RCW 84.40.190.

(c) **Trusts or estates.** A personal property affidavit required to be submitted by a trust or estate must be signed by the fiduciary. RCW 84.40.190. A "fiduciary" means a person having a duty, created by the person's undertaking, to act primarily for anther's benefit in matters connected with such undertaking. For example, a trustee of a trust or a personal representative of an estate if a fiduciary.

(d) **Agents.** A personal property affidavit may be made and signed by an agent on behalf of a principal if the agent is authorized to do so by a power of attorney executed by the principal and filed with the assessor. RCW 84.40.190. A "principal" is someone who has permitted or directed another (i.e., an agent) to act for the principal's benefit and who is subject to the direction or control of the principal. If properly executed, the assessor must accept the power of attorney and keep a copy of it on file. The power of attorney will be effective until it expires or is revoked. An agent can make and sign a personal property affidavit on behalf of a principal who is a corporation, unincorporated organization, trust, estate, or other person required to submit an affidavit to the assessor. For example, a corporation may authorize an employee of an accounting firm to prepare and sign a personal property affidavit for the corporation by executing a power of attorney and filing it with the assessor.

In the case of corporations, unincorporated organizations, trusts, or estates, it is not necessary for an individual identified in subsection (4)(a), (b), or (c) of this rule to file a power of attorney with the assessor. The act of the individual will be considered that of the corporation, unincorporated organization, trust, or estate that the individual represents for purposes of the penalties found in RCW 84.40.130 without the necessity of filing a power of attorney. For example, a president of a corporation may submit a personal property affidavit to the assessor for the corporation without having to file a power of attorney with the assessor.

(i) "Power of attorney" includes any written authorization to prepare and sign a personal property affidavit executed by an authorized officer or the board of directors of a corporation or by a partner, owner, or fiduciary. "Authorized officer," as used in the preceding sentence, means a person who has been appointed by the board of directors to designate, by name or title, an employee or agent to execute and file personal property affidavits on behalf of the corporation.

(ii) When the assessor believes that a full, fair, and complete listing of property has not been made on behalf of a principal, the assessor may require the agent to provide evidence of his or her authority.

(iii) When any list, schedule, statement, or affidavit is made and signed by an agent, the principal required to make out and deliver the list, schedule, statement, or affidavit will be responsible for the contents and the filing thereof and will be liable for the penalties imposed under RCW 84.40.130. Refer to WAC 458-12-110 for detailed information about the penalties imposed under RCW 84.40.130.

(5) **Listing of personal property by manufacturers.** A manufacturer must make and deliver to the assessor a personal property affidavit. The listing is made in the county where the business is located. The affidavit must include the manufacture's stock, engines, machinery, and other nonexempt personal property, together with the date of acquisition and total original cost for each item. Detailed information about the cost of personal property is contained in subsection (2)(c)(ii) of this rule. Manufacturer's stock that constitutes "business inventories," as that term is defined in RCW 84.36.477, is exempt from ad valorem taxation and need not be included in the personal property affidavit.

Fixtures considered by the assessor as part of any parcel of real property should not be included in a manufacturer's personal property affidavit. For detailed information about fixtures or trade fixtures, refer to WAC 458-12-005 and 458-12-010.

(a) **Who is a "manufacturer"?** A "manufacturer" is any person who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by do doing. RCW 84.40.210.

(b) **What is "manufacturer's stock"?** "Manufacturer's stock" includes all articles purchased, received, or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying, or refining.

(c) **What if property listed in the affidavit has also been listed and assessed as part of any parcel of real property?** On receipt of the manufacturer's personal property affidavit, the assessor will delete from the assessment the value of any engines and machinery that the assessor knows to have been assessed as part of any parcel of real property (i.e., as a fixture). A copy of the corrected assessment will be provided to the manufacturer.

AMENDATORY SECTION (Amending Order PT 68-6, filed 4/29/68)

WAC 458-12-360 ((~~Assessment and evaluation—Notice of value change—Real property~~)) Notice of change in value of real property. ((~~Whenever there is a change in the true and fair value of real property, a notice of such change for the tract or lot of land and any improvements shall be mailed for by the assessor to the taxpayer. A copy shall be sent to the legal owner where such is requested, his address is given or is known, and the legal owner is different from the taxpayer.~~

~~The notice shall be mailed on or before June 15th of each year and shall contain a statement of the true and fair value on which the assessment of the property is based, and a brief statement of the procedure for appeal to the board of equalization including the time, date, and place of the meetings of the board.~~

~~"Taxpayer" shall mean the person charged, or whose property is charged with property tax, and whose name appears on the most recent tax roll or has been otherwise provided to the assessor.~~

~~"Legal owner" shall mean the person holding legal title to the property against which property tax is charged. (Rule derived from section 10, chapter 146, 1967 ex. sess.)~~)) (1) **Introduction.** This rule explains the requirement of county assessors to notify taxpayers of any change in the true and fair value of real property as provided by RCW 84.40.045. For purposes of this rule, the notice of a change in the true and fair value of real property is referred to as a revaluation notice.

(2) **When must a revaluation notice be provided?** All revaluation notices must be mailed within thirty days of the completed appraisal, except that no revaluation notices can be mailed during the period from January 15th to February 15th of each year. Also, if the true and fair value of the real property appraised has not changed, no revaluation notice need be sent to the taxpayer following the completed appraisal.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) On January 5th the assessor completes an appraisal of a home and the land upon which it sits. The total value of the land and home increased as a result of the appraisal. The assessor must mail a revaluation notice to the taxpayer by February 16th; however, the assessor is not allowed to mail the revaluation notice between January 15 and February 15th.

(b) The assessor appraises a home and the land upon which it sits. The value of the home decreases, and the value of the land increases; however, the total value of the home and land remain unchanged. The assessor is not required to mail a revaluation notice to the taxpayer. Under RCW 84.40.045, revaluation notices are only required when there is a change in the true and fair value of the real property that is the subject of the appraisal. In this example, although there is a change in the true and fair value of the home and land, there is no overall change in the true and fair value of the real property that was the subject of the appraisal.

(3) **What if an assessor fails to provide a timely revaluation notice?** The failure to provide a timely revaluation notice as required by RCW 84.40.045 does not invalidate the assessment. RCW 84.40.045 does not affect RCW 84.40.020 which provides, in relevant part, that all real property in this state subject to taxation must be listed and assessed every year, at its value on January 1st of the assessment year.

A taxpayer who fails to timely appeal an assessor's determination of value to the county board of equalization (board) because of the assessor's failure to timely provide a revaluation notice may still petition the board for a review of the assessor's determination of value. A board may reconvene on is own authority in certain circumstances, including upon request of a taxpayer who has not received a timely revaluation notice. The taxpayer must submit to the board a sworn affidavit stating that a revaluation notice for the current assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition for review of the assessor's determination of value, and the taxpayer can show proof that the value was actually changed. (For additional information about appealing an assessor's determination of value to the county board, refer to chapter 458-14 WAC.)

(4) **Who is entitled to receive a revaluation notice?** The assessor is required by law to mail revaluation notices to the taxpayer. RCW 84.40.045. For purposes of this rule, "taxpayer" means the person charged, or whose property is charged, with property tax and whose name appears on the most recent tax roll or has been otherwise provided to the assessor.

If any taxpayer, as shown by the tax rolls, holds only a security interest under a mortgage, contract of sale, or deed of trust in the real property that is the subject of the revaluation notice, the taxpayer is required to supply, within thirty days of receiving a written request from the assessor, the name and address of the person making payments under the mortgage, contract of sale, or deed of trust. The assessor must mail a copy of the revaluation notice to the person making payments under the mortgage, contract of sale, or deed of trust at the address provided by the taxpayer. The assessor is required to make the request provided for in this subsection during the month of January. A taxpayer who willfully fails to comply with such a request from the assessor within the thirty-day time limitation is subject to a maximum civil penalty of five

thousand dollars. The civil penalty is recoverable in an action by the county prosecutor and, when recovered, must be deposited in the county current expense fund.

(5) **What information must a revaluation notice contain?** A revaluation notice must contain the following information.

(a) The name and address of the taxpayer;

(b) A description of the real property that is the subject of the revaluation notice;

(c) The previous and new true and fair values, stating separately land and improvement values;

(d) A statement that the assessed value is one hundred percent (100%) of the true and fair value;

(e) If the property is classified on the basis of its current use, the previous and new current use value of the property, stating separately land and improvement values;

(f) A statement informing taxpayers that if they would like to learn more about how their property was valued for tax purposes and how their property taxes will be determined, they may obtain an information pamphlet describing the property tax system from the assessor's office free of charge;

(g) A statement that land used for farm and agricultural purposes, to preserve open space, or for the commercial growth and harvesting of forest crops may be eligible for assessment based on the land's current use rather than its highest and best use. This statement must also provide information on the method of making application and availability of further information on current use classification;

(h) A statement informing taxpayers that if they own and live in a residence in the county, including a mobile home, are now or will be 61 years of age by December 31st of the current year, or are retired because of physical disability, and if their combined disposable income is under the limits provided in RCW 84.36.381, they may be eligible to receive a property tax exemption. Although not statutorily required, it is suggested that a revaluation notice contain a statement that if you are a senior citizen or a disabled person, you may be able to defer payment of your property taxes. This statement should include information about how further information about property tax deferrals for senior citizens and disabled persons may be obtained; and

(i) A brief statement of the procedure for appeal to the county board of equalization and the time, date, and place of the meetings of the board. The following language is suggested: "You may appeal either the true and fair value and/or current use assessed value to the county board of equalization. An appeal petition may be obtained from the board of equalization. Petitions for a hearing must be filed with the board of equalization on or before July 1st of the assessment year, or within (number of days) of the date of the revaluation notice, whichever is later. Petitions received after those dates will be denied on the grounds of not having been timely filed. The board of equalization will convene on July 15th in the (name of office) at (name of city or town), Washington, and will continue in session for a period not to exceed four weeks. The board of equalization is to review and equalize the assessments of the current year for taxes payable the following year."

WSR 03-03-101
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF REVENUE
[Filed January 17, 2003, 4:24 p.m.]

Subject of Possible Rule Making: WAC 458-20-24003 Tax incentives for high technology businesses.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.32.300, 82.01.060(2), and 82.63.010.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is considering a new rule to identify and explain the sales and use tax deferrals for high technology businesses provided by chapter 82.63 RCW and the business and occupation tax credit for research and development spending provided by RCW 82.04.4452.

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

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, e-mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. Written comments may be directed to Greg Potegal, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6132, e-mail gregp@dor.wa.gov, fax (360) 664-0693.

Date and Location of Public Meeting: Capital Plaza Building, 4th Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on February 12, 2003, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 570-6175.

January 16, 2003
Alan R. Lynn
Rules Coordinator
Legislation and Policy Division

WSR 03-03-108
PREPROPOSAL STATEMENT OF INQUIRY
HORSE RACING COMMISSION
[Filed January 21, 2003, 1:12 p.m.]

Subject of Possible Rule Making: Threshold levels for permitted medication.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.16.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To establish quantitative standards for therapeutic medication.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Robert M. Leichner, Executive Secretary, Washington Horse Racing Commission, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462, fax (360) 459-6461.

January 21, 2003
R. M. Leichner
Executive Secretary

WSR 03-03-110
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 21, 2003, 1:14 p.m.]

Subject of Possible Rule Making: Scaffold requirements in the General safety and health standards, chapter 296-24 WAC; Safety standards—Longshore, stevedore and related waterfront operations, chapter 296-56 WAC; Safety standards for ski area facilities and operations, chapter 296-59 WAC; Safety standards for pulp, paper, and paperboard mills and converters, chapter 296-79 WAC; and Safety standards for window cleaning, chapter 296-878 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, [49.17].040, [49.17].050, [49.17].-060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The purpose of this rule making is to make this rule easy to read, understand and more usable for employers. This proposal will move all scaffold requirements from the General safety and health standards, chapter 296-24 WAC and place them into a new chapter. There will be no increase in requirements.

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

Process for Developing New Rule: Parties interested in the development of these rules may contact the individual listed below. The public may also participate by providing written comments or giving oral testimony after these rule 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 Christine Swanson, Department of Labor and Industries, WISHA Services Division, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, fax (360) 902-5529, e-mail copc235@lni.wa.gov.

January 21, 2003
Gary Moore
Director

WSR 03-03-111
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING

(Board of Registration for Professional Engineers and Land Surveyors)

[Filed January 21, 2003, 3:29 p.m.]

Subject of Possible Rule Making: Revision to chapter 196-30 WAC, Fees for on-site wastewater treatment system designers and inspectors.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.24.086, 18.43.035, and 18.210.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: There is a statutory requirement under RCW 43.24.086 that licensing and regulatory groups such as this board be self-supporting through fees. The Department of Licensing and the Engineer/Surveyor Board are reviewing the fee structure to determine if any adjustments to fees must be made, as well as determining if any updates to the language in the rule are necessary.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Joe Vincent Jr., Manager, On-Site Wastewater Treatment Systems, Designer Licensing, Inspector Certification Program, P.O. Box 9025, Olympia, WA 98507-9025, phone (360) 664-1567, fax (360) 664-2551, e-mail onsiteprog@dol.wa.gov. Persons may comment by mail, fax, phone or e-mail. Draft language of any changes will be sent to the board's mailing list.

January 21, 2003
George A. Twiss
Executive Director
Board of Registration
for Professional Engineers
and Land Surveyors

WSR 03-03-112
WITHDRAWAL OF PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 21, 2003, 3:47 p.m.]

The Economic Services Administration (ESA) is requesting the withdrawal of a CR-101 Preproposal statement of inquiry filed as WSR 03-01-061, filed on December 11, 2002. This filing relates to WAC 388-406-0015.

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-03-113
WITHDRAWAL OF PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 21, 2003, 3:49 p.m.]

The Economic Services Administration (ESA) is requesting the withdrawal of several preproposal statements of inquiry. Please withdraw the following CR-101s:

WSR	Date Filed
WSR 02-01-098	12/17/01
WSR 02-01-100	12/17/01
WSR 01-23-063	11/20/01
WSR 01-21-022	10/8/01
WSR 01-13-025	6/12/01
WSR 01-12-020	5/25/01
WSR 01-06-027	3/2/01
WSR 01-03-024	1/5/01
WSR 00-19-029	9/11/00
WSR 00-13-060	6/15/00
WSR 00-09-035	4/14/00
WSR 00-08-052	3/31/00
WSR 00-08-050	3/31/00
WSR 00-03-060	1/18/00
WSR 99-24-128	12/1/99
WSR 99-24-027	11/23/99
WSR 99-24-026	11/23/99
WSR 99-07-105	3/23/99
WSR 99-04-054	1/29/99
WSR 99-04-055	1/29/99
WSR 98-23-090	11/18/98
WSR 98-22-096	11/4/98
WSR 98-01-168	12/22/97
WSR 97-20-120	10/1/97
WSR 97-02-086	12/31/96
WSR 97-02-084	12/31/96
WSR 97-02-082	12/31/96
WSR 97-02-081	12/31/96
WSR 97-02-080	12/31/96
WSR 97-02-079	12/31/96
WSR 97-02-077	12/31/96

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-03-120
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE
[Filed January 22, 2003, 8:47 a.m.]

Subject of Possible Rule Making: To repeal WAC 16-333-040 Caneberry certification fees effective June 30, 2001, and amend WAC 16-333-041 Caneberry certification fees effective July 1, 2001, to increase caneberry certification and inspection fees by the fiscal growth factors for fiscal year 2003 (3.29%) and fiscal year 2004 (3.2%).

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 15.14 and 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Current caneberry plant certification and inspection fee income is not adequate to cover costs of these activities.

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

Process for Developing New Rule: Washington State Department of Agriculture representatives will discuss proposed fee increases with affected stakeholders and comply with the filing, publication and public hearing requirements of chapter 34.05 RCW. Affected stakeholders will have an opportunity to submit written comments on the proposal during the public comment period and present oral testimony at the public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary A. Martin Toohey, Assistant Director, Washington State Department of Agriculture, Plant Protection Division, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1907, fax (360) 902-2094, e-mail mtoohey@agr.wa.gov; or Tom Wessels, Plant Services Program Manager, Washington State Department of Agriculture, Plant Protection Division, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1984, fax (360) 902-2094, e-mail twessels@agr.wa.gov.

January 22, 2003
Mary A. Martin Toohey
Assistant Director

WSR 03-03-121
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE
[Filed January 22, 2003, 8:47 a.m.]

Subject of Possible Rule Making: To repeal WAC 16-328-010 Strawberry plant certification fees effective June 30, 2001 and amend WAC 16-328-011 Strawberry plant certification fees effective July 1, 2001, to increase strawberry plant certification and inspection fees by the fiscal growth factors for fiscal year 2003 (3.29%) and fiscal year 2004 (3.29%).

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 15.14 and 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Current strawberry plant cer-

tification and inspection fee income is not adequate to cover costs of these activities.

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

Process for Developing New Rule: Washington State Department of Agriculture representatives will discuss proposed fee increases with affected stakeholders and comply with the filing, publication and public hearing requirements of chapter 34.05 RCW. Affected stakeholders will have an opportunity to submit written comments on the proposal during the public comment period and present oral testimony at the public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary A. Martin Toohey, Assistant Director, Washington State Department of Agriculture, Plant Protection Division, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1907, fax (360) 902-2094, e-mail mtoohey@agr.wa.gov; or Tom Wessels, Plant Services Program Manager, Washington State Department of Agriculture, Plant Protection Division, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1984, fax (360) 902-2094, e-mail twessels@agr.wa.gov.

January 22, 2003
Mary A. Martin Toohey
Assistant Director

WSR 03-03-122
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE
[Filed January 22, 2003, 8:47 a.m.]

Subject of Possible Rule Making: Revision of existing weights and measures rules regarding the pricing and method of sale of retail motor fuel, heating fuel and liquified petroleum gas. The revision would combine two separate rules into a single, updated administrative rule and make other changes. The agency proposes amending chapter 16-659 WAC, Liquefied petroleum gas and chapter 16-657 WAC, Retail pricing of motor and heating fuel. The agency will combine and retitle these rules under chapter 16-657 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 19.94, 19.112, and 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: In compliance with Executive Order 97-02 on regulatory improvement, this rule change would streamline and update current requirements about the pricing and method of sale of retail motor fuel, heating fuel and liquified petroleum gas. Obsolete requirements would be eliminated and the rules would be revised to acknowledge current commercial practices and to protect consumers. The revision may incorporate adoption of additional sections of the National Institute of Standards and Technology (NIST) Handbook #130.

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 agency will consult with the Weights and Measures Advisory Group and industry associations.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary Toohey, Assistant Director, Plant Protection Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1907, fax (360) 902-2094; or Jerry Buendel, Program Manager, Washington State Department of Agriculture, Weights and Measures Division, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1856, fax (360) 902-2086, e-mail jbuendel@agr.wa.gov.

January 22, 2003
Mary A. Martin Toohey
Assistant Director

WSR 03-03-129
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LABOR AND INDUSTRIES
(Board of Boiler Rules)
[Filed January 22, 2003, 10:14 a.m.]

Subject of Possible Rule Making: Review the current fees that exist in the Board of Boiler Rules—Substantive, 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 3.29% fee increase, which is the Office of Financial Management's maximum allowable fiscal growth factor for fiscal year 2003, may be necessary to help offset inflation and 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 rule changes. Other interested parties and the public may also participate by providing written comments or giving oral testimony during the public hearing and comment 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.

January 21, 2003
Craig Hopkins, Chair
Board of Boiler Rules

WSR 03-03-131
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE
[Filed January 22, 2003, 11:16 a.m.]

Subject of Possible Rule Making: (1) Increase hourly inspection rates within the fiscal growth factor of 3.29% for FY2003 and 3.20% for FY2004 as allowed under Initiative 601.

(2) Adoption of the federal terminal market inspection hourly rate established by USDA/AMS/FPB.

(3) Establish fees for fresh produce audit verification program for good agricultural practices (GAP) and good handling practices (GHP).

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: (1) Currently, hourly inspection rates are below the costs of providing services. Alignment of inspection charges with inspection practices and procedures.

(2) Adoption of the federal market inspection fees to establish fees for GAP and GHP audit certifications performed by federal/state licensed auditors for the USDA Fresh Produce Audit Verification Program.

(3) No rule currently established for fresh produce audit verifications of fruits and vegetables. Adoption of the federal terminal market inspection hourly rate would make the state and federal fees equal for this federal-state audit 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: Discussions and focus group meetings will be conducted with industry groups and stakeholders throughout the state.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jim Quigley, Program Manager, Fruit and Vegetable Inspection Program, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1832, fax (360) 902-2085.

January 22, 2003
Robert W. Gore
Assistant Director

WSR 03-03-135
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF FISH AND WILDLIFE
[Filed January 22, 2003, 11:57 a.m.]

Subject of Possible Rule Making: Personal use fishing 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: The current sturgeon harvest limits fully utilize the resource, and cause a shortened season. Adjustment of the seasonal limits may provide additional fishing opportunity.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Oregon Department of Fish and Wildlife regulates sturgeon fishing on the Columbia River, and this rule will be coordinated with Oregon.

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 Phil Anderson, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2720. Contact by March 6, 2003. Anticipated proposal filing March 7, 2003.

January 22, 2003
Evan Jacoby
Rules Coordinator

PROPOSED

WSR 03-01-117
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)
[Filed December 18, 2002, 3:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-15-079.

Title of Rule: Chapter 388-145 WAC, Emergency respite center licensing requirements.

Purpose: This chapter establishes licensing rules for emergency respite centers (ERCs), also known as crisis nurseries. The legislature passed chapter 230, Laws of 2001 that included an amendment to RCW 74.15.020 defining center-based ERCs and adding RCW 74.15.280 authorizing the department to adopt licensing rules.

Statutory Authority for Adoption: RCW 74.15.020 and chapter 230, Laws of 2001.

Statute Being Implemented: RCW 74.15.280 and 74.15.020, chapter 230, Laws of 2001.

Summary: This chapter establishes licensing rules for emergency respite centers (ERCs), also know as crisis nurseries. Licensing will be required of all center-based programs providing crisis respite to families in their communities. The chapter provides consistent standards for the health and safety of children placed by their parents at a respite center.

Reasons Supporting Proposal: The 2001 session of the legislature passed chapter 230, Laws of 2001 that included an amendment to RCW 74.15.020 defining center-based ERCs and RCW 74.15.280 authorizing the department to adopt licensing rules. The rules outline health and safety standards for the protection of children placed at respite centers.

Name of Agency Personnel Responsible for Drafting and Implementation: Jean L. Croisant, P.O. Box 45710, Olympia, WA 98504-5710, (360) 902-7992; and Enforcement: Division of Licensed Resources, Office of Foster Care Licensing, Children's Administration, Department of Social and Health Services.

Name of Proponent: Department of Social and Health Services, Children's Administration, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this chapter is to define the basic licensing standards for emergency respite centers and to ensure children experience safe and healthy care while placed in centers. Some of the rules were drawn from appropriate child care center and child group care licensing requirements. Additionally, new sections specific to ERCs were developed. In part, the chapter includes:

- Licensing process;
- Facility or building fire safety requirements;
- Health and environment safety regarding medication management, first-aid supplies, food/menus, and physical facility maintenance;
- Staff qualifications and training;
- Staffing ratios and child supervision; and
- Program activities and toys.

The anticipated effect of the new rules will be consistent standards of care for children placed away from their home and family by their parents. The inspections by the Office of the State Fire Marshal and Department of Health help to ensure that the physical safety of each child is in place. The rules provide adequate staffing levels and standards of supervision to promote the health and safety of the children.

Proposal does not change existing rules. The proposed rules do not change current permanent rules. When adopted as permanent, the proposed WAC 388-145-0010 through 388-145-1220 will replace emergency new WAC 388-148-1205 through 388-148-1300 that were filed previously as WSR 02-23-064, 02-15-132, and 02-08-031.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Children's Administration has analyzed the proposed rules and concluded that no small businesses will be impacted.

RCW 34.05.328 applies to this rule adoption. Since the proposed new regulations "make significant changes to a policy or regulatory program" (see RCW 34.05.328 (5)(c)(iii)), Children's Administration has determined the proposed rules to be "significant" as defined by the legislature. As required by RCW 34.05.328 (1)(c), Children's Administration has analyzed the probable costs and probably benefits of the proposed new requirements, taking into account both the qualitative and quantitative benefits and costs. This cost-benefit analysis is available by contacting the person above.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on February 25, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by February 21, 2003, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., February 25, 2003.

Date of Intended Adoption: Not earlier than February 26, 2003.

Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

Chapter 388-145 WAC

EMERGENCY RESPITE CENTERS

PURPOSE

NEW SECTION

WAC 388-145-0010 What is the purpose of this chapter? The department issues or denies a license on the basis of compliance with licensing requirements. This chapter defines general and specific licensing requirements for emergency respite centers. Unless noted otherwise, these require-

ments apply to people who want to be licensed or re-licensed to provide emergency respite care.

The department is committed to ensuring that children who receive emergency respite care experience health, safety, and well-being. We want these children's experiences to be beneficial to them not only in the short term, but also in the long term. Our licensing requirements reflect our commitment to children.

NEW SECTION

WAC 388-145-0020 What definitions apply to this chapter? The following definitions are important to understand these rules:

"Abuse or neglect" means injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Children" or **"youth,"** means individuals who are:

(1) Under eighteen years old, including expectant mothers under eighteen years old; or

(2) Up to twenty-one years of age with developmental disabilities.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written licensing improvement plan to address specific skills, abilities, or other issues of a fully licensed home or facility to maintain and/or increase the safety and well-being of children in their care.

"DCCEL" means the division of child care and early learning. DCCEL licenses child care homes and child care centers.

"DCFS" means the division of children and family services.

"DDD" means the division of developmental disabilities.

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

"DLR" means the division of licensed resources.

"DOH" means the department of health.

"ERC" or **"emergency respite center"** is an agency that may be commonly known as a crisis nursery that provides emergency or crisis care for children to prevent child abuse or neglect.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Hearing" means the department's administrative review process.

"I" refers to anyone who operates or owns emergency respite center.

"Individual with developmental disabilities" means an individual who meets the eligibility requirements in RCW 71A.10.020 and WAC 388-825-030 for services. A developmental disability is any of the following: Mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition described in WAC 388-825-030. These conditions must originate before the age of eighteen years; be expected to continue indefinitely; and result in a substantial handicap.

"Infants" means children under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the licensing requirements.

"Licensor" means a division of licensed resources (DLR) employee at DSHS who:

(1) Approves licenses or certifications for foster homes and group facilities; and

(2) Monitors homes and facilities to ensure that they continue to meet health and safety requirements.

"Nonambulatory" means not able to walk.

"Nonmobile" refers to children who are not yet walking, are unable to walk, or unable to use a wheelchair or other device to move about freely.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as a disciplinary measure to an individual or agency that has previously been issued a full license but is out of compliance with licensing standards.

"Respite" means brief, relief care provided to parents or legal guardians with the child care provider fulfilling some or all of the functions of the care-taking responsibilities of the parent or guardian.

"Severe developmental disabilities" means significant disabling, physical and/or mental conditions(s) that cause a child to need external support for self-direction, self-support and social participation.

"Universal precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under universal precautions (sometimes call standard precautions), blood or other potentially infectious materials of all patients should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates an emergency respite center.

GENERAL INFORMATION

NEW SECTION

WAC 388-145-0030 What is an emergency respite center? An emergency respite center is an agency that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children to prevent abuse and neglect for up to seventy-two hours.

NEW SECTION

WAC 388-145-0040 What services may be provided or arranged for by the emergency respite center? An emergency respite center may provide the following:

(1) The provision of direct child care;

(2) A family assessment;

(3) Appropriate community service referrals; and/or

(4) Family support services.

NEW SECTION

WAC 388-145-0050 Are there services an emergency respite center may not provide? The services provided by an emergency respite center may not substitute for those provided by:

(1) Crisis residential centers;

(2) HOPE centers; or

(3) Any other services required under chapter 13.32A (Family reconciliation services) or 13.34 RCW (Child welfare).

NEW SECTION

WAC 388-145-0060 What age children may a center serve? (1) Emergency respite centers may provide care for children from birth through seventeen years.

(2) There is one situation when an emergency respite center may provide care for a person eighteen through twenty years of age. That situation is when an eighteen through twenty-year old person is developmentally disabled and admitted with a sibling who is under eighteen.

NEW SECTION

WAC 388-145-0070 Who may place children at a center? A parent or legal guardian of a child may voluntarily place a child in an emergency respite center for up to seventy-two hours.

APPLICATION

NEW SECTION

WAC 388-145-0080 Is a license required? (1) In most situations, a license is required to provide child care at an emergency respite center.

(2) The department does not require licenses for people providing care in any of the situations defined in RCW 74.15.020(2). Examples are relatives, school nurseries, and hospitals.

NEW SECTION

WAC 388-145-0090 How old do I have to be to apply for a license? You must be at least twenty-one years old to apply for a license to provide care to children at an emergency respite center.

NEW SECTION

WAC 388-145-0100 What personal characteristics must I have to provide care to children at a center? If you are requesting a license or a position as an employee, volunteer, intern, or contractor in an emergency respite center, you must:

(1) Demonstrate an understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, and social needs of the children under your care.

(2) Be able to furnish the child with a nurturing, respectful, supportive, and responsive environment.

(3) Not have been disqualified by our background check (chapter 388-06 WAC) before having unsupervised access to children.

NEW SECTION

WAC 388-145-0110 What personal information may I be required to provide to be licensed? (1) The department may request additional information at any time and it may include, but is not limited to:

(a) Substance and alcohol abuse evaluations and/or documentation of treatment;

(b) Psychiatric evaluations;

(c) Psycho-sexual evaluations; and

(d) Medical evaluations and/or medical records.

(2) The applicant/licensees pays for any evaluation requested by the department.

(3) The applicant/licensee must give permission for the licensor to speak with the evaluator/provider before and after the evaluation.

(4) If an applicant or licensee refuses to comply with subsections (1), (2), or (3) of this section, then DLR may deny the application or revoke the license.

NEW SECTION

WAC 388-145-0120 How do I apply for a license? (1) To apply for an emergency respite center license, the person or legal entity responsible for the center must send the application form to your licensor at DLR.

(2) With the application form, you must send the following information:

(a) Written verification for each applicant and staff person of completion of:

(i) A tuberculosis test or x-ray unless you can demonstrate medical reasons prohibiting the test;

(ii) First-aid and cardio-pulmonary resuscitation (CPR) training appropriate to the age of the children in care; and

(iii) HIV/AIDS and blood borne pathogens training including infection control standards.

(b) A completed background check form for each applicant, staff person, board member, intern or volunteer on the premises who:

(i) Is at least sixteen years old; and

(ii) Has unsupervised access to children (emergency respite centers must comply with chapter 388-06 WAC regarding background checks).

PROPOSED

(3) If you, any staff person, board member, intern, or volunteer has lived in Washington state less than three years and will have unsupervised access to children, you must provide us with a completed FBI fingerprint form.

NEW SECTION

WAC 388-145-0130 What is required to document completed background checks on staff? The licensee of an emergency respite center must keep a log of all background check results of employees, volunteers, and interns on the premises of the center.

NEW SECTION

WAC 388-145-0140 What first aid and cardiopulmonary resuscitation (CPR) training is required? (1) You and your staff at an emergency respite center must have the following current first-aid and CPR training:

(a) Basic standard first aid; and

(b) Age-appropriate cardiopulmonary resuscitation (CPR).

(2) Approved first aid and CPR training must be in accordance with a nationally recognized standard.

(3) A person with first aid and CPR training must be on the premises of an emergency respite center at all times, when children are present.

(4) The requirement for CPR training may be waived for persons with a statement from their physician that the training is not advised for medical reasons. This person must not be the only person on the premises when children are present.

(5) You must keep records in your center showing who has completed current first aid and CPR training. This includes copies of the certificate of completion for the training for each staff person.

NEW SECTION

WAC 388-145-0150 What HIV/AIDS and blood borne pathogens training is required? (1) You must provide or arrange for training for yourself and your staff at an emergency respite center on infection control, prevention, transmission, and treatment of HIV and AIDS and blood borne pathogens.

(2) You must use infection control requirements and educational material consistent with the approved current curriculum "Know - HIV/AIDS Prevention Education for Health Care Facility Employees," published by the department of health, office on HIV/AIDS.

(3) Child care workers and anyone else providing direct care to children at an emergency respite center must use universal precautions (see definitions) when coming in contact with the bodily fluids or secretions of a child.

NEW SECTION

WAC 388-145-0160 How long do I have to complete the licensing application packet? (1) You must complete your licensing application with supporting documents, such as training certificates, within ninety days of first applying for your emergency respite center license.

(2) If you fail to meet this deadline and have not contacted your licensor, your licensor may consider your application withdrawn.

(3) If you are applying for a license renewal, you must send the application form to your licensor at least ninety days prior to the expiration of your current license.

LICENSING AND PROGRAM APPROVAL

NEW SECTION

WAC 388-145-0170 Does the department need to approve the program I offer? (1) The department must approve the program that you have developed for children under your care at an emergency respite center.

(2) You must send to DLR a detailed written program description outlining educational, recreational, and any therapeutic services you will provide to children and their families.

(3) A sample of the schedule of daily activities for children under care must be included with the program description.

NEW SECTION

WAC 388-145-0180 May an agency have more than one type of license? (1) A facility-based emergency respite center licensed by the division of licensed resources may also be licensed as a child care center by the division of child care and early learning.

(2) The licensee must meet the requirements for both licenses and the have written approval for both licenses from each division.

NEW SECTION

WAC 388-145-0190 What hours may a center be open? An emergency respite center may choose to be open up to twenty-four hours a day, seven days a week.

NEW SECTION

WAC 388-145-0200 How does the department decide how many children a center may serve? (1) The department approves the number of children that an emergency respite center may serve based on an evaluation of these factors:

(a) Physical accommodations in the center;

(b) The number of staff, family members and volunteers available for providing care;

(c) Your skills and the skills of your staff;

(d) The ages and characteristics of the children you are serving;

(e) The evaluation of fire safety by the office of the state fire marshal; and

(f) The evaluation of health and safety by the department of health.

(2) Based on the evaluation, the department may license you for the care of fewer children than your facility could house.

NEW SECTION

WAC 388-145-0210 Will the department grant exceptions to the licensing requirements? (1) At its discretion, the department may make exceptions to the licensing requirements for emergency respite centers. The exceptions:

(a) Must regard only nonsafety requirements.

(b) Must not compromise the safety and well being of the children receiving care.

(2) You must make a written request for an exception to the licensing requirements.

(3) After granting an exception to a licensing requirement, the department may:

(a) Limit or restrict your license; and/or

(b) Require you to enter into a compliance agreement to ensure the safety and well being of the children in your care.

(4) You must keep a copy of the approved exception and any compliance agreement to the licensing requirements for your files.

(5) You do not have appeal rights if the department denies your request for an exception to our requirements.

CORRECTIVE ACTION

NEW SECTION

WAC 388-145-0220 Does the department issue probationary licenses? (1) The department may issue an emergency respite center a probationary license as part of a corrective action plan with a licensed provider.

(2) The department must base its decision about whether to issue a probationary license on the following:

(a) Intentional or negligent noncompliance with the licensing rules;

(b) A history of noncompliance with the rules;

(c) Current noncompliance with the rules;

(d) Evidence of a good faith effort to comply; and

(e) Any other factors relevant to the specific situation.

(3) A probationary license may be issued for up to six months. At its discretion, the department may extend the probationary license for an additional six months.

NEW SECTION

WAC 388-145-0230 When is a license denied, suspended or revoked? (1) An emergency respite center license must be denied, suspended or revoked if the department decides that you cannot provide care for children in a way that ensures their safety, health and well-being.

(2) The department must disqualify you for any of the reasons that follow:

(a) Your facility fails to meet the health and safety requirements to receive a certificate of compliance as required by the department of health and/or office of the state fire marshal.

(b) You have been disqualified by your background check (see chapter 388-06 WAC).

(c) You have been found to have committed child abuse or neglect, or you treat, permit or assist in treating children in your care with cruelty, indifference, abuse, neglect, or exploitation, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(d) You or anyone on the premises had a license denied or revoked from an agency that provided care to children or vulnerable adults.

(e) You try to get a license deceitfully, such as making false statements or leaving out important information on the application.

(f) You commit, permit or assist in an illegal act on the premises of an emergency respite center providing care to children.

(g) You are using illegal drugs, or excessively using alcohol and/or prescription drugs.

(h) You knowingly allowed employees or volunteers with false statements on their applications to work at your agency.

(i) You repeatedly lack qualified or an adequate number of staff to care for the number and types of children under your care.

(j) You have refused to allow our authorized staff and inspectors to have requested information or access to your facility, child and program files, and/or your staff and clients.

(k) You are unable to manage the property, fiscal responsibilities, or staff in your agency.

(l) You have failed to comply with the federal and state laws for any Native American children that you have under care.

NEW SECTION

WAC 388-145-0240 Are there any other reasons that could potentially cause me to lose my license? (1) The department may suspend or revoke your emergency respite center license if you go beyond the conditions of your license by:

(a) Having more children than your license allows; or

(b) Having children with ages different than your license allows.

(2) The department also may suspend or revoke your license if you:

(a) Fail to provide a safe, healthy and nurturing environment for children under your care; or

(b) Fail to comply with any of our other licensing requirements.

NEW SECTION

WAC 388-145-0250 What happens when a licensor is notified that a licensee has received a noncompliance support order from the division of child support? (1) The department must suspend an emergency respite care license, if the licensor receives a notice from the division of child support that the licensee is not in compliance with a support order under authority of RCW 43.20A.205 and 74.20A.320.

PROPOSED

(2) In this situation, the suspension of a center license, for noncompliance of a support order, would be effective on the date the licensee receives a notice from the licensor.

(3) The license remains suspended until the licensee provides proof that he or she is in compliance with the child support order.

(4) The licensee does not have a right to an administrative hearing based on a suspension of the center license due to noncompliance of a child support order.

NEW SECTION

WAC 388-145-0260 How will the department notify me if my license is denied, suspended, or revoked? (1) The department sends you a certified letter informing you of any decision to deny, suspend or revoke your emergency respite center license.

(2) In the letter, the department also tells you what you may do if you disagree with the decision of the department to deny, suspend or revoke your emergency respite center license.

NEW SECTION

WAC 388-145-0270 What may I do if I disagree with the department's decision to deny, suspend or revoke my license? (1) You have the right to appeal any decision the department makes to deny, suspend, or revoke your emergency respite center license. The exception is outlined in WAC 388-145-0250 and deals with noncompliance of a child support order.

(2) Your right to appeal and the procedures for that process are outlined in RCW 43.20A.205 and 74.14.130, chapter 34.05 RCW, and chapter 388-02 WAC.

POSTING LICENSE AND REPORTING CHANGES

NEW SECTION

WAC 388-145-0280 Where do I post my license? You must post your emergency respite center license where the public can easily view it.

NEW SECTION

WAC 388-145-0290 What changes to my center must I report to my licensor? (1) You must report to your licensor immediately any changes in the original emergency respite center licensing application. This includes changes in:

(a) Your location or designated space, including address;

(b) Your phone number;

(c) The maximum number, age ranges, and sex of children you wish to serve; or

(d) The structure of your facility or on the premises from events causing damage, such as a fire, or from remodeling.

(2) A license is valid only for the person or organization named on the license at a specific address. If you operate an emergency respite center, you must also report any of the following changes to your licensor:

(a) A change of your agency's executive director;

(b) The death, retirement, or incapacity of the person who holds the license;

(c) A change in the name of a licensed corporation, or the name by which your center is commonly known; or

(d) Changes in an agency's articles of incorporation and bylaws that apply to the operation or the license of the facility.

FIRE SAFETY

NEW SECTION

WAC 388-145-0300 Must I comply with the requirements of the State Fire Marshal to receive a license? (1) An emergency respite center must comply with the requirements for fire safety of the office of the state fire marshal under WAC 212-12-210.

(2) The office of the state fire marshal will issue a notice of approval for licensing to the licensing agency when you have met their requirements for fire safety.

NEW SECTION

WAC 388-145-0310 Do I need to notify the local fire department of the location of my center? You must notify the local fire department of the location of your emergency respite center.

NEW SECTION

WAC 388-145-0320 Are local ordinances part of the licensing requirements? (1) Local ordinances (laws), such as zoning regulations and local building codes, are outside the scope of the licensing requirements for an emergency respite center.

(2) The department may require you to provide proof that you have met local ordinances.

NEW SECTION

WAC 388-145-0330 Are there other fire safety requirements for inside a center? An emergency respite center must comply with the fire safety requirements that follow.

(1) Every sleeping room used by children under care must have at least one operable window or door approved for emergency escape or rescue that must open directly into a public street, public alley, yard, or exit court.

(2) Centers with floors located more than four feet above or below ground (one-half story) must not be used for care of nonmobile children.

(3) Emergency windows must:

(a) Be operable from the inside to provide a full, clear opening without the use of separate tools;

(b) Have a minimum net clear open area of 5.7 square feet (0.53 mm);

(c) Have a minimum net clear open height dimension of 24 inches (610 mm);

(d) Minimum net clear open width dimension of 20 inches (508 mm);

(e) Have a finished sill height of not more than 44 inches (1118 mm) above the floor.

(4) No child may occupy a space that is accessible only by a ladder, folding stairs, or a trap door.

(5) Every bathroom door lock must be designed to permit the opening of the locked door from the outside.

(6) Every closet door latch must be designed to open from the inside.

(7) Open-flame devices and fireplaces, heating and cooking appliances, and products capable of igniting clothing must not be left unattended or used incorrectly.

(8) Fireplaces, wood stoves and other heating systems that have a surface hot enough to cause a burn must have a barrier to prevent access by children under age six years.

NEW SECTION

WAC 388-145-0340 What are the requirements for smoke detectors? (1) Emergency respite centers licensed for sixteen or more residents must have an approved automatic and manual fire alarm system.

(2) Operation of any fire alarm activating device must automatically, without delay, activate off-site monitoring and signal a general alarm indication and sound an audible alarm throughout the building or affected part of the building.

(3) Emergency respite centers licensed for fewer than sixteen persons must have smoke detectors installed in all sleeping room, corridors, and in areas separating use areas from sleeping areas.

(4) Smoke detectors must be installed following the approved manufacturer's instructions.

NEW SECTION

WAC 388-145-0350 What are the requirements for a fire evacuation plan? (1) You must develop a written fire evacuation plan for your emergency respite center.

(2) The evacuation plan must include:

(a) An evacuation floor plan, identifying exit doors and windows;

(b) Action that the person discovering a fire must take;

(c) Methods for sounding an alarm on the premises;

(d) Ways to evacuate the building that ensures responsibility for children; and

(e) Action that staff must take while waiting for the fire department.

(3) The plan must be posted at each exit door.

NEW SECTION

WAC 388-145-0360 What fire prevention measures must I take? The department requires that you must take the following fire prevention measures for your emergency respite center:

(1) You must assure that furnace rooms are:

(a) Maintained free of lint, grease, and rubbish; and

(b) Suitably isolated, enclosed, or protected.

(2) Flammable or combustible materials must be stored away from exits and in areas that are not accessible to children. Combustible rubbish must not be allowed to collect and must be removed from the building or stored in closed, metal containers away from building exits.

(3) All trash must be removed daily from the building and thrown away in a safe manner outside the building. All containers used for the disposal of waste material must consist of noncombustible materials and have tops.

(4) All electrical motors must be kept free of dust.

(5) Open-flame devices capable of igniting clothing must not be left on, unattended or used in a manner that could result in an accidental ignition of children's clothing.

(6) Candles must not be used.

(7) All electrical circuits, devices and appliances must be properly maintained. Circuits must not be overloaded. Extension cords and multi-plug adapters must not be used in place of permanent wiring and proper outlets.

(8) Fireplaces, woodstoves, and similar devices must be installed and approved according to the rules that were in effect at the time of installation (see the local building permit). These devices must be properly maintained and must be cleaned and certified at least once a year or maintained according to the manufacturer's recommendations.

(9) Separate hazardous areas by at least a "one-hour" fire-resistant wall.

Hazardous areas include rooms or spaces containing:

(a) A commercial-type cooking kitchen;

(b) A boiler;

(c) A maintenance shop;

(d) A janitor closet;

(e) A woodworking shop;

(f) A vehicle garage;

(g) Flammable or combustible materials; or

(h) Painting operations.

(10) The department does not require a fire-resistant wall when:

(a) A kitchen contains only a domestic cooking range; and

(b) Food preparation does not produce smoke or grease-laden vapors.

NEW SECTION

WAC 388-145-0370 What are the requirements for fire drills? (1) You must conduct monthly fire drills to test and practice the evacuation procedures.

(2) The monthly fire drill must be conducted on each shift, so that each person providing care to children participates in the drill.

(3) You must consult with and follow the state fire marshal protocol for "mock" fire drills, if you care for nonambulatory children.

(3) You must maintain a written record on the premises that indicates the date and time that drill practices were completed at your emergency respite center.

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.

PROPOSED

NEW SECTION

WAC 388-145-0380 What fire safety procedures do center staff need to know? You and your staff at an emergency respite center must be familiar with:

(1) Safety procedures related to fire prevention; and

(2) All aspects of a fire drill.

(3) Your and your staff must be able to:

(a) Operate all fire extinguishers installed on the premises;

(b) Test smoke detectors (single station types);

(c) Conduct frequent inspections of the facility to identify fire hazards; and

(d) Correct any hazards noted during the inspection.

NEW SECTION

WAC 388-145-0390 What are the requirements for fire sprinkler systems? (1) Where a sprinkler system is required, a system complying with the uniform building code standards must be installed.

(2) A Washington state licensed fire sprinkler contractor must annually test and certify sprinkler systems installed in an emergency respite center for fire prevention.

HEALTH AND ENVIRONMENT

NEW SECTION

WAC 388-145-0400 Does an ERC need approval from the department of health to operate? (1) An emergency respite center must receive a certificate of compliance from the department of health before the department (DSHS) will issue an emergency respite center license.

(2) The department of health (DOH) conducts the health and safety survey. A registered nurse (RN) and/or a public health sanitarian may complete the survey.

NEW SECTION

WAC 388-145-0410 What are the physical structure safety requirements for a center? You must keep the equipment and the physical structures in your emergency respite center safe and clean for the children you serve. You must:

(1) Maintain your buildings, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair.

(2) Provide handrails for steps, stairways, and ramps, if required by the department.

(3) Have emergency lighting devices available and in operational condition.

(4) Furnish your center appropriately, based on the age and activities of the children under care.

(5) Have washable, water-resistant floors in your center bathrooms, kitchens, and any other rooms exposed to moisture. The department may approve washable, short-pile carpeting that is kept clean and sanitary for your facility's kitchens.

(6) Provide tamper proof or tamper resistant electrical outlets or blank covers installed in areas accessible to children under the age of six or other persons with limited mental capacity or who might be endangered by access to them.

(7) Have easy access to rooms occupied by children in case an emergency arises. Some examples are bedrooms, toilet rooms, shower rooms, and bathrooms.

(8) Have a written disaster plan for emergencies such as fire and earthquakes.

NEW SECTION

WAC 388-145-0420 What are the requirements for the location of a center? (1) Your center must be located on a well-drained site, free from hazardous conditions. Some examples of hazards are natural or man-made water hazards such as lakes or streams, steep banks, ravines, and busy streets.

(2) The safety of the children in care is paramount. You must discuss with the licensor any potential hazardous conditions, considering the children's ages, behaviors, and abilities.

(3) If the department decides that hazardous conditions are present at the emergency respite center, a supervision plan must be written for the children in care.

NEW SECTION

WAC 388-145-0430 What are the requirements for emergency aid vehicle access to my center? (1) Your emergency respite center must be accessible to emergency vehicles.

(2) Your address must be clearly visible on the facility or mailbox so that firefighters or medics can easily find your center location.

NEW SECTION

WAC 388-145-0440 What steps must I take to ensure children's safety around outdoor bodies of water? (1) You must ensure children in your care at an emergency respite center are safe around bodies of water.

(2) On a daily basis, you must empty and clean any portable wading pool that children use.

(3) When they are swimming, wading, or near a body of water, children under twelve must be in continuous visual or auditory range at all times by an adult with current first aid and age appropriate CPR.

(4) You must ensure age and developmentally appropriate supervision of any child that uses hot tubs, swimming pools, spas, and other man-made and natural bodies of water.

(5) You must lock hot tubs and spas when they are not in use.

(6) You must place a fence designed to discourage climbing and have a locking gate around a pool. The pool must be inaccessible to children when not in use.

(7) A certified lifeguard must be on duty when children are using a public or private swimming pool.

NEW SECTION

WAC 388-145-0450 What measures must I take for pest control? You must make reasonable attempts, using the least toxic methods, to keep the premises of the emergency respite center free from pests. This includes rodents, flies, cockroaches, fleas, and other insects.

NEW SECTION

WAC 388-145-0460 What are the requirements regarding pets and animals at a center? (1) In an emergency respite center, you must not have any common household pets, exotic pets, other animals, birds, insects, reptiles, or fish that are dangerous or provide a risk to the children in care.

(2) Common household pets, exotic pets, animals, birds, insects, reptiles, and fish must:

(a) Be cared for in compliance with state regulations and local ordinances; and

(b) Be free from disease and cared for in a safe and sanitary manner.

NEW SECTION

WAC 388-145-0470 Are alcoholic beverages allowed at a center? You can not have alcohol on the premises of an emergency respite center. The staff of the center may not consume alcohol on the premises or during breaks.

NEW SECTION

WAC 388-145-0480 Is smoking permitted around children? (1) You must prohibit smoking in the emergency respite center and in motor vehicles while transporting children.

(2) You may permit adults to smoke outdoors away from children.

(3) Nothing in this section is meant to interfere with traditional or spiritual Native American ceremonies involving the use of tobacco.

NEW SECTION

WAC 388-145-0490 May I have firearms at a center? The department prohibits firearms, ammunition, and other weapons on the premises of an emergency respite center.

NEW SECTION

WAC 388-145-0500 May I use wheeled baby walkers? The department prohibits the use of wheeled baby walkers in an emergency respite center.

STORAGE OF MEDICATIONS AND CHEMICALS

NEW SECTION

WAC 388-145-0510 Are there requirements for the storage of medications? At an emergency respite center:

(1) You must keep all medications, including pet medications, vitamins and herbal remedies, in locked storage.

(2) You must store external medications separately from internal medications.

(3) You must store medications according to the manufacturer or pharmacy instructions.

(4) Pet and human medications must be stored in separate places.

NEW SECTION

WAC 388-145-0520 Are there requirements for storing dangerous chemicals or other substances? (1) At an emergency respite center, you must store the following items in a place that is not accessible to children, persons with limited mental capacity, or anyone who might be endangered by access to the following products:

(a) Cleaning supplies;

(b) Toxic or poisonous substances;

(c) Aerosols; and

(d) Items with warning labels.

(2) When containers are filled with toxic substances from a stock supply, you must label the containers filled from a stock supply.

(3) Toxic substances must be stored separately from food items.

FIRST-AID SUPPLIES

NEW SECTION

WAC 388-145-0530 Are first-aid supplies required? (1) At an emergency respite center, first-aid supplies must be kept on hand for immediate use, including nonexpired syrup of ipecac that is to be used only when following the instruction of the poison control center.

(2) The following first-aid supplies must be kept on hand:

(a) Barrier gloves and one-way resuscitation mask;

(b) Bandages;

(c) Scissors and tweezers;

(d) Ace bandage;

(e) Gauze;

(f) Thermometer; and

(g) A first-aid manual.

MEDICAL CARE AND MEDICATION MANAGEMENT

NEW SECTION

WAC 388-145-0540 What are the requirements for medical policies and procedures for a center? (1) Emergency respite centers must have written policies and procedures about the control of infections. These policies must include, but are not limited to, the following areas:

(a) Isolation;

(b) Aseptic procedures;

(c) Reporting communicable diseases;

PROPOSED

(d) Hygiene, including hand washing, using the toilet, diapering, and laundering.

(2) Emergency respite centers must maintain current written medical policies and procedures to be followed on:

(a) Prevention of the transmission of communicable diseases including:

(i) Hand washing for staff and children;

(ii) Management and reporting of communicable diseases.

(b) Medication management, including steps to be taken if medication is incorrectly administered;

(c) First aid;

(d) Care of minor illnesses;

(e) Actions to be taken for medical emergencies;

(f) Infant care procedures when infants are under care; and

(g) General health practices.

(3) You must arrange to have one of the following help you develop and periodically review your medical policies and procedures:

(a) An advisory physician,

(b) A physician's assistant, or

(c) A registered nurse.

NEW SECTION

WAC 388-145-0550 Must all children accepted for care have current immunizations? Emergency respite centers may accept a child who is not current with immunizations for care at an emergency respite center.

NEW SECTION

WAC 388-145-0560 What must I do to prevent the spread of infections and communicable diseases? (1) You must take precautions to guard against infections and communicable diseases infecting the children under care in an emergency respite center.

(2) Staff with a reportable communicable disease in an infectious stage, as defined by the department of health, must not be on duty until they have a physician's approval for returning to work.

(3) Each center that cares for medically fragile children must have an infection control program supervised by a registered nurse.

(4) Applicants for a license or adults authorized to have unsupervised access to children in a center must have a tuberculin (TB) skin test by the Mantoux method of testing. They must have this skin test upon being employed or licensed unless:

(a) The person has evidence of testing within the previous twelve months;

(b) The person has evidence that they have a negative chest x-ray since previously having a positive skin test;

(c) The person has evidence of having completed adequate preventive therapy or adequate therapy for active tuberculosis.

(5) The department does not require a tuberculin skin test if:

(a) A person has a tuberculosis skin test that has been documented as negative within the past twelve months; or

(b) A physician indicates that the test is medically unadvisable.

(6) Persons whose tuberculosis skin test is positive must have a chest x-ray within thirty days following the skin test.

(7) The department does not require retesting at the time of license renewal, unless the licensee or staff person believes they have been exposed to someone with tuberculosis or if testing is recommended by their health care provider.

NEW SECTION

WAC 388-145-0570 How do I manage medications for children? You must meet specific requirements for managing prescription and nonprescription medication for children under your care. The requirements are:

(1) Only you or another authorized care provider may give or have access to medications for the child under your care.

(2) Only you or another authorized care provider may give prescription and nonprescription medications. Written approval of the child's parent or legal guardian is required to give the child any medication.

(3) You must keep a record of all medications you give a child.

(4) You or another authorized care provider must contact a pharmacist or the department of health regarding the proper disposal of medications that are not returned to the parent or legal guardian of the child.

(5) You must give certain classifications of non-prescribed medications, only with the dose and directions on the manufacturer's label for the age and /or weight of the child needing the medication. These nonprescribed medications include but are not limited to:

(a) Nonaspirin antipyretics/analgesics, fever reducers/pain relievers;

(b) Nonnarcotic cough suppressants;

(c) Decongestants;

(d) Antacids and anti-diarrhea medication;

(e) Anti-itching ointments or lotions intended specifically to relieve itching;

(f) Shampoo for the removal of lice;

(g) Diaper ointments and powders intended specifically for use in the diaper area of children; and

(h) Sun screen (for children over six months of age).

NEW SECTION

WAC 388-145-0580 May I accept medicine from a child's parent or guardian? The only medicine you may accept from the child's parent or legal guardian is medicine in the original container labeled with:

(1) The child's first and last names;

(2) The date the prescription was filled;

(3) The medication's expiration date; and

(4) Legible instructions for the administration of the drug (manufacturer's instructions or prescription label).

NEW SECTION

WAC 388-145-0590 When may children take their own medicine? (1) You may permit children under your care to take their own medicine as long as:

(a) They are physically and mentally capable of properly taking the medicine; and

(b) The child's parent or legal guardian approves in writing.

(2) You must keep the written approval by the child's parent or legal guardian in your records.

(3) When children take their own medication, the medication and medical supplies must be kept locked or inaccessible to other children and unauthorized persons.

FOOD/DIET/MENUS

NEW SECTION

WAC 388-145-0600 Are there general menu requirements? The department has menu requirements for emergency respite centers.

(1) Your program must be in compliance with the department of health standards in chapter 246-215 WAC on food service sanitation.

(2) You must prepare and date daily menus, including snacks, at least one week in advance.

(3) You must provide for the proper storage, preparation, and service of food to meet the needs of the program.

(4) A menu must specify a variety of foods for adequate nutrition and meal enjoyment.

(5) You must keep the menus on file for a minimum of six months so that we can review your menus.

(6) You must post each person's dietary restrictions, if any, for staff to follow.

(7) You must post a schedule of mealtimes.

NEW SECTION

WAC 388-145-0610 How often must I feed children at a center? (1) You must provide all children a minimum of three meals in each twenty-four hour period. You may vary from this guideline only if you write to your licensor requesting a change and the request is approved by DLR.

(2) The time interval between the evening meal or snack and breakfast must not be more than fourteen hours.

NEW SECTION

WAC 388-145-0620 How do I handle a child's special diet? Unless a child is admitted to an emergency respite center with a written physician's order as medically necessary for the child, the following must not be served:

(1) Nutrient concentrates, supplements, or amnio-acids;

(2) Vitamins; or

(3) Modified diets.

NEW SECTION

WAC 388-145-0630 Do you have special requirements for serving milk? (1) You must serve only pasteurized milk or a pasteurized milk product.

(2) You may not serve the following types of milk to any child under twenty-four months of age unless you have written permission by a physician, or parent or legal guardian:

(a) Skim milk;

(b) Reconstituted nonfat dry milk; and

(c) One and two percent butterfat milk.

NEW SECTION

WAC 388-145-0640 What home canned foods may I use? You may not serve home canned foods to children at an emergency respite center.

NEW SECTION

WAC 388-145-0650 What requirements must I mee4d for feeding babies? You must meet the following requirements for feeding babies:

(1) If more than one child is bottle-fed, all formulas must be in sanitized bottles with nipples and labeled with the child's name and date prepared.

(2) You must refrigerate filled bottles if the bottles are not used immediately. Contents must be discarded if not used within twenty-four hours.

(3) If you reuse bottles and nipples, you must sanitize them.

(4) Infants who are six months of age or over may hold their own bottles as long as an adult remains in the room, within eyesight. You must take bottles from the child when the child finishes feeding, or when the bottle is empty.

(5) You must not prop a bottle when feeding an infant.

(6) To prevent uneven heating, formula must not be warmed in a bottle used for feeding in a microwave oven.

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.

ROOM REQUIREMENTS

NEW SECTION

WAC 388-145-0660 Are there room requirements? (1) You must provide rooms that are ample in size and properly furnished for the number of children you serve at an emergency respite center.

(2) With more than twelve children, you must provide at least one separate indoor recreation area. Its size and location must be sufficient for the age and number of the children using it to engage in recreational and informal education activities.

(3) You must provide a room or area that is used as an administrative office. In addition, suitable offices must be provided for social service staff. In facilities caring for fewer than thirteen children, these offices may be combined with the administrative office.

PROPOSED

NEW SECTION

WAC 388-145-0670 What does the room temperature at a center need to be? (1) You must maintain the temperature within your emergency respite center facility at a reasonable level while occupied. This would normally be a minimum of sixty-eight degrees Fahrenheit during awake hours and a minimum of sixty-five degrees Fahrenheit during sleeping hours.

(2) You must consider the age and needs of the children under your care in determining appropriate temperature.

NEW SECTION

WAC 388-145-0680 What are the kitchen requirements? (1) You must provide facilities to properly store, prepare, and serve food to meet the needs of the children under your care at your emergency respite center.

(2) All food service facilities and food handling practices must comply with rules and regulations of the state board of health governing food service sanitation (see chapter 246-215 WAC). This includes food handler's permit for all staff.

NEW SECTION

WAC 388-145-0690 May I use the kitchen for activities for children? Children are not allowed in the kitchen of an emergency respite center.

NEW SECTION

WAC 388-145-0700 May a room be used for more than one purpose? At your emergency respite center you may use a room for multiple purposes such as playing, dining, napping, and learning activities, provided that:

(1) The room is of sufficient size; and

(2) The room's usage for one purpose does not interfere with usage of the room for another purpose.

NEW SECTION

WAC 388-145-0710 What are the general requirements for bedrooms? You must meet all the following requirements for bedrooms if you provide full-time care at an emergency respite center.

(1) An adult must be on the same floor or within easy hearing distance and accessibility to where children under six years of age are sleeping.

(2) Any room used for sleeping must be at least thirty-five square feet per child.

(3) Bedrooms must have both:

(a) Adequate ceiling height for the safety and comfort of the occupants (normally, seven and a half feet); and

(b) At least one window of not less than one-tenth of the required floor space that opens to the outside. This allows natural light into the bedroom and permits emergency access or exit.

(4) The number of beds allowed at an emergency respite center is established in consultation with the DOH surveyor for each facility.

BEDS AND CRIBS

NEW SECTION

WAC 388-145-0720 What are the requirements for beds? (1) Children in overnight care must have their own bed at an emergency respite center. The bed must be at least twenty-seven inches wide with a clean and comfortable mattress in good condition.

(2) For each child in care, you must provide a pillow and pillowcase, blankets, and sheets.

(3) Pillows must be covered with waterproof material or be washable.

(4) Bedding must be clean.

(5) You must provide waterproof mattress covers or moisture resistant mattresses, if needed.

(6) You may use toddler beds with a standard crib mattress that is sufficient in length and width for the comfort of children.

(7) You must not allow children to use the loft style beds or upper bunks of double-deck beds if using them due to age, development or condition could hurt them. Examples: Preschool age children and children with disabilities.

(8) If a cot is used as the bed, the licensee must ensure the child's cot is of sufficient length and width, and constructed to provide adequate comfort for the child to sleep. The licensee must ensure that the cot surface is of a material that can be cleaned with a detergent solution, disinfected, and allowed to air dry.

(9) You must not use canvas cots.

(10) A mat may be used for napping but not as a substitute for a bed.

NEW SECTION

WAC 388-145-0730 Are there requirements for the use of cribs? (1) You must provide an infant with a crib that ensures the safety of the infant and complies with chapter 70.111 RCW, Infant Crib Safety Act.

(2) Cribs must have no more than two and three-eighths inches space between vertical slats when used for infants less than six months of age.

(3) Cribs, infant beds, bassinets, and playpens must:

(a) Have clean, firm, snug fitting mattresses covered with waterproof material that is easily sanitized; and

(b) Be made of wood, metal, or approved plastic with secure latching devices

(4) Crib bumpers, stuffed toys, and pillows must not be used in cribs, infant beds, bassinets, or playpens.

(5) You must follow the recommendation of the American Academy of Pediatrics, 1-800-505-CRIB, placing infants on their backs each time for sleep.

(6) The distance between each crib/bed must provide enough space for exiting and allow staff access to children. Normally, this would be thirty inches.

DIAPER CHANGING AND BATHING FACILITIES

NEW SECTION

WAC 388-145-0740 What are the requirements for diapers and diaper-changing areas? At an emergency respite center, you must follow the requirements for diapers, diaper-changing rooms, and potty-chairs.

(1) You must separate diaper-changing areas from food preparation areas.

(2) You must sanitize diaper-changing areas between each use or you must use a nonabsorbent, disposable covering that is discarded after each use.

(3) For cleaning children, you must use either disposable towels or clean cloth towels that have been laundered between each use.

(4) You and any caregiver must wash hands before and after diapering each child.

(5) You must use disposable diapers, a commercial diaper service, or reusable diapers supplied by the child's family.

(6) Diaper-changing procedures must be posted at the changing areas.

(7) Diaper-changing areas must be adjacent to a handwashing sink.

(8) The staff must be within arms-length of the child being diapered at all times while changing diapers. The use of safety belts is prohibited.

(9) Diaper-changing tables or surfaces must have a barrier or edge that is a minimum of four inches above the pad or six inches above the top of the table.

NEW SECTION

WAC 388-145-0750 What are the requirements for bathing facilities? Emergency respite centers must comply with the requirements that follow.

(1) Bathing facilities must be inaccessible to children when not in use.

(2) Preschool age and younger children must be supervised while using bathing facilities.

(3) Bathing facilities must be equipped with a conveniently located grab bar or other safety device such as a nonskid pad.

(4) The ratio of bathing facilities to children in care must be 1:8.

TELEPHONE/LIGHTING/VENTILATION/WATER/WASTE DISPOSAL

NEW SECTION

WAC 388-145-0760 Do I need a telephone? (1) You must have at least one telephone on the premises for incoming and outgoing calls. The telephone must be accessible for emergency use at all times.

(2) You must post emergency phone numbers next to the phone.

NEW SECTION

WAC 388-145-0770 What are the lighting requirements? (1) You must locate light fixtures and provide lighting that promotes good visibility and comfort for the children under your care at your emergency respite center.

(2) Emergency respite centers must have nonhazardous light fixture covers or shatter resistant (or otherwise made safe) light bulbs or tubes.

NEW SECTION

WAC 388-145-0780 What are the requirements for ventilation? (1) You must ensure that your physical facility is ventilated for the health and comfort of the persons under your care at the emergency respite center.

(2) A mechanical exhaust fan to the outside must ventilate toilets and bathrooms, and utility rooms with mop sinks that do not have windows opening to the outside.

NEW SECTION

WAC 388-145-0790 What are the requirements about drinking water? (1) You must provide the following:

(a) A public water supply or a private water supply approved by the local health authority at the time of licensing or re-licensing; and

(b) Disposable paper cups, individual drinking cups or glasses, or angled jet type drinking fountains.

(2) You must not use bubbler type fountains or common drinking cups.

NEW SECTION

WAC 388-145-0800 What are the requirements for sewage and liquid wastes? Emergency respite centers must discharge sewage and liquid wastes into a public sewer system or into a functioning septic system.

LAUNDRY, SINKS, AND TOILETS

NEW SECTION

WAC 388-145-0810 What are the requirements for laundry facilities? The department has specific requirements for laundry facilities at an emergency respite center.

(1) You must have separate and adequate facilities for storing soiled and clean linen.

(2) You must provide adequate laundry and drying equipment, or make other arrangements for getting laundry done on a regular basis.

(3) You must locate laundry equipment in an area separate from the kitchen and child care areas.

(4) Laundry equipment must be vented to the outdoors.

(5) You must make laundry equipment inaccessible to young children.

PROPOSED

NEW SECTION

WAC 388-145-0820 What are the requirements for washing clothes? You must use an effective way to sanitize laundry contaminated with urine, feces, lice, scabies, or other potentially infectious materials at your emergency respite center. You must sanitize laundry through temperature control or the use of chemicals.

NEW SECTION

WAC 388-145-0830 Do I need a housekeeping sink? Facilities licensed to provide emergency respite care must have and use a housekeeping sink or DOH-approved method of drawing clean mop water and disposing of the wastewater.

NEW SECTION

WAC 388-145-0840 What are the requirements for hand-washing sinks? (1) An emergency respite center must supply children with warm running water for hand washing. The water must be kept at a temperature range of not less than eighty-five degrees Fahrenheit and not more than one hundred and twenty degrees Fahrenheit.

(2) The children's hand washing facilities must be located in or adjacent to rooms used for toileting.

(3) The center must provide the child with soap and individual towels or other appropriate devices for washing and drying the child's hands and face.

(4) Hand washing sinks must be of appropriate height and size for children in care or your center must furnish safe, easily cleanable platforms impervious to moisture.

(5) An emergency respite center must provide a minimum of one hand washing sink:

(a) For every fifteen children normally on site during the day; and

(b) For every eight children normally on site overnight.

NEW SECTION

WAC 388-145-0850 What are the requirements for toilets? (1) An emergency respite center must provide a minimum of one indoor flush-type toilet:

(a) For every fifteen children normally on site during the day; and

(b) For every eight children normally on site overnight.

(2) Children eighteen months of age or younger and other children using toilet training equipment need not be included when determining the number of required flush-type toilet.

(3) If urinals are provided, the number of urinals must not replace more than one-third of the total required toilets.

(4) Privacy for toileting must be provided for children of the opposite sex who are six years of age and older and for other children demonstrating a need for privacy.

(5) A mounted toilet paper dispenser for each toilet must be provided.

(6) Toilets and urinals must be of appropriate height and size for children in care or your center must furnish safe, easily cleanable platforms impervious to moisture.

NEW SECTION

WAC 388-145-0860 Must a center have toilet training equipment for children? (1) An emergency respite center must have developmentally appropriate toilet-training equipment, when the center serves children who are not toilet trained.

(2) The equipment must be sanitized after each child's use.

INDOOR PLAY AREAS

NEW SECTION

WAC 388-145-0870 What are the requirements for indoor play areas? (1) The emergency respite center's indoor premises must contain adequate area for child play and sufficient space to house a developmentally appropriate program for the number and age range of children served.

(2) You must provide a minimum of thirty-five square feet of usable floor space per child, not counting bathrooms, hallways, and closets.

(3) You may use and consider the napping area as child care space, if there are not beds or cots on the floor space.

(4) Any room used for napping or sleeping must have a window to allow natural light into the room.

OUTDOOR PLAY AREAS

NEW SECTION

WAC 388-145-0880 What are the requirements for an outdoor play area? (1) You must provide a safe and securely-fenced or department-approved, enclosed outdoor play area at an emergency respite center.

(2) The fenced or approved enclosed outdoor play area must prevent child access to roadways and other dangers.

(3) The fence or enclosure must protect the play area from unauthorized exit or entry. Any fence or enclosure must be designed to discourage climbing.

(4) The outdoor play area must adjoin directly the indoor premises or be reachable by a safe route and method.

(5) The outdoor play area must promote the child's active play, physical development, and coordination.

NEW SECTION

WAC 388-145-0890 What are the size requirements for an outdoor play area? (1) You must ensure the play area at an emergency respite center contains a minimum of seventy-five usable square feet per child.

(2) If not all of the children are using the outdoor play area at the same time, you may reduce the outdoor play area size by the number of children normally using the play area at one time.

NEW SECTION

WAC 388-145-0900 What are the requirements for playground equipment? (1) You must provide a variety of

age appropriate play equipment for climbing, pulling, pushing, riding, and balancing activities at an emergency respite center.

(2) You must arrange, design, construct, and maintain equipment and ground cover to prevent child injury.

(3) The quantity of outdoor play equipment must offer the child a range of outdoor play options.

TRANSPORTATION

NEW SECTION

WAC 388-145-0910 Are there requirements to follow when I transport children? When you transport children under your care, you must follow these requirements.

(1) The vehicle must be kept in a safe operating condition.

(2) The driver must have a valid driver's license.

(3) There must be at least one adult other than the driver in a vehicle when:

(a) There are more than five preschool-aged children in the vehicle;

(b) Staff-to-child ratio guidelines or your contract require a second staff person; or

(c) The child's specific needs require a second adult person.

(4) The driver or owner of the vehicle must be covered under an automobile liability and insurance policy.

(5) Your vehicles must be equipped with seat belts, car seats and booster seats, and/or other appropriate safety devices for all passengers as required by law.

(6) The number of passengers must not exceed the vehicle's seat belts.

(7) All persons in the vehicle must use seat belts or approved child passenger restraint systems, as appropriate for age, whenever the vehicle is in motion.

(8) Buses approved by the state patrol are not required to have seat belts.

CLIENT RECORDS

NEW SECTION

WAC 388-145-0920 What does the department require for keeping client records? (1) Your records must be kept at your emergency respite center and contain, at a minimum, the following information:

(a) The child's name and birthdate;

(b) Daily attendance logs;

(c) A copy of any suspected child abuse and/or neglect referrals made to children's administration;

(d) Names, address and home and business telephone numbers of parents or persons to be contacted in case of emergency;

(e) Dates and illnesses or accidents while at the center;

(f) Medications and treatments given at the center;

(g) Facility and/or daily logs must have the signature of the person making the written entry;

(h) Health screening information including any allergy information; and

(i) Other information determined relevant by the department.

(2) Identifying and personal information about the child and their family must be kept confidential, unless permission has been given for release by the parent.

(3) You must keep information about the child and their families in a secure place.

NEW SECTION

WAC 388-145-0930 What written information is needed before a child is admitted to a center? Before accepting a child for care at an emergency respite center you must obtain the following written consent and information from the parent or guardian:

(1) Permission from the child's parent or guardian authorizing the placement of their child;

(2) Permission to seek emergency medical care or surgery on behalf of their child;

(3) Basic family information, including address, telephone numbers, and emergency contact; and

(4) Basic medical information, including current medication, known allergies, and at-risk behaviors of the child.

CLIENT PROTECTION

NEW SECTION

WAC 388-145-0940 What are the requirements for protecting a child under my care from abuse and neglect? As part of ensuring a child's health, welfare and safety, you must protect children under your care from all forms of child abuse and neglect (see RCW 26.44.020(12) and chapter 388-15 WAC for more details).

NEW SECTION

WAC 388-145-0950 What are the nondiscrimination requirements? You must follow all state and federal laws regarding nondiscrimination while providing services to children in your care.

NEW SECTION

WAC 388-145-0960 Do I have to admit or retain all children at the center? An emergency respite center has the right to refuse to admit or retain a child who can not be served safely or who may pose a risk to other children.

CLIENT RIGHTS

NEW SECTION

WAC 388-145-0970 Do I have responsibility for a child's personal hygiene? (1) You must provide or arrange for children under your care to have items needed for grooming and personal hygiene.

PROPOSED

(2) You must assist these children in using these items, based on the child's developmental needs.

(3) Clothing must be clean and age-appropriate.

NEW SECTION

WAC 388-145-0980 Do I have responsibility for a child's personal items at the center? You must provide separate space for the storage of personal items such as clothing and toys, for each child at your emergency respite center.

DISCIPLINE

NEW SECTION

WAC 388-145-0990 What requirements must I follow when disciplining children? (1) You are responsible for disciplining children in your care. This responsibility may not be delegated to a child.

(2) Discipline must be based on an understanding of the child's needs and stage of development.

(3) Discipline must be designed to help the child under your care to develop inner control, acceptable behavior and respect for the rights of others.

(4) Discipline must be fair, reasonable, consistent, and related to the child's behavior.

NEW SECTION

WAC 388-145-1000 What types of disciplinary practices are forbidden? (1) You must not use cruel, unusual, frightening, unsafe or humiliating discipline practices, including but not limited to:

(a) Spanking children with a hand or object;

(b) Biting, jerking, kicking, hitting, or shaking the child;

(c) Pulling the child's hair;

(d) Throwing the child;

(e) Purposely inflicting pain as a punishment;

(f) Name calling or using derogatory comments;

(g) Threatening the child with physical harm;

(h) Threatening or intimidating the child; or

(i) Placing or requiring a child to stand under a cold water shower.

(2) You must not use methods that interfere with a child's basic needs. These include, but are not limited to:

(a) Depriving the child of sleep;

(b) Providing inadequate food, clothing or shelter;

(c) Restricting a child's breathing;

(d) Interfering with a child's ability to take care of their own hygiene and toilet needs; or

(e) Providing inadequate medical or emergency dental care.

(3) You must not use medication in an amount or frequency other than that prescribed by a physician or psychiatrist.

(4) You must not give one child's medications to another child.

(5) You must not use medication for behavior management unless a physician to control that child's behavior prescribes the medication.

NEW SECTION

WAC 388-145-1010 Does the department require a written statement describing my discipline methods? (1) You must provide a written statement describing the discipline methods you use with your application and re-application for licensure.

(2) If your discipline methods change, you must immediately provide a new statement to your licensor describing your current practice.

PHYSICAL RESTRAINT

NEW SECTION

WAC 388-145-1020 What types of physical restraint are acceptable? (1) You must use efforts other than physical restraint to redirect or de-escalate a situation.

(2) If a child's behavior poses an immediate risk to physical safety, you may use a physical restraint on a child. The restraint must be reasonable and necessary to:

(a) Prevent a child on the premises from harming himself/herself or others; or

(b) Protect property from serious damage.

(3) You and the staff may use restraining techniques:

(a) If your emergency respite center provides care to school-age children only; and

(b) Is approved by DLR for the use of physical restraint. You and your staff must be trained in accordance with the DLR behavior management policy before restraining a child in a nonemergency situation.

NEW SECTION

WAC 388-145-1030 What types of physical restraint are not acceptable for children? You must not use:

(1) Physical restraint as a form of punishment or discipline;

(2) Mechanical restraints, such as handcuffs and belt restraints;

(3) Locked time-out rooms; or

(4) Physical restraint techniques that restrict breathing, or inflict pain as a strategy for behavior control, or that might injure a child. These include, but are not limited to:

(a) Restriction of body movement by placing pressure on joints, chest, heart, or vital organs;

(b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;

(c) Arm twisting;

(d) Hair holds;

(e) Choking or putting arms around the throat; or

(f) Chemical restraints, including but not limited to pepper spray.

NEW SECTION

WAC 388-145-1040 What must I do following an incident that involved using physical restraint? The director or program supervisor of an emergency respite center must review any incident with the staff who used physical

restraint to ensure that the decision to use physical restraint and its application were appropriate.

NEW SECTION

WAC 388-145-1050 What incidents involving children must I report? (1) You or your staff at an emergency respite center must report any of the following incidents immediately to your local children's administration intake staff and the child's parent or legal guardian:

(a) Any reasonable cause to believe that a child has suffered child abuse or neglect;

(b) Any violations of the licensing or certification requirements;

(c) Death of a child;

(d) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;

(e) Any use of physical restraint that is alleged to be improper, excessive, or results in injury;

(f) Sexual contact between two or more children that is not considered typical play between pre-school age children;

(g) Any disclosures of sexual or physical abuse by a child in care;

(h) Physical assaults between two or more children that result in injury requiring off-site medical treatment or hospitalization;

(i) Unexpected or emergent health problems that require off-site medical treatment;

(j) Any medication that is given incorrectly and requires off-site medical treatment; or

(k) Serious property damage that is a safety hazard and is not immediately corrected.

(2) You or your staff must report immediately, any of the following incidents to the child's parent or legal guardian:

(a) Suicidal/homicidal ideation, gestures, or attempts that do not require professional medical treatment;

(b) Unexpected health problems that do not require professional medical treatment;

(c) Any incident of medication administered incorrectly;

(d) Physical assaults between two or more children that resulted in injury but did not require professional medical treatment;

(e) Runaways; and

(f) Use of physical restraints for routine behavior management.

STAFFING RATIO

NEW SECTION

WAC 388-145-1060 What is the ratio of child care staff to children at a center? At all times, emergency respite centers must have the following minimum staffing ratios:

(1) At least two staff on duty when children are present; and

(2) One child care staff providing visual or auditory supervision for every four children in care.

SUPERVISION OF CHILDREN

NEW SECTION

WAC 388-145-1070 What are the requirements for supervision of children at a center? (1) Emergency respite centers must provide or arrange for care and supervision that is appropriate for the child's age, developmental level, and condition.

(2) In emergency respite centers, children must be within visual and auditory range at all times.

(3) Emergency respite centers must supervise children who help with activities involving food preparation, based on their age and skills.

(4) Preschool children and children with severe developmental disabilities must not be left unattended in a bathtub or shower at an emergency respite center.

(5) Staff, volunteers, and others caring for children at an emergency respite center must provide the children with:

(a) Appropriate adult supervision;

(b) Emotional support;

(c) Personal attention; and

(d) Structured daily routines and living experiences.

STAFF POSITIONS AND QUALIFICATIONS

NEW SECTION

WAC 388-145-1080 What are the responsibilities of the director? (1) The director of an emergency respite center is responsible for the overall management of the center's facility and operation.

(2) The director serves as the administrator of the center.

(3) The director must ensure the emergency respite center complies with the licensing requirements contained in this chapter.

NEW SECTION

WAC 388-145-1090 Are there general qualifications for all staff in an emergency respite center? You, your staff, and other persons at an emergency respite center who have access to the children must be able to demonstrate the understanding, ability, personality, emotional stability, and physical health suited to meet the cultural, emotional, mental, physical, and social needs of the children in care.

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NEW SECTION

WAC 388-145-1100 What are the minimum qualifications and training requirements for center staff?

Position	Qualifications	Background Check	TB Test	Food Handlers Permit	First Aid and CPR	HIV/AIDS and Bloodborne Pathogens Training
Director or program supervisor	•Twenty-one years of age; •Bachelor's degree; or •Five years of experience in child development, social service or related field.	X	X	X	X	X
Primary child care worker	•Twenty-one years of age; •High school diploma or GED; •Two years of experience caring for children; or •Twenty hours training child development.	X	X	X	X	X
Child care assistant	•Eighteen years of age; •High school diploma or GED; •One year of experience caring for children; or •Twenty hours training if obtained within first year of employment.	X	X	X	X	X
Work study students	•Sixteen years of age; •Involved in an education-related program; and •Supervised by primary or child care assistant.	X	X	X	X	X
Case manager	Bachelor's degree in social services, child development, or related field; recommended position, not required.	X	X	X	X	X
Volunteers	•Sixteen years of age. •Supervised at all times.	X	X	X	Recommended training	X

NEW SECTION

WAC 388-145-1110 May one person hold two positions at a center? (1) The director and program supervisor may be one and the same person when qualified for both positions.

(2) The director and program supervisor may also serve as child care staff when the role does not interfere with the director's or program supervisor's management and supervisory responsibilities.

NEW SECTION

WAC 388-145-1120 Who must be on the premises while children are in care at a center? (1) The director, program supervisor, or case manager at an emergency respite center must normally be on the premises during daytime hours when children are in care.

(2) If temporarily absent (for two hours or less) from the center, the director and program supervisor must leave a competent, designated staff person in charge. This person must meet the qualifications of primary child care staff person.

(3) During evening, overnight, and weekend shifts, at least one of the staff on the premises must be a primary child care worker when children are present. The other staff may be a child care assistant. The director, program supervisor, or case manager must be on-call and able to respond by telephone within fifteen minutes.

NEW SECTION

WAC 388-145-1130 Are child care assistants allowed to provide care to a group of children without supervision? (1) You may assign a child care assistant to support lead child care staff at an emergency respite center.

(2) No person under eighteen years of age may be assigned sole responsibility for a group of children at an emergency respite center.

(3) Any child care assistant under twenty-one years old may care for a child or group of children without direct supervision for up to fifteen minutes.

NEW SECTION

WAC 388-145-1140 Are volunteers allowed to provide child care to children without supervision? The volunteer at an emergency respite center must care for a child only under the direct supervision of the primary child care staff person or program director.

NEW SECTION

WAC 388-145-1150 Do volunteers count in the staff-to-child ratio respite center? You may count the volunteer in the staff-to-child ratio when the volunteer meets the required staff qualifications at an emergency respite center.

NEW SECTION

WAC 388-145-1160 Are professional consultants and case managers needed? (1) Emergency respite centers may have consultants and case managers available, as needed, to work with the staff, the children you serve, and the children's families. Any consultants or case managers must meet the full professional competency requirements in their respective fields. The consultants and case managers must have:

(a) The training, experience, knowledge and demonstrated skills in each area that he or she will be advising;

(b) The ability to ensure that your staff develop their skills and understanding needed to effectively manage their cases;

(c) Knowledge of mandatory child abuse and neglect reporting requirements; and

(d) Training and experience in early childhood education.

(2) Consultants and case managers may be hired as staff or operate under a contract with an emergency respite center.

NEW SECTION

WAC 388-145-1170 What clerical, accounting and administrative services do I need? You must have sufficient clerical, accounting and administrative services to maintain proper records and carry out your program at an emergency respite center.

NEW SECTION

WAC 388-145-1180 What support and maintenance staff do I need? You must have sufficient support and maintenance services to maintain and repair your facility and prepare and serve meals at an emergency respite center.

ON-GOING STAFF TRAINING

NEW SECTION

WAC 388-145-1190 Is in-service training required for staff? (1) You must offer in-service training programs for developing and upgrading staff skills.

(2) If you have five or more employees or volunteers, your training plan must be in writing.

(3) You must discuss with the staff your policies and procedures as well as the rules contained in this chapter.

(4) You must provide or arrange for your staff to have training for the services that you provide to children under your care.

(5) Your training on behavioral management must be approved by DLR and must include nonphysical age-appropriate methods of redirecting and controlling behavior, as described in the department's behavior management policy.

(6) Your training must include monthly practice of fire drills and disaster training for each staff.

(7) You must record the amount of time and type of training provided to staff.

(8) This information must be kept in each employee's file or in a separate training file.

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PROGRAM ACTIVITIES AND TOYS

NEW SECTION

WAC 388-145-1200 What are the requirements for an activity program? (1) You must provide an activity program at an emergency respite center that is designed to meet the developmental, cultural, and individual needs of the children served at an emergency respite center.

(2) You must ensure the emergency respite center's activity program allows time for children to have daily opportunities for small and large muscle activities and outdoor play.

(3) You must provide a written outline of planned activities, allowing flexibility for special events and specific child circumstances.

NEW SECTION

WAC 388-145-1210 What activities must I provide to children? (1) Activities must be designed for the developmental stages of the children you serve at an emergency respite center, allowing a balance between:

(a) Child-initiated and staff-initiated activities;

(b) Free play and organized events;

(c) Individual and group activities; and

(d) Quiet and active experiences.

(2) You must ensure that children at an emergency respite center are grouped to ensure the safety of children.

NEW SECTION

WAC 388-145-1220 What types of toys must I provide? (1) You must provide safe and suitable toys and equipment for all children in your care at an emergency respite center.

(2) You must have toys that relate to the different developmental stages of the children you serve at an emergency respite center.

WSR 03-03-008
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 6, 2003, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-23-014.

Title of Rule: WAC 388-450-0050 How are your cash assistance and basic food benefits determined when you are participating in the community jobs (CJ) program?

Purpose: To differentiate between classic jobs and career jump jobs and explain the impact that income received from each of these programs has on cash and basic food assistance benefit amounts.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Summary: The change to this rule is intended to clarify the difference between classic jobs and career jump jobs and the impact each has on cash and basic food assistance.

Reasons Supporting Proposal: Income from classic jobs is treated differently from income received from career jump jobs. If this rule is not amended, some clients would be terminated from cash assistance instead of being suspended and some clients would receive incorrect food assistance benefit amounts.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carole McRae, 1009 College S.E., Lacey, WA 98504, (360) 413-3074.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Rule: WAC 388-450-0050 How are your cash assistance and basic food benefits determined when you are participating in the community jobs (CJ) program?

Purpose and Effect: Income from classic jobs is treated differently from income received from career jump jobs. If this rule is not amended, some clients would be terminated from cash assistance instead of being suspended, and some clients would receive incorrect food assistance benefit amounts.

Proposal Changes the Following Existing Rules: Subsection (1) is modified to explain the distinction between classic jobs and career jump activities.

Subsection (2) is modified to explain the process for determining the monthly amount of wages from these activities.

Subsection (3) is modified to explain the effect of variations in the monthly hours of employment upon the TANF grant.

Subsection (4) is modified to explain how income from these activities is treated for both cash and basic food assistance.

New subsection (6) is added to explain the circumstances under which the cash assistance will terminate due to income from career jump jobs.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses. It only affects DSHS clients who are participating in the community jobs program.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." This rule adopts clarifying distinctions between two employment activities which are components of the community jobs program for DSHS clients, and impact of that employment income on financial eligibility for assistance.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on February 25, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by February 21, 2003, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX @dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., February 25, 2003.

Date of Intended Adoption: Not earlier than February 26, 2003.

Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-23-044, filed 11/15/01, effective 1/1/02)

WAC 388-450-0050 How are your cash assistance and basic food ((~~assistance~~)) benefits determined when you are participating in the community jobs (CJ) program? (1) ((~~When you work in the community jobs (CJ) program, you get part of your money from the job and part as a TANF grant. The department estimates your total monthly income from your CJ position based on the number of hours you, your case manager and the CJ contractor expect you to work for the month. We multiply the~~)) There are two different kinds of community jobs. They are:

(a) Classic jobs where your wages are subsidized by TANF or SFA; and

(b) Career jump where your wages are paid entirely by your employer beginning with the fifth month of your employment.

(2) We figure your total monthly income you get from your classic jobs or career jump job by:

(a) Estimating the number of hours you, your case manager, and the CJ contractor expect you to work for the month; and

(b) Multiplying the number of hours by the federal or state minimum wage, whichever is higher((~~, to get your monthly income~~)).

(((~~2~~))) (3) Because you are expected to participate and meet the requirements of CJ, once we determine what your total monthly income is expected to be, we do not change your TANF grant if your actual hours are more or less than anticipated.

(((~~3~~))) (4) We treat the total income we expect you to get each month from your CJ position as:

(a) Earned income for cash assistance except we do not count any of the CJ income you get in the first month of your employment.

(b) ((~~Unearned~~)) Earned income for basic food ((~~assistance~~)) if you are a career jump participant that has transferred to your employer's regular payroll and your wages are no longer being subsidized; or

(c) Unearned income for basic food while you are in subsidized employment.

(((~~4) For cash assistance, we do not count any of the CJ income that you get in the first month that you work in the CJ position.~~)))

(5) If your anticipated ((~~CJ~~)) classic jobs income is more than your grant amount, your cash grant is suspended. This means that you are considered to be a TANF/SFA recipient, but you do not get a grant.

(a) The grant suspension can be up to a maximum of nine months.

(b) As long as you would be eligible for a grant if we did not count your ((~~CJ~~)) classic jobs income, you can keep participating in CJ even though your grant is suspended.

(c) The months your grant is suspended do not count toward your sixty-month lifetime limit.

(6) If your income from career jump after we subtract half of what you have earned is greater than your grant, your TANF/SFA case will close. This happens because your income is over the maximum you are allowed. You will still be able to participate in the CJ program for up to nine months.

(7) If your income from other sources alone not counting CJ income makes you ineligible for a cash grant, we terminate your grant and end your participation in CJ.

WSR 03-03-018
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed January 7, 2003, 4:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-15-014.

Title of Rule: Chapter 388-78A WAC (entire chapter revision), Boarding home licensing rules.

Purpose: The purpose of revising the boarding home licensing rules is to make the rules easier to understand, make them more applicable to the current residents of boarding homes to improve the quality of care and services to residents, make them more consistent with current practices in residential care, make them more focused on what occurs with residents, and to comply with the Governor's Executive Order 97-02.

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: Chapter 18.20 RCW.

Summary: The proposed amendments:

- Repeal all existing sections in chapter 388-78A WAC, and replace them with new sections in the same chapter.
- Clarify and strengthen the assessment and care planning requirements for residents in boarding homes.
- Outline the minimum level of support all boarding homes must provide to the residents.
- Clarify and strengthen the nursing, medication and other health care support services available to residents in boarding homes.

- Identify when specialized training for developmental disabilities, mental illness, and dementia is required in boarding homes.
- Improve the requirements for boarding home administrators.
- Revise all sections to make the requirements easier to understand.

Reasons Supporting Proposal: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Denny McKee, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2590: Implementation and Enforcement: Patricia K. Lashway, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2401.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DSHS intends to adopt the proposed rules after March 12, 2003, and make them effective as of September 1, 2003.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Chapter 388-78A WAC is being revised to improve the care and services provided to boarding home residents by clarifying and strengthening the requirements for assessing residents, developing and implementing negotiated care plans, and more clearly outlining the expectations regarding nursing services, medication services, and health care support services in boarding homes. The rules also establish a minimum level of care and service a boarding home must provide, and improve the qualifications of boarding home administrators. The anticipated effects of this rule are the residents will receive more appropriate and individualized care and services in a boarding home.

Proposal Changes the Following Existing Rules: The entire licensing chapter 388-78A WAC has been revised to make it easier to understand and strengthen requirements to improve care and services to boarding home residents. The proposed changes include:

- Repealing all existing sections in chapter 388-78A WAC and replacing them with new sections in the same chapter.
- Specifying the characteristics of persons that boarding homes may accept and retain in the boarding home.
- Specifying the outcomes and timing of an initial resident assessment and what topics the assessment must include.
- Specifying the process of developing negotiated care plans for residents, including the timing and content of these agreements.
- Specifying the minimum level of services a boarding home must provide.
- Specifying the requirements for medication assistance and medication administration, and storing and accounting for medications.
- Specifying the requirements associated with providing intermittent nursing services, including coordinating health care services with outside providers.
- Specifying the requirements for implementing negotiated care plans and monitoring residents' well-being.
- Specifying the requirements for hiring and training sufficient staff for the boarding home, including requirements for criminal history background checks and testing for tuberculosis.
- Specifying the qualifications and training requirements for boarding home administrators.
- Specifying the administrative requirements of operating a boarding home, including use of management agreements, development of policies and procedures, infection control practices, and reporting requirements.
- Specifying requirements for disaster preparedness and disclosing available services.
- Specifying the licensee's responsibilities in a boarding home.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: Chapter 388-78A WAC, Boarding homes contains the requirements that boarding homes must meet in order to be licensed in Washington. The statutory authority for chapter 388-78A WAC is RCW 18.20.090. The purpose of chapter 388-78A WAC is to implement chapter 18.20 RCW, as directed by the statute, to promote the safe and adequate care of individuals in boarding homes receiving domiciliary care, and to promote sanitary, hygienic and safe conditions in boarding homes.

Residential care services (RCS) in Aging and Disability Services Administration (ADSA), Department of Social and Health Services is proposing amendments to chapter 388-78A WAC, Boarding homes.

The purpose of these amendments is to:

- Comply with Governor Locke's Executive Order 97-02 regarding regulatory improvement.
- rules easier to understand.
- Make the rules more applicable to today's boarding home residents.
- Make the rules more consistent with current practices in residential care.
- Make the rules more focused on what occurs with residents ("outcome focused").

The proposed amendments include repealing all existing sections in chapter 388-78A WAC, and replacing them with new sections, and specifying:

- The characteristics of persons boarding homes may accept and retain in the boarding home;
- The conditions under which a person may live in a building before it is licensed as a boarding home;
- The outcomes and timing of an initial resident assessment, who is qualified to perform the assessment, and what topics the assessment must include;
- The process of developing, and the timing and content of negotiated care plans for residents;

- The minimum level of services a boarding home must provide;
- The requirements for medication assistance and medication administration, and storing and accounting for medications;
- The requirements for food services;
- The requirements associated with providing intermittent nursing services, including coordinating health care services with outside providers;
- The requirements for implementing negotiated care plans and monitoring residents' well-being;
- The requirements for providing adult day care and dementia care, and the requirements for operating a unit with restricted egress;
- The requirements associated with documenting resident care, and maintaining records regarding residents' care;
- The requirements for hiring and training sufficient staff for the boarding home, including requirements for criminal history background checks and testing for tuberculosis;
- The training requirements for staff;
- The qualifications and training requirements for boarding home administrators;
- The administrative requirements of operating a boarding home, including use of management agreements, development of policies and procedures, infection control practices, and reporting requirements;
- Resident rights in boarding homes;
- Requirements for disaster preparedness and disclosing available services;
- The requirements for obtaining a boarding home license and the procedures for application;
- The licensee's responsibilities in a boarding home;
- The requirements for the building to be used as a boarding home;
- The rights and responsibilities of the boarding home during the inspection process; and
- The enforcement actions the department may take in response to a boarding home's noncompliance with rules, and the boarding home's appeal rights.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT:

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. Small businesses are defined in this statute as those for-profit businesses that employ fifty or fewer people and are independently owned.

The statute outlines information that must be included in a small business economic impact statement (SBEIS). Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. This chapter impacts all licensed boarding homes in Washington.

Residential care services (RCS) has analyzed the proposed amendments to their rules and has determined that small businesses will be impacted by these changes, and that a comprehensive SBEIS is required.

INDUSTRY ANALYSIS: RCS is responsible for licensing boarding homes in Washington and investigating complaints regarding their operation. As part of their monitoring, RCS keeps a current internal database that identifies all licensed boarding homes. Since internal industry information can be obtained at a more accurate level than is required by chapter 19.85 RCW, it is unnecessary to conduct an industry analysis using the four-digit standard industrial classification (SIC) codes.

Residential care services has determined that there are approximately three hundred thirty-three existing boarding homes that meet the criteria for small businesses under RCW 19.85.020.

INVOLVEMENT OF SMALL BUSINESSES: Aging and Disability Services Administration began the process of obtaining public input on the development of this rule revision around March 2000 by holding meetings with a wide variety of stakeholders. The initial meetings were designed to identify the general problems that existed in current rules and the major topics that needed to be addressed. As a result of these first discussions, eight different work groups, composed of a variety of stakeholders, were created around the topics of:

- Provision of nursing services and health care supports;
- The process of assessing residents' needs;
- Boarding homes disclosing to the public the services they provide;
- Administrative issues in the boarding home;
- Providing care to persons with dementia;
- Enforcement issues;
- The building and physical environment; and
- Miscellaneous issues including the basic services that should be required in a boarding home.

These eight work groups met a total of fifty-eight times and developed two hundred-six advisory recommendations to ADSA. These advisory recommendations served as recommended general concepts or guiding principles for inclusion in the revision of chapter 388-78A WAC. Further, these recommendations were posted on a publicized web-site with e-mail links to the department for other members of the public to provide input. ADSA management team reviewed each of these recommendations and accepted the vast majority of them. The accepted guiding principles or concepts were then embodied in this proposed rule.

In addition to the multiple meetings of the different advisory work groups, on October 28, 2002, a draft of the revisions to chapter 388-78A WAC was distributed to various stakeholders, including the long-term care ombudsman program (LTCOP) and the three professional associations representing boarding home operators (Northwest Assisted Living Facilities Association - NorALFA; Washington Association of Housing and Services for the Aging - WAHSA; and Washington Health Care/Washington Center for Assisted Living - WHCA/WCAL). At the same time, LTCOP, NorALFA, WAHSA, and WHCA/WCAL were each invited to send three representatives to another meeting on December 4, 2002, to specifically discuss the costs associated with implementing the draft WAC.

The invited participants were asked to:

- Review the draft WAC;
- Identify the requirements in the draft WAC that they perceived to be new requirements beyond current standards; and

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- Determine as near as possible the additional costs to the boarding home of implementing/complying with that requirement.

A meeting was held from 9:00 a.m. - 3:30 p.m. on December 4, 2002, and was attended by six provider representatives, one representative from LTCOP, and two staff from ADSA. Additionally, one invited provider who was not able to attend the meeting submitted comments by fax. Provider representatives were asked to identify what they perceived as new requirements and the associated new costs, and to present them in order, starting with what the provider representatives considered to be the most costly. The department noted all of the new requirements that the provider representatives thought would have "more than minor costs."

It was noted that the costs of complying with a new requirement could have a large variation across the industry because of the unique factors associated with each boarding home. However, as the result of discussion, approximate industry averages were agreed upon by attendees. It was also agreed upon that to the extent possible, the on-going costs associated with complying with the revised rules should be expressed in terms of dollars per resident-day. And it was further agreed upon that the "average" "small business" is best represented by a boarding home licensed for thirty-one beds, and that the "average" "large business" is best represented by a boarding home licensed for eighty-four beds.

The one-time costs associated with achieving compliance are best expressed in cost per licensed bed.

COST OF COMPLIANCE: To fairly consider costs of compliance, residential care services has elected to look at costs per licensed bed for the one-time costs associated with achieving compliance with the new rules, and costs per resident-day for on-going expenses associated with maintaining compliance. This is due to these facts:

Boarding homes' revenues are based on the numbers of residents being served in the boarding home. Boarding homes generally prorate expenses over the average number of residents served.

In order to fairly compare expenses between large and small businesses, the cost per resident-day provides a measure of the impact any change would have on each resident.

GENERAL COSTS: The one-time costs associated with complying with the requirements of the proposed rule were estimated to be as follows:

Providers' Perceived One-time Costs	**ADSA's Analysis for Small Businesses (Average thirty-one beds)**	**ADSA's Analysis for Large Businesses (Average eighty-four beds)**
• Cost for revising existing policies and procedures (100 hours @ $20/hour).	• To the extent that the proposed amended rule reflects a different standard, providers will need to revise their operating policies and procedures. • $32.26 total per bed in the first year only. (50 hours x $20/hr/31).	• $11.09 total per bed in the first year only (50 hours x $20/hr/84).
• Cost of additional in-service training on revised policies and procedures (4 hours training per direct care employee @ $12/hr and 8 hours training per professional staff @ $20/hr).	• To the extent that the proposed amended rule reflects a different standard, providers will need to train their staffs. • Assuming thirteen direct care staff and two professional staff, $30.45 total per bed in the first year only [(4 x $12 x 13) + (8 x $20 x 2)]/31 = $30.45.	• To the extent that the proposed amended rule reflects a different standard, providers will need to train their staffs. • Assuming twenty-six direct care staff and four professional staff, $22.48 total per bed in the first year only [(4 x $12 x 26) + (8 x $20 x 4)]/84 = $22.48.
• Cost of obtaining a social history on current residents with dementia (1 hour @ $20/hr).	• Obtaining a social history for residents with dementia is consistent with current standards of practice in successful boarding homes today, and is consistent with recommendations from work groups regarding the appropriate standards. • No additional one-time costs are anticipated for current residents with dementia.	• Obtaining a social history for residents with dementia is consistent with current standards of practice in successful boarding homes today, and is consistent with recommendations from work groups regarding the appropriate standards. • No additional one-time costs are anticipated for current residents with dementia.
• Total one-time first year costs per bed:	• $62.71 per bed in first year only.	• $33.57 per bed in first year only.

At the meeting on December 4, 2002, the provider representatives identified what they believed to be the new on-going requirements of the draft rules and the associated costs. Aging and Disability Services Administration has analyzed these costs and associated requirements and has concluded that the on-going new costs imposed by the proposed amendments would be $.12 per resident-day in both small and large businesses:

Providers' Perceived New Costs	ADSA's Analysis
• Assessment requirements would cost an additional $.22 per resident-day because of increased qualifications for assessor and specified elements of assessment (4 hours of additional time per resident per year @ $20/hr).	• Current chapter 388-78A WAC and chapter 70.129 RCW presently require boarding homes to assess residents' needs and the proposed WAC does not create any new assessment requirement. The proposed new WAC only elaborates on existing assessment topics, such as health professional's diagnosis, and safety needs. This elaboration is consistent with current standards of practice in successful boarding homes today, and is consistent with recommendations from work groups regarding the appropriate standards. • ADSA has reviewed the information submitted by providers regarding the draft rule that increased the time and qualifications of the person responsible for conducting the initial resident assessment (for needs or services other than nursing care). As a result of this analysis, ADSA has determined the increased costs to be $.12 per resident day (2.25 hours of additional time per resident per year @ $20/hr).
• The requirements to develop the negotiated care plan would cost an additional $.24 per resident-day because of specified elements of the negotiated care plan, accommodating resident preferences, and developing plans with residents' families when they are involved in providing care or services to the resident (5 minutes more per resident per week @ $20/hr).	• Current chapter 388-78A WAC and chapter 70.129 RCW require boarding homes to develop an individual's resident plan to address resident needs and accommodate residents' preferences, and the proposed WAC does not create a new requirement. • The proposed WAC is consistent with current standards of practice in successful boarding homes today, and is consistent with recommendations from work groups regarding the appropriate standards. • Any costs that may be related to changes in requirements for developing negotiated care plans are considered "minor" in amounts.
• The requirements to provide a basic level of services in a boarding home would cost between $3.10 and $4.65 per resident day in a small business and between $2.86 and $4.29 per resident day in a large business (8-12 total additional direct care staff hours per day per 31 beds @ $12 per hour, and 20-30 total additional direct care staff hours per day per 84 beds @ $12 per hour).	• Current chapter 388-78A WAC and chapter 70.129 RCW require boarding homes to provide the listed services, but do not specify the extent of services. By defining the exact level of services that are expected, in some cases it limits how much services may be required, and in other cases it more clearly describes the extent of services that are expected. • No new costs are associated with these clarifying statements.
• The requirements to provide a higher level of activities in a boarding home would cost between $3.10 per resident day in a small business and $2.29 per resident day in a large business (1 additional FTE in a small business @ $12/hr and 2 additional FTEs in a large business).	• ADSA has reviewed the information submitted by providers regarding the draft rule that increased boarding homes' requirements to provide individualized activities daily. As a result of this analysis, ADSA concurs that the costs of this draft requirement outweighs the benefits. • Additionally, since this requirement would have disproportionately impacted small businesses, the proposed rule will be changed to reflect existing requirements. The draft requirement to provide individualized activities on a daily basis is being withdrawn. • Therefore no new costs will be incurred because the draft requirement is being withdrawn.
• The expanded role of the registered nurse will cost more.	• The proposed rule and role of the registered nurse is consistent with nursing practice as described in chapter 246-840 WAC. ADSA did not create the requirements regarding the role of the registered nurse and therefore this rule did not create any new requirement or expense.

PROPOSED

Providers' Perceived New Costs	ADSA's Analysis
• There are a number of additional requirements that individually are very minor, but in the aggregate would cost @ $.25 per resident per day.	• Other minor requirements not mentioned above are consistent with current standards of practice in successful boarding homes today, and are consistent with recommendations from work groups regarding the appropriate standards. • A significant number of these requirements would only impact a fraction of the boarding homes on only an occasional basis, and therefore would not have a significant affect on the industry as a whole. • Any costs that may be related to changes in other requirements are considered "minor" in amounts.
Summary:	• ADSA has analyzed the costs associated with the on-going requirements of the draft rules and evaluated the probable benefits of them. In response to the boarding home industry's concerns, ADSA has deleted one major requirement from the draft rules: The requirement for individualized activities on a daily basis has been deleted from the proposed rules. • New on-going costs associated with the proposed rules are considered to be $.12 per resident day.

Disproportionate Economic Impact Analysis: When proposed rule changes cause more than minor costs to small businesses, the Regulatory Fairness Act requires an analysis that compares these costs between small businesses and 10% of the largest businesses. The on-going costs of $.12 per resident day are equal in a large business and a small business.

However, the one-time costs associated with achieving compliance are disproportionate between small businesses and large businesses, since there are fewer licensed beds over which to spread the fixed costs in a small business. In the average small business boarding home, the first year cost of complying with the one-time expenses is estimated to be $62.71 per licensed bed. In the average large business boarding home, the first year cost of complying with the one-time expenses is estimated to be $33.57 per licensed bed.

While the estimated time required for boarding homes to achieve compliance may be worth the amounts described above, it is most likely that boarding homes will not have to bear all this expense as an additional expenditure. It is expected that providers will shift some of the costs associated with staff time from other priorities. For example, staff may be trained on the new policies and procedures at times that were normally scheduled for staff training on other subjects. While there is no debate about the value of staff time, there in fact may not be a significant additional expenditure required for this training.

Mitigating Expenses: Residential Care Services has plans for mitigating expenses for small businesses by delaying the effective date of the rules approximately one hundred-twenty days from the date of adoption. It is estimated that the adoption date will be no later than April 30, 2003. Consequently, the effective date for the rules has been set for September 1, 2003. This will allow both small businesses and large businesses to spread the costs of developing policies and presenting training over four months. This will help reduce the likelihood that additional actual expenditures would be required, such as having additional staff provide resident care services while other staff are being trained on new polices.

Additionally, ADSA intends to present several training sessions around the state for providers to help them more quickly understand and implement the new rules. This will help keep the amount of time necessary to revise or develop new policies and procedures to a minimum.

Finally, ADSA will not impose sanctions for a period of six months after the effective date of the rules, for a boarding home's failure to have written policies and procedures formally written and/or adopted regarding the following areas where new policies and procedures are required by WAC 388-78A-0600, subsection:

- (2)(a) regarding what to do when a resident is not capable of making necessary decisions;
- (2)(b) regarding what to do when a substitute decision maker is no longer appropriate;
- (2)(k)(i) regarding how medications are to be ordered and brought into the boarding home;
- (2)(k)(ii) regarding what to do if a resident's medications are not available;
- (2)(k)(vi) regarding sending medications with a resident when the resident leaves the premises;
- (2)(k)(viii) regarding inventorying schedule II and III drugs;
- (2)(k)(x) regarding the use of medication organizers;
- (2)(k)(xi) regarding what to do if a resident chooses not to take prescribed medications;
- (2)(l) regarding nurse delegation; and
- (2)(n) regarding the safe operation of boarding home vehicles.

ADSA will continue to impose enforcement actions or sanctions for negative outcomes that a resident may experience beginning with the effective date of the rules. ADSA will withhold sanctions for six months only for the limited purposes of having such policies and procedures formally written or adopted by the boarding home. This will allow small businesses to concentrate their time and energies on meeting the requirements of the rule, and will provide an extended period to achieve compliance with the necessary documentation. The broader time frame for compliance will

allow boarding home operators to further spread out the costs of complying with this rule.

CONCLUSION: Residential care services has given careful consideration to the impact of proposed rules in chapter 388-78A WAC on small businesses. In accordance with the Regulatory Fairness Act, chapter 19.85 RCW, Residential care services has analyzed impacts on small businesses and proposed ways to mitigate those costs associated with the one-time requirements of developing new policies and procedures and training staff on them. Residential care services will delay the effective date of the rules, provide training, and suspend enforcement actions for specific violations for a period of six months following the effective date of the rules.

A copy of the statement may be obtained by writing to Denny McKee, Residential Care Services, ADSA, P.O. Box 45600, Olympia, WA 98504-5600, e-mail mckeedd@dshs.wa.gov, phone (360) 725-2590, fax (360) 438-7903.

RCW 34.05.328 applies to this rule adoption. A cost-benefit analysis has been prepared regarding this proposed rule. A copy of the cost-benefit analysis may be obtained by contacting Denny McKee, Residential Care Services, ADSA, P.O. Box 45600, Olympia, WA 98504-5600, e-mail mckeedd@dshs.wa.gov, phone (360) 725-2590, fax (360) 438-7903.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on March 11, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by March 7, 2003, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., March 11, 2003.

Date of Intended Adoption: Not earlier than March 12, 2003.

December 30, 2002
Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

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 03-04 issue of the Register.

WSR 03-03-029
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed January 9, 2003, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-23-086 filed on November 20, 2002.

Title of Rule: Manual on Uniform Traffic Control Devices for Streets and Highways.

Purpose: To adopt the millennium edition of the Manual on Uniform Traffic Control Devices, June 2001 version.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 47.36.030.

Summary: The proposed rule adopts and modifies for use in Washington state the Federal Manual on Uniform Traffic Control Devices millennium edition.

Reasons Supporting Proposal: Federal regulations require the states to adopt the Manual on Uniform Traffic Control Devices. Adoption of the federal Manual on Uniform Traffic Control Devices millennium edition will also bring Washington into compliance with the latest national standards for traffic control device standards.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mike Dornfeld, Washington State Department of Transportation, P.O. Box 47344, Olympia, WA 98504-7344, (360) 705-7288.

Name of Proponent: Washington State Department of Transportation, governmental.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule adopts the millennium edition of the Manual on Uniform Traffic Control Devices (MUTCD), the latest version of the federal standards for traffic control devices. The MUTCD provides standards for the use of traffic control devices like lane striping, traffic signs, traffic signals, and other devices. The MUTCD M.E. contains the latest information on the use of traffic control devices. This rule also modifies the MUTCD M.E. to meet Washington state law and practices.

Proposal Changes the Following Existing Rules: Existing WAC rules (chapter 468-95 WAC) on the MUTCD are being renumbered, modified or repealed. Some existing rules being repealed or modified in order to bring Washington state traffic control device use into compliance with national standards.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The adoption of this rule is to meet federal requirements. States are required to adopt the Manual on Uniform Traffic Control Devices.

RCW 34.05.328 does not apply to this rule adoption. RCW 34.05.328 does not apply to this rule adoption because the federal regulations are being adopted with no material change.

Hearing Location: Washington State Department of Transportation Building, Large Commission Board Room, 310 Maple Park Avenue S.E., Olympia, WA, on February 28, 2003, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Mike Dornfeld at (360) 705-7288 by February 25, 2003.

Submit Written Comments to: Toby Rickman, State Traffic Engineer, Washington State Department of Transportation, P.O. Box 47344, Olympia, WA 98504-7344, fax (360) 705-6822, by February 25, 2003.

Date of Intended Adoption: February 28, 2003.

January 9, 2003
John F. Conrad
Assistant Secretary

PROPOSED

AMENDATORY SECTION (Amending Order 127, filed 12/21/90, effective 1/21/91)

WAC 468-95-010 General. ((~~The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 1988 edition, and future revisions approved by the Federal Highway Administrator, except as modified by the department of transportation herein, as the national standard for all highways open to public travel, published by the U.S. Department of Transportation, Federal Highway Administration, was duly adopted by Administrative Order No. . . . . of the Secretary of Transportation dated . . . . . .~~)) The June 2001 Millennium Edition of the *Manual on Uniform Streets and Highway for Streets and Highways (MUTCD)*, published by the Federal Highway Administration and approved by the Federal Highway Administrator as the national standard for all highways open to public travel, was duly adopted by the Washington state secretary of transportation. The manual includes in part many illustrations, some of which depend on color for proper interpretation. The code reviser has deemed it inexpedient to convert these regulations and illustrations to the prescribed form and style of WAC and therefore excludes them from publication. ((~~Copies of the MUTCD may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~)) The document is available for public inspection at the headquarters office and all ((~~district~~)) region offices of the Washington state department of transportation. Further, each city, town, and county engineering office in the state will have a copy of the MUTCD, with revisions and modifications for Washington, in its possession.

NEW SECTION

WAC 468-95-110 Parking for the disabled in urban areas. Pursuant to RCW 46.61.581 the following modifications to the MUTCD are established:

(1) A paragraph is added to the standard of MUTCD Section 2B.35, Design of Parking, Standing, and Stopping Signs: A parking space or stall for a physically disabled person shall be indicated by a vertical sign with the international symbol of access, whose colors are white on a blue background, described under RCW 70.92.120 and the notice State Disabled Parking Permit Required.

(2) A second Standard is added to MUTCD Section 2B.36 to read: Signs indicating a parking space or stall for a physically disabled person shall be installed between thirty-six and eighty-four inches off the ground.

NEW SECTION

WAC 468-95-120 Traffic signal signs. Pursuant to RCW 46.61.055 amend the second Standard of MUTCD Section 2B.40 to read:

The NO TURN ON RED sign (R10-11a, R10-11b) shall be used to prohibit a right turn on red or a left turn on red from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn.

NEW SECTION

WAC 468-95-130 High occupancy vehicle signs. Amend the fourth paragraph of the Standard of MUTCD Section 2B.50 to read:

For concurrent-flow HOV lanes, ground-mounted HOV signs (R3-11) shall be located at intervals based on engineering judgment. Overhead HOV signs (R3-14) should be used to supplement the ground-mounted HOV signs (R3-11) at intervals based on an engineering study.

NEW SECTION

WAC 468-95-140 Signing to regional shopping centers. Pursuant to RCW 47.36.270 a regional shopping center may be signed as a supplemental guide sign destination from state highways in accordance with the applicable sections of MUTCD Part II-D, Guide Signs - Conventional Roads and Part II-E Guide Signs - Freeways and Expressways, and in accordance with subsections (1) through (8) of this section.

(1) There shall be at least 500,000 square feet of leasable retail floor space;

(2) There shall be at least three major department stores owned by national or regional retail chain organizations;

(3) The center shall be located within one highway mile of the state highway;

(4) The center shall generate at least 9,000 daily one-way vehicle trips to the center;

(5) Sufficient sign space as specified in the MUTCD shall be available for installation;

(6) Supplemental follow-through directional signing is required on county roads or city streets at key motorist decision points, if the center is not clearly visible from the point of exit from the state highway. The required supplemental follow-through directional signs shall be installed by the city or county prior to the installation of signs on the state highway;

(7) Signing on the state highway to a county road or city street that bears the name of the regional shopping center fulfills the statutory requirements for signing to those centers;

(8) The costs of materials and labor for fabricating, installing, and maintaining regional shopping center signs shall be borne by the center.

NEW SECTION

WAC 468-95-150 No passing zone markings. Amend the third Standard of MUTCD Section 3B.02, to read:

On two-way, two- or three-lane roadways where centerline markings are installed, no-passing zones shall be established at vertical curves and other locations where an engineering study indicates that passing must be prohibited because of inadequate sight distances or other special conditions.

On two-way, two- and three-lane roadways where centerline markings are installed, no-passing zones shall be established at horizontal curves where an engineering study indicates passing must be prohibited because of inadequate sight distances or other special conditions. A January 17, 2007, compliance date is established.

On three-lane roadways where the direction of travel in the center lane transitions from one direction to the other, a no-passing buffer zone shall be provided in the center lane as shown in Figure 3B-4. A lane transition shall be provided at each end of the buffer zone.

The buffer zone shall be a median island consisting of a lane transition in each direction and a minimum of a 15 m (50 ft) buffer zone. In areas where no-passing zones are required because of limited passing sight distances, the buffer zone shall be the distances between the beginnings of the no-passing zones in each direction.

NEW SECTION

WAC 468-95-160 Other yellow longitudinal markings. Amend the second Standard of MUTCD Section 3B.03 to read:

If a continuous median island formed by pavement markings separating travel in opposite directions is used, the island may be formed by two single normal solid yellow lines, a combination of two single normal solid yellow lines with yellow crosshatching between the lines with a total width not less than eighteen inches, two sets of double solid yellow lines, or a solid yellow line not less than eighteen inches in width. All other markings in the median island area shall be yellow, except crosswalk markings, which shall be white (see MUTCD Section 3B.17).

NEW SECTION

WAC 468-95-170 White lane line markings. Amend the third Standard of MUTCD Section 3B.04 to read:

Where crossing is prohibited, the lane line markings shall consist of two normal solid white lines or a single wide white line, supplemented with lane change prohibition signing.

NEW SECTION

WAC 468-95-180 Other white longitudinal pavement markings. Amend MUTCD Section 3B.05, to change the dimensions shown on Figure 3B-10 for drop lane markings from 3' markings with a 9' gap to 3' markings with a 12' gap.

NEW SECTION

WAC 468-95-190 Pavement edge lines and raised pavement markers supplementing other markings. Pursuant to RCW 47.36.280, the Standard in MUTCD Section 3B.07, is revised as follows:

Edge lines shall be used on all interstate highways, on rural multilane divided highways, on all principal arterials and minor arterials within urbanized areas, except when curb or sidewalk exists, and may be used on other classes of roads. Jurisdictions shall conform to these requirements at such time that it undertakes to renew or install permanent markings on new or existing roadways. The lines shall be white except that on the left edge of each roadway of divided streets and highways and one-way roadway in the direction of travel, the lines shall be yellow.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

Pursuant to RCW 47.36.280, the first paragraph under Option of MUTCD Section 3B.13 is revised to read as follows:

Raised pavement markers may also be used to supplement other markings for channelizing islands or approaches to other objects. The general use of raised pavement markers along right edge lines is strongly discouraged because they can cause steering difficulties and make bicyclists lose control of their vehicles. Raised or recessed pavement markers may be used along right edge lines on the taper in lane transition sections, on approaches to objects and within channelization at intersections. Raised or recessed pavement markers can only be used along right edge lines at other locations where an engineering study has determined the markers are essential to preserving pedestrian, bicycle, and motor vehicle safety. At the initiation of the engineering study, local bicycling organizations, the regional member of the state bicycling advisory committee, or the WSDOT bicycle and pedestrian program manager shall be notified of the study for review and comment. Positioning and spacing of the markers in such cases must be determined by engineering judgment taking into consideration their effect on bicycle, pedestrian, and motor vehicle safety. Other applications of raised or recessed pavement markers along right edge lines of arterials are considered to be nonconforming with this section. Cities and counties shall remove nonconforming raised pavement markings at the time that they prepare to resurface roadways, or earlier at their option.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

NEW SECTION

WAC 468-95-200 Approach markings for obstructions. Amend the first Standard of MUTCD Section 3B.10 to read:

Pavement markings shall be used to guide traffic away from fixed obstructions within a paved roadway. Approach markings for bridge supports, refuge islands, median islands, and channelization islands (except channelization islands formed by paint stripes or raised pavement markers) shall consist of a diagonal line or lines extending from the centerline or the lane line to a point 0.3 to 0.6 m (1 to 2 ft) to the right side, or to both sides, of the approach end of the obstruction (see Figure 3B-13).

Amend the third Standard of MUTCD Section 3B.10 to read:

If traffic is required to pass only to the right of the obstruction, the markings shall consist of a no-pass marking, approaching the obstruction, at least twice the length of the diagonal portion as determined by the appropriate taper formula (see Figure 3B-13).

PROPOSED

Modify MUTCD Figure 3B-13, Item a - Center of two-lane road, to show a single no-pass marking on the approach to the obstruction.

NEW SECTION

WAC 468-95-210 Raised pavement markers substituting for pavement markings. Amend the first sentence in the first Standard of MUTCD Section 3B.14 to read:

If raised pavement markers are substituted for broken line markings, a group of 3 to 5 markers equally spaced at no greater than N/8 (see Section 3A.06), or at the one-third points of the line segment if N is other than 12 m (40 ft), with a least one retroreflective or internally illuminated marker used per group.

NEW SECTION

WAC 468-95-220 Stop line locations. Amend the second Guidance of MUTCD Section 3B.16 to read:

Stop or yield lines, where used, should ordinarily be placed four feet in advance of and parallel to the nearest crosswalk line. In the absence of a marked crosswalk, the stop or yield line should be placed at the desired stopping point, in no case less than 4 feet from the nearest edge of intersecting roadway.

Stop lines at midblock signalized locations should be placed at least 40 feet in advance of the nearest signal indication (see MUTCD Section 4D.15).

NEW SECTION

WAC 468-95-230 Crosswalk markings. Amend the second Guidance in MUTCD Section 3B.17 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

NEW SECTION

WAC 468-95-240 Preferential lane longitudinal markings for motorized vehicles. Amend the second Standard of MUTCD Section 3B.23, item C.1 to read:

A double solid wide white line or a single wide white line, supplemented with lane change prohibition signing where crossing is prohibited (see Figure 3B-25b and 3B-25c).

Amend the second Standard of MUTCD Section 3B.23, item D.4 to read:

A single dotted normal white line or a single dotted wide white line is permitted for any vehicle to perform a right turn maneuver (see Figure 3B-25b).

Amend all references in Table 3B-2 for double wide white line to allow single solid wide white line, each with lane change prohibition signing.

Amend the callout in figure 3B-25 for a SINGLE DOTTED NORMAL WHITE on the approach to the limited access exit, side-street, or commercial entrance to say SINGLE DOTTED NORMAL WHITE or SINGLE DOTTED WIDE WHITE.

NEW SECTION

WAC 468-95-250 Meaning of signal indications. Pursuant to RCW 46.61.055, amend the second paragraph of the Standard of MUTCD Section 4D.04, item C.1 to read:

Vehicle operators facing a steady circular red signal may, after stopping, proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

Pursuant to RCW 46.61.055, amend the MUTCD Section 4D.04, item C.2 to read:

Vehicle operators facing a steady red arrow indication may, after stopping, proceed to make a right turn from a one-way or two-way street or into a one-way street carrying traffic in the direction of the right turn, or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn, unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

NEW SECTION

WAC 468-95-260 Application of steady signal indications. Pursuant to RCW 46.61.055, amend MUTCD Section 4D.05, item D to read:

A steady RED ARROW signal indication shall be displayed when it is intended to prohibit vehicular traffic from entering the intersection or other controlled area to make the indicated turn when regulatory signing is in place prohibiting such movement. Pedestrians directed by a pedestrian signal head may enter the intersection or other controlled area.

NEW SECTION

WAC 468-95-270 Meaning of lane-use control indications. Pursuant to RCW 46.61.072, amend MUTCD Section 4J.02 paragraph B to read:

A steady YELLOW X or a flashing RED X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change

is being made, and to avoid occupying that lane when a steady RED X is displayed.

NEW SECTION

WAC 468-95-280 Operation of lane-use control signals. Pursuant to RCW 46.61.072, in MUTCD Section 4J.04, amend the first sentence of the first paragraph after item G to read:

A moving condition in one direction shall be terminated either by the immediate display of a RED X signal indication or by a YELLOW X signal indication followed by a RED X signal indication or a flashing RED X indication followed by a RED X indication.

NEW SECTION

WAC 468-95-290 County road signing. Pursuant to RCW 36.75.300, there is added to Part 5 of the MUTCD, the following regulation pertaining to signing of county roads:

The legislative authority of each county may by resolution classify and designate portions of county roads as primitive roads where the designated road portion:

(1) Is not classified as part of the county primary road system, as provided for in RCW 36.86.070;

(2) Has a gravel or earth driving surface; and

(3) Has an average annual daily traffic of 100 or fewer vehicles.

Any road designated as a primitive road shall be marked with a PRIMITIVE ROAD sign at all places where the primitive road portion begins or connects with a highway other than a primitive road.

A sign with the caption CAUTION - NO WARNING SIGNS may be installed on the same post with the PRIMITIVE ROAD sign, and may be individually erected at intermediate points along the road section if conditions warrant. In addition, a sign with the caption NEXT.... MILES may be installed on the same post below the CAUTION - NO WARNING SIGNS sign.

NEW SECTION

WAC 468-95-300 Temporary traffic control. Amend MUTCD Section 6C.04, Table 6C-1 and MUTCD Section 6H.01, Table 6H-3 to read:

Sign Spacing (1)

Freeways & Expressways	55/70 MPH	1500' ± or per MUTCD
Rural Highways	60/65 MPH	1000' ±
Rural Roads	45/55 MPH	500' ±
Rural Roads & Urban Arterials	35/40 MPH	350' ±
Rural Roads, Urban Streets, Residential Business Districts	25/30 MPH	200' ± (2)
Urban Streets	25 MPH or less	100' ± (2)

(1) All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

(2) This spacing may be reduced in urban areas to fit roadway conditions.

NEW SECTION

WAC 468-95-310 Temporary pavement markings. Amend the first Support of MUTCD Section 6F.66 to read:

Temporary pavement markings are those that may be used until it is practical and possible to install permanent pavement markings that meet MUTCD standards. Normally, it should not be necessary to leave temporary pavement markings in place for more than 2 weeks, except on roadways being paved with bituminous surface treatment (BST) and having traffic volumes under 2,000 ADT. All temporary pavement markings, including pavement markings for no-passing zones, shall conform to the requirements of Sections 3A and 3B.

Amend the first Guidance of MUTCD Section 6F.66 to read:

For temporary situations of 14 calendar days or less, for a two-lane or three-lane road, no-passing zones may be identified by using W 14-3 No Passing Zone signs (see Section 2C.32) rather than pavement markings (see Section 3B.02). Signs may also be used in lieu of pavement markings on low-volume roads for longer periods, when this practice is in keeping with the state's or other highway agency's policy. These signs should be placed in accordance with Sections 2B.24 and 2B.25.

NEW SECTION

WAC 468-95-320 School advance warning sign (S-1). Amend MUTCD Section 7B.08, Figure 7B-1 by deleting the words SCHOOL PROPERTY LINE and replacing with the words SCHOOL GROUNDS. Amend MUTCD Section 7B.08, Figure 7B-1 to show the school zone 300 feet on either side of the marked school crosswalk.

NEW SECTION

WAC 468-95-330 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1). Pursuant to RCW 46.61.440 delete the first Guidance paragraph and add the following paragraph to the first Standard of MUTCD Section 7B.11:

The reduced school speed zone shall begin at a point 90 m (300 ft) in advance of the crosswalk and end at a point 90 m (300 ft) after the crosswalk. These distances may be modified to fit the field conditions by regulation.

NEW SECTION

WAC 468-95-340 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1). Amend the Option to the second Standard of MUTCD Section 7B.11 to read:

The School Speed Limit assembly shall be either a fixed-message sign assembly or a changeable message sign. The fixed-message School Speed Limit assembly shall consist of a top plaque (S4-3) with the legend SCHOOL, a Speed Limit (R2-1) sign, and a bottom plaque (S4-1, S4-2, or S4-4) indicating the specific periods of the day and/or days of the week that the special school speed limit is in effect. An additional bottom plaque may be used that reads WHEN FLAGGED.

PROPOSED

PROPOSED

NEW SECTION

WAC 468-95-350 When children are present. Amend MUTCD Section 7B.11 by adding the following supplemental paragraph to the second Standard:

The supplemental or lower panel of a School Speed Limit 20 sign which reads When Children are Present shall indicate to the motorist that the 20 mile per hour school speed limit is in force under any of the following conditions:

(1) School children are occupying or walking within the marked crosswalk.

(2) School children are waiting at the curb or on the shoulder of the roadway and are about to cross the roadway by way of the marked crosswalk.

(3) School children are present or walking along the roadway, either on the adjacent sidewalk or, in the absence of sidewalks, on the shoulder within the posted school speed limit zone extending 300 feet, or other distance established by regulation, in either direction from the marked crosswalk.

NEW SECTION

WAC 468-95-360 Crosswalk markings. Amend the second Guidance of MUTCD Section 7C.03 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

NEW SECTION

WAC 468-95-370 Pavement markings for obstructions. Amend MUTCD Section 9C.07, Figure 9C.07, to show a normal solid white line instead of a wide solid white line.

NEW SECTION

WAC 468-95-400 Sign borders. The following MUTCD sections are adopted as modified herein, until Revision 2 to the June 2001 Millennium Edition of the MUTCD is adopted by the Washington state secretary of transportation:

(1) **Section 2A.15, Sign Borders**

Amend the Standard to read:

Unless specifically stated otherwise, each sign illustrated herein shall have a border of the same color as the legend, at or just inside the edge. The corners of all sign borders shall be rounded, except for STOP signs.

Amend the Guidance to read:

A dark border on a light background should be set in from the edge, while a light border on a dark background should extend to the edge of the panel. A border for 750 mm (30 in) signs with a light background should be from 13 to 19 mm (0.5 to 0.75 in) in width, and 13 mm (0.5 in) from the edge. For similar size signs with a light border, a border width of 25 mm (1 in) should be used. For other sizes, the border width should be of similar proportions, but should not exceed the stroke-width of the major lettering of the sign. On signs exceeding 1800 x 3000 mm (72 x 120 in) in size, the border should be 50 mm (2 in) wide. For signs larger than 1800 x 3000 mm (72 x 120 in), the border should be 75 mm (3 in) wide. Where practical, the corners of the sign should be rounded parallel to the border, except for STOP sign corners which are not rounded.

(2) **Section 2A.19, Lateral Offset**

Change the first Standard to read:

For overhead sign supports (cantilever or sign bridges), the minimum lateral offset from the edge of the shoulder (or if no shoulder exists, from the edge of the pavement) to the near edge of the supports shall be 1.8 m (6 ft).

Overhead sign supports shall have a barrier or crash cushion to shield them if they are within the clear zone.

Roadside-mounted sign supports shall be breakaway, yielding, or shielded with a longitudinal barrier or crash cushion if within the clear zone.

(3) **Section 2C.04 Page 2C-4, Table 2C-2, Warning Sign Sizes**

Replace the table with the following:

Table 2C-2. Warning Sign Sizes

Description						
Shape	**Sign Series**	**Conventional Roads**	**Expressways**	**Freeways**	**Minimum**	**Oversized**
Diamond	W1, W2, W7, W8, W9, W11, W14, W15-1, W17-1	750 x 750 (30 x 30)	900 x 900 (36 x 36)	1200 x 1200 (48 x 48)	600 x 600 (24 x 24)	
Diamond	W3, W4, W5, W6, W8-3, W10, W12	900 x 900 (36 x 36)	1200 x 1200 (48 x 48)	1200 x 1200 (48 x 48)	750 x 750 (30 x 30)	
Rectangular	W1 - Arrows	1200 x 600 (48 x 24)			900 x 450 (36 x 18)	1500 x 750 (60 x 30)
Rectangular	W1 - Chevron	450 x 600 (18 x 24)	750 x 900 (30 x 36)	900 x 1200 (36 x 48)	300 x 450 (12 x 18)	

Table 2C-2. Warning Sign Sizes

Description						
Shape	**Sign Series**	**Conventional Roads**	**Expressways**	**Freeways**	**Minimum**	**Oversized**
	W7-4	1950 x 1200 (78 x 48)	1950 x 1200 (78 x 48)	1950 x 1200 (78 x 48)		
	W7-4a, b, c	1950 x 1500 (78 x 60)	1950 x 1500 (78 x 60)	1950 x 1500 (78 x 60)		
	W10-9, W10-10	750 x 225 (30 x 9)				
	W12-2P	2100 x 600 (84 x 24)	2100 x 600 (84 x 24)	2100 x 600 (84 x 24)		
	W13, W25	600 x 750 (24 x 30)	900 x 1200 (36 x 48)	1200 x 1500 (48 x 60)	600 x 750 (24 x 30)	1200 x 1500 (48 x 60)
Pennant	W14-3	900 x 1200 x 1200 (36 x 48 x 48)			750 x 1000 x 1000 (30 x 40 x 40)	1200 x 1600 x 1600 (48 x 64 x 64)
Circular	W10-1	900 (36) Dia.	1200 (48) Dia.		750 (3) Dia.	1200 (48) Dia.

Note: 1. Larger signs may be used when appropriate.
2. Dimensions are shown in millimeters followed by inches in parentheses and are shown as width x height.

(4) **Section 2C.05, Table 2C-4, Guidelines for Advance Placement of Warning Signs (English Units).**
Replace the table and notes with the following:

Table 2C-4. Guidelines for Advance Placement of Warning Signs (English Units)

	Advance Placement Distance[1]								
	Condition A:	Condition B: Deceleration to the listed advisory speed (mph) for the condition[4]							
Posted or 85th Percentile Speed	Speed reduction and lane changing in heavy traffic[2]	**0[3]**	**10**	**20**	**30**	**40**	**50**	**60**	**70**
20 mph	225 ft	N/A[5]	N/A[5]	–	–	–	–	–	–
25 mph	325 ft	N/A[5]	N/A[5]	N/A[5]	–	–	–	–	–
30 mph	450 ft	N/A[5]	N/A[5]	N/A[5]	–	–	–	–	–
35 mph	550 ft	N/A[5]	N/A[5]	N/A[5]	N/A[5]	–	–	–	–
40 mph	650 ft	125 ft	N/A[5]	N/A[5]	N/A[5]	–	–	–	–
45 mph	750 ft	175 ft	125 ft	N/A[5]	N/A[5]	N/A[5]	–	–	–
50 mph	850 ft	250 ft	200 ft	150 ft	100 ft	N/A[5]	–	–	–
55 mph	950 ft	325 ft	275 ft	225 ft	175 ft	100 ft	N/A[5]	–	–
60 mph	1100 ft	400 ft	350 ft	300 ft	250 ft	175 ft	N/A[5]	–	–
65 mph	1200 ft	475 ft	425 ft	400 ft	350 ft	275 ft	175 ft	N/A[5]	–
70 mph	1250 ft	550 ft	525 ft	500 ft	425 ft	350 ft	250 ft	150 ft	–
75 mph	1350 ft	650 ft	625 ft	600 ft	525 ft	450 ft	350 ft	250 ft	100 ft

Notes: [1]The distances are adjusted for a sign legibility distance of 50 m (175 ft) for Condition A. The distances for Condition B have been adjusted for a sign legibility distance of 75 m (250 ft), which is appropriate for an alignment warning symbol sign.

[2]Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. Typical signs are Merge, Right Lane Ends, etc. The distances are determined by providing the driver a PIEV time of 14.0 to 14.5 seconds for vehicle maneuvers (2001 AASHTO Policy, Exhibit 3-3, Decision Sight Distance, Avoidance Maneuver E) minus the legibility distance of 50 m (175 ft) for the appropriate sign.

[3]Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield Ahead, Signal Ahead, and Intersection Advance Warning signs. The distances are based on the 2001 AASHTO Policy, Stopping Sight Distance, Exhibit 3-1, providing a PIEV time of 2.5 seconds, a deceleration rate of 3.4 m/second^2 (11.2 ft/second^2), minus the sign legibility distance of 50 m (175 ft).

[4]Typical conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, Reverse Turn, or Reverse Curve. The distance is determined by providing a 2.5 second PIEV time, a vehicle deceleration rate of 3 m/second^2 (10 ft/second^2), minus the sign legibility distance of 75 m (250 ft).

[5]No suggested minimum distances are provided for these speeds, as the placement location is dependent on-site conditions and other signing to provide an adequate advance warning for the driver.

PROPOSED

(5) **Section 2C.27 CROSS TRAFFIC DOES NOT STOP Plaque (W4-4)**

Replace the entire Section text with the following:

Option:

The CROSS TRAFFIC DOES NOT STOP (W4-4) plaque (see Figure 2C-9) may be used in combination with a STOP sign when engineering judgment indicates that drivers frequently misinterpret the intersection to be a multi-way stop condition.

Standard:

If the W4-4 plaque is used, it shall be installed below the STOP sign.

(6) **Section 2C.28 Merge Signs (W4-1, W4-1a)**

W4-2 Lane End sign is included in MUTCD Revision 2 Section 2C.30.

(7) **Section 2C.34 Intersection Warning Signs (W2-1 through W2-6)**

Amend the section to read:

Option:

A Cross Road (W2-1) symbol, Side Road (W2-2 or W2-3) symbol, T-Symbol (W2-4), or Y-Symbol (W2-5) sign (see Figure 2C-9) may be used in advance of an intersection to indicate the presence of an intersection and the possibility of turning or entering traffic. The relative importance of the intersecting roadways may be shown by different widths of lines in the symbol.

The Circular Intersection (W2-6) symbol sign accompanied by an educational word message plaque may be installed in advance of a circular intersection.

An advance street name plaque (see Section 2C.45) may be installed below an Intersection Warning sign.

Guidance:

The Intersection Warning sign should illustrate and depict the general configuration of the intersecting roadway, such as cross road, side road, T-intersection, or Y-intersection. Where the side roads are not opposite of each other, the symbol for the intersection should indicate a slight offset.

Intersection Warning signs, other than the Circular Intersection symbol (W2-6) sign should not be used on approaches controlled by STOP signs, YIELD signs, signals, or where Junction signing (see Sections 2D.13 and 2D.28) or advance route turn assembly signs (see Section 2D.29) are present. The Circular Intersection symbol (W2-6) sign should be installed on the approach to a roundabout intersection controlled by a YIELD sign.

(8) **Section 2C.37 Crossing Signs (W11-1, W11-2, W11-3, W11-4, W16-7P)**

Rename and replace the entire section with the following:

Section 2C.37 Nonvehicular Signs (W11-1, W11-2, W11-3, W11-4, W11-11, W11-14, W11-14a, W11-15)

Option:

Nonvehicular signs (see Figure 2C-10) may be used to alert road users in advance of locations where unexpected entries into the roadway or shared use of the roadway by pedestrians, bicyclists, golf carts, animals, horse-drawn vehicles, and other crossing activities might occur.

Support:

These conflicts might be relatively confined, or might occur randomly over a segment of roadway.

Option:

When used in advance of a crossing, Nonvehicular warning signs may be supplemented with supplemental plaques (see Section 2C.39) with the legend AHEAD, XX METERS (XX FEET), or NEXT XX KILOMETERS (NEXT XX MILES) to provide advance notice to road users of possible crossing activity.

Standard:

When used at the crossing, Nonvehicular warning signs shall be supplemented with a diagonal downward pointing arrow (W16-7) plaque (see Figure 2C-10) showing the location of the crossing.

Option:

The crossing location may be defined with crosswalk markings (see Section 3B.17). Pedestrian, Bicycle, School Advance Crossing, and School Crossing signs and their related supplemental plaques may have a fluorescent yellow-green background with a black legend and border.

Guidance:

When a fluorescent yellow-green background is used, a systematic approach featuring one background color within a zone or area should be used. Mixing standard yellow and fluorescent yellow-green backgrounds within a selected site area should be avoided.

Nonvehicular signs should be used only at locations where the crossing activity is unexpected or at locations not readily apparent.

(9) **Section 2C.46 Dead End/No Outlet Plaques (W14-1P, W14-2P)**

Amend the section to read:

Option:

DEAD END (W14-1P) or NO OUTLET (W14-2P) plaques (see Figure 2C-11) may be used in combination with Street Name (D3-1) signs (see Section 2D.38) to warn turning traffic that the cross street ends in the direction indicated by the arrow.

At locations where the cross street does not have a name, DEAD END or NO OUTLET plaques may be used alone in place of a street name sign.

(10) **Section 3B.13 B1 Raised Pavement Markers Supplementing Other Markings**

Under Guidance, amend the section to read:

B. Longitudinal Spacing

1. When supplementing solid line markings, raised pavement markers at a spacing no greater than N (see Section 3A.06) should be used, except when supplementing left edge line markings a spacing no greater than N/2 should be used. Raised markers should not supplement right edge line markings, unless they are spaced closely enough (no greater than 3 m (10 ft) apart) to approximate the appearance of a solid line.

2. When supplementing broken line markings, a spacing no greater than 3N should be used. However, when supplementing broken line markings identifying reversible lanes, a spacing no greater than N should be used.

3. When supplementing dotted line markings, a spacing appropriate for the application should be used.

4. When supplementing longitudinal line markings through at-grade intersections, one raised pavement marker for each short line segment should be used.

5. When supplementing edge line extensions through freeway interchanges, a spacing of N should be used.

(11) **Section 3B.24 Markings for Roundabouts**

Replace Figure 3B-27, Typical Markings for Roundabouts with Two Lanes, with the same figure in MUTCD Revision 2 available at http://mutcd.fhwa.dot.gov/pdfs/millennium/pr2/3r2.pdf. Page 69.

(12) **Section 3B.25 General**

Amend the section to read:

Support:

When used for guidance or regulation of traffic, colored pavements are traffic control devices. Colored pavements also are sometimes used to supplement other traffic control devices. Colored pavement located between crosswalk lines to emphasize the presence of the crosswalk is not considered to be a traffic control device.

Guidance:

Colored pavements used as traffic control devices should be used only where they contrast significantly with adjoining paved areas. Colors that degrade the contrast of white crosswalk lines, or that might be mistaken by road users as a traffic control application, should not be used for colored pavement located between crosswalk lines.

Standard:

Colored pavements shall not be used as a traffic control device, unless the device is applicable at all times. Colored pavements used as traffic control devices shall be limited to the following colors and applications:

A. Yellow shall be used only for flush or raised median islands separating traffic flows in opposite directions.

B. White shall be used for delineation on shoulders, and for flush or raised channelizing islands where traffic passes on both sides in the same direction of travel.

(13) **Section 4D.18-2 Design, Illumination, and Color of Signal**

Delete the entire last Guidance.

(14) **Section 7A.04 Scope**

Under the Standard, delete the second paragraph.

(15) **Section 7B.01 Size of School Signs**

Replace Table 7B-1 size of School Signs with the following figure:

Table 7B-1. Size of School Area Signs and Plaques

Sign Minimum	MUTCD Code	Conventional Roads		
		Standard	Special	
School Crossing	S1-1	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)	1200 x 1200 mm (48 x 48 in)
School Bus Stop Ahead	S3-1	750 x 750 mm (30 x 30 in)	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)
School Speed Limit Ahead	S4-5, S4-5a	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)	1200 x 1200 mm (48 x 48 in)
School Speed Limit XX When Flashing (English)	S5-1	600 x 1200 mm (24 x 48 in)	900 x 1800 mm (36 x 72 in)	1200 x 2400 mm (48 x 96 in)
School Speed Limit XX When Flashing (Metric)	S5-1	600 x 1350 mm (24 x 54 in)	900 x 1950 mm (36 x 78 in)	1200 x 2550 mm (48 x 102 in)
End School Zone	S5-2	600 x 750 mm (24 x 30 in)	900 x 1125 mm (36 x 45 in)	1200 x 1500 mm (48 x 60 in)
Speed Limit (School Use) (English)	R2-1	600 x 750 mm (24 x 30 in)	900 x 1125 mm (36 x 45 in)	1200 x 1500 mm (48 x 60 in)
Speed Limit (School Use) (Metric)	R2-1	600 x 900 mm (24 x 36 in)	900 x 1275 mm (36 x 51 in)	1200 x 1650 mm (48 x 66 in)

Plaque Minimum	MUTCD Code	Conventional Roads		
		Standard	Special	
8:30 AM to 5:30 PM	S4-1	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
When Children Are Present	S4-2	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
School	S4-3	600 x 200 mm (24 x 8 in)	900 x 300 mm (36 x 12 in)	1200 x 400 mm (48 x 16 in)
When Flashing	S4-4	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)

PROPOSED

Plaque Minimum	MUTCD Code	Conventional Roads		
		Standard	Special	
XXX FT or XXX M	W16-2	600 x 300 mm (24 x 12 in)	750 x 375 mm (30 x 15 in)	900 x 450 mm (36 x 18 in)
XXX FT or XXX M	W16-2a	600 x 450 mm (24 x 18 in)	750 x 525 mm (30 x 21 in)	900 x 600 mm (36 x 24 in)
Ahead	W16-9p	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
Diagonal Arrow	W16-7	600 x 300 mm (24 x 12 in)	750 x 375 mm (30 x 15 in)	900 x 450 mm (36 x 18 in)

(16) **Section 7B.07, Sign Color for School Warning Signs**

Under Option D, amend the reference to the School Speed Limit sign (S5-1) to become a reference to the SCHOOL portion of the School Speed Limit sign (S5-1).

(17) **Section 9B.04, Bicycle Lane Signs (R3-16, R3-17)**

Amend the Standard to read:

The BIKE LANE (R3-17) sign (see Figure 9B-2) shall be used only in conjunction with marked bicycle lanes as described in Chapter 9C, and shall be placed at periodic intervals along the bicycle lanes.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 468-95-020	Parking for the disabled in urban areas.
WAC 468-95-025	Signing to regional shopping centers.
WAC 468-95-030	No passing zone markings.
WAC 468-95-035	Pavement edgelines and raised pavement markers supplementing other markings.
WAC 468-95-037	Stop line locations.
WAC 468-95-040	Meaning of signal indications.
WAC 468-95-050	Meaning of lane-use control indications.
WAC 468-95-055	"MUTCD Part VI."
WAC 468-95-060	When children are present.
WAC 468-95-070	Meaning of signal indications.
WAC 468-95-080	Functions.
WAC 468-95-090	County road signing.
WAC 468-95-100	Compliance dates.

WSR 03-03-040

PROPOSED RULES

HORSE RACING COMMISSION

[Filed January 10, 2003, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-17-046.

Title of Rule: WAC 260-28-030 Financial responsibility.

Purpose: To establish criteria, definitions, and procedures relating to financial responsibility.

Statutory Authority for Adoption: RCW 67.16.020.

Summary: To establish criteria, definitions and procedures.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, Olympia, Washington, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, Olympia, Washington, (360) 459-6462.

Name of Proponent: Washington Horse Racing Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Adopting stronger financial responsibility requirements for the horse racing industry.

Proposal Changes the Following Existing Rules: Amending WAC 260-28-030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The changes will not impose any costs upon businesses in the horse racing industry.

RCW 34.05.328 does not apply to this rule adoption. The rule is not subject to this section under RCW 34.05.328 (5)(a).

Hearing Location: Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on March 13, 2003, at 1:00 p.m.

Submit Written Comments to: Robert M. Leichner, Executive Secretary, Washington Horse Racing Commission, 6326 Martin Way, #209, Olympia, WA 98516, (360) 459-6461, by March 12, 2003.

Date of Intended Adoption: March 13, 2003.

January 7, 2003
R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending Rules of racing, § 25 [27], filed 4/21/61)

WAC 260-28-030 Financial responsibility. ((~~Any application for owner and/or trainer's license, at the request of the commission, must establish to the satisfaction of the commission his financial stability. He shall maintain his financial responsibility so long as he is licensed by the commission; failure to so comply shall be grounds for revocation of license.~~))

(1) No licensee shall willfully fail or refuse to pay money due for services, supplies, or fees connected with his or her operations as a licensee. No licensee shall falsely deny such an amount due or the validity of a complaint on such an amount due for the purpose of hindering, delaying, or defrauding the person to whom the amount is due.

(2) A financial responsibility complaint against a licensee must be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to have been provided, or by a judgment from a civil court that has been issued within one year of the date of the complaint.

(3) Any licensee failing to make restitution as a result of a complaint or judgment may be subject to disciplinary action, including a license suspension.

(4) The Stewards will consider for disciplinary action only those financial responsibility complaints that meet the following criteria:

(a) The complaint involves services, supplies or fees that are directly related to the licensee's Washington racetrack operations; and

(b) The debt or cause of action originated in Washington, or the civil court judgment was issued in Washington, within one year of the date the complaint is filed.

(5) In determining whether to act on a financial responsibility complaint, the Stewards may consider the number of financial responsibility complaints made by the complainant against the same licensee within a two-year period immediately preceding the current complaint.

(6) No licensee shall write, issue, make or present any check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies when the licensee knows or should reasonably know that the check will be refused for payment by the bank upon which it is written, or that the account upon which the check is written does not contain sufficient funds for payment of the check, or that the check is written on a closed or non-existent account. The fact that such a check is returned to the payee by the bank as refused is a grounds for a license suspension pending satisfactory redemption of the returned check.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 03-03-060

WITHDRAWAL OF PROPOSED RULES

STATE BOARD OF EDUCATION

(By the Code Reviser's Office)

[Filed January 14, 2003, 11:30 a.m.]

WAC 180-10-001, 180-10-003, 180-10-005, 180-10-007, 180-10-010, 180-10-015, 180-10-020, 180-10-025, 180-10-030, 180-10-035, 180-10-040 and 180-10-045, proposed by the State Board of Education in WSR 02-14-115 appearing in issue 02-14 of the State Register, which was distributed on July 17, 2002, 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 03-03-061

WITHDRAWAL OF PROPOSED RULES

STATE BOARD OF EDUCATION

(By the Code Reviser's Office)

[Filed January 14, 2003, 11:31 a.m.]

WAC 180-55-032, proposed by the State Board of Education in WSR 02-14-117 appearing in issue 02-14 of the State Register, which was distributed on July 17, 2002, 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 03-03-062

WITHDRAWAL OF PROPOSED RULES

STATE BOARD OF EDUCATION

(By the Code Reviser's Office)

[Filed January 14, 2003, 11:31 a.m.]

WAC 180-38-065, proposed by the State Board of Education in WSR 02-14-140 appearing in issue 02-14 of the State Register, which was distributed on July 17, 2002, 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

PROPOSED

PROPOSED

WSR 03-03-063
WITHDRAWAL OF PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER
(By the Code Reviser's Office)
[Filed January 14, 2003, 11:32 a.m.]

WAC 284-24A-070, proposed by the Office of the Insurance Commissioner in WSR 02-14-155 appearing in issue 02-14 of the State Register, which was distributed on July 17, 2002, 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 03-03-077
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed January 15, 2003, 9:23 a.m.]

Original Notice.

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

Title of Rule: WAC 246-802-990 Acupuncture fees and renewal cycle, 246-815-990 Dental hygiene fees and renewal cycle, 246-830-990 Massage fees and renewal cycle, and 246-836-990 Naturopathic physician licensing fees and renewal cycle.

Purpose: REDUCE fees for four health care credentials so revenue generated by fees is brought into alignment with costs.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: Chapter 43.70 RCW.

Summary: The changes to these rules will lower fees for certain health professions, including acupuncture, dental hygiene, massage, and naturopathic physician.

Reasons Supporting Proposal: Fee reductions will lower the costs of certain health care practitioners in obtaining their credentials and will bring revenue into alignment with expenses.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pamela Lovinger, P.O. Box 47860, Olympia, WA 98504-7860, (360) 246-4984.

Name of Proponent: Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule changes will lower fees for four health care credentials. Fee reductions will lower revenues and will bring revenue into alignment with expenses. Rules affected are: WAC 246-802-990 Acupuncture fees, 246-815-990 Dental hygiene fees, 246-830-990 Massage fees, and 246-836-990 Naturopathic physician licensing fees.

Proposal Changes the Following Existing Rules: Fees will be lowered.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules set or adjust fees pursuant to legislative standards (RCW 19.85.025(3)).

RCW 34.05.328 does not apply to this rule adoption. RCW 34.05.328 does not apply because these rule changes are exceptions as noted under RCW 34.05.328 (5)(b)(vi).

Hearing Location: Department of Health, 1101 Eastside Street, Olympia, WA 98504, on February 28, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Mary Dale by February 21, 2003, at (360) 236-4985, TDD (800) 833-6388.

Submit Written Comments to: Pamela Lovinger, Health Policy Services, P.O. Box 47860, Olympia, WA 98504-7860, fax (360) 753-0657, by February 21, 2003.

Date of Intended Adoption: February 28, 2003.

January 13, 2003
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 99-08-101, filed 4/6/99, effective 7/1/99)

WAC 246-802-990 Acupuncture fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
License application	$ 50.00
License renewal	((~~180.00~~)) 90.00
Inactive license renewal	50.00
Late renewal penalty	((~~90.00~~)) 50.00
Expired license reissuance	((~~90.00~~)) 50.00
Expired inactive license reissuance	50.00
Duplicate license	15.00
Certification of license	25.00
Acupuncture training program application	500.00

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-815-990 Dental hygiene fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application examination and reexamination . .	$100.00
Renewal	((~~60.00~~)) 40.00
Late renewal penalty	((~~50.00~~)) 40.00

Expired license reissuance	((~~50.00~~)) 40.00
Credentialing application	((~~300.00~~)) 100.00
Temporary license application	((~~115.00~~)) 100.00
Duplicate license	15.00
Certification of license	25.00
Education program evaluation	200.00

AMENDATORY SECTION (Amending WSR 99-08-101, filed 4/6/99, effective 7/1/99)

WAC 246-830-990 Massage fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Written examination and reexamination	$ 65.00
Practical examination and reexamination	50.00
Initial license	((~~55.00~~)) 50.00
Renewal	((~~40.00~~)) 25.00
Late renewal penalty	((~~40.00~~)) 25.00
Expired license reissuance	((~~40.00~~)) 25.00
Certification of license	10.00
Duplicate license	10.00

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-836-990 Naturopathic physician licensing fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Amount
Application initial/retake	((~~50.00~~)) $ 25.00
State examination (initial/retake)	((~~50.00~~)) 25.00
Initial license	((~~50.00~~)) 25.00
License renewal	((~~450.00~~)) 200.00
Late renewal penalty	((~~225.00~~)) 100.00
Expired license reissuance	((~~225.00~~)) 100.00
Duplicate license	15.00
Certification of license	15.00
Application for reciprocity	((~~50.00~~)) 25.00

PROPOSED

WSR 03-03-078
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed January 15, 2003, 9:26 a.m.]

Original Notice.

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

Title of Rule: WAC 246-290-060 Variances, exemptions and waivers.

Purpose: To revise the requirements due to federal Safe Drinking Water Act (SDWA) amendments of 1998.

Other Identifying Information: As the primacy agency, the Department of Health is responsible for implementing rules no less stringent than EPA rules and regulations.

Statutory Authority for Adoption: RCW 43.20.050 (2) and (3).

Statute Being Implemented: RCW 70.119A.080.

Summary: The revisions provide implementation guidance to states and include more detail and description of what a primacy state must consider before either granting a variance or an exemption to a public water system. Environmental Protection Agency (EPA) has reduced the requirements for water systems serving fewer than 10,000 people to obtain a variance (small system variance).

Reasons Supporting Proposal: The revised regulations are necessary to strengthen the criteria the Department of Health must follow to allow a public water system to obtain a variance or exemption and continue to protect public health.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, Tumwater, (360) 236-3147; Implementation and Enforcement: Richard Siffert, Tumwater, (360) 236-3146.

Name of Proponent: Environmental Health Programs, governmental.

Rule is necessary because of federal law, 40 C.F.R. Parts 141 and 142, Federal Register Vol. 63, No. 157, August 14, 1998, Final Rule.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule will achieve compliance with the new federal requirements to maintain state primacy and clarifies what factors the state must review to grant a variance or an exemption to a public water system. The new requirements will allow a public water system more time to comply with the rules due to economic reasons, best available treatment techniques, and other compelling factors while protecting public health.

PROPOSED

Proposal Changes the Following Existing Rules: Adds the federal citations to WAC 246-290-060, clarifies the language and eliminates redundancies.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule revision is exempt from the small business impact statement requirement under RCW 19.85.025(3) because it adopts federal requirements without material change.

RCW 34.05.328 does not apply to this rule adoption. Under RCW 34.05.328 (5)(b)(iii) and (iv), RCW 34.05.328 does not apply to rule adoption because this rule adopts federal requirements without material change.

Hearing Location: Department of Health, 20435 72nd Avenue South, Suite 200, Kent, WA 98032, on February 25, 2003, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Theresa Phillips by February 14, 2003, TDD (800) 833-6388 or (360) 236-3147.

Submit Written Comments to: Department of Health, Theresa Phillips, P.O. Box 47822, Olympia, WA 98504-7822, fax (360) 236-2253, by February 25, 2003.

Date of Intended Adoption: March 26, 2003.

January 13, 2003
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-060 Variances, exemptions, and waivers. (1) General.

(a) The state board of health may grant variances, exemptions, and waivers of the requirements of this chapter according to the procedures outlined in subsection (5) of this section. See WAC 246-290-300 (4)(g) and (7)(f) for monitoring waivers.

(b) Consideration by the board of requests for variances, exemptions, and waivers shall not be considered adjudicative proceedings as that term is defined in chapter 34.05 RCW.

(c) Statements and written material regarding the request may be presented to the board at or before the public hearing wherein the application will be considered. Allowing cross-examination of witnesses shall be within the discretion of the board.

(d) The board may grant a variance, exemption, or waiver if it finds:

(i) Due to compelling factors, the public water system is unable to comply with the requirements; and

(ii) The granting of the variance, exemption, or waiver will not result in an unreasonable risk to the health of consumers.

(2) Variances.

(a) MCL.

(i) The board may grant a MCL variance to a public water system that cannot meet the MCL requirements because of characteristics of the source water that is reasonably available to the system.

(ii) A MCL variance may only be granted ((~~after the system has applied the best available technology (BAT), treatment techniques, or other means as identified by the environmental protection agency (EPA) and still cannot meet an MCL standard as specified in section 1415, Public Law 93-523 (federal Safe Drinking Water Act) as amended by Public Law 99-339 (SDWA amendments of 1986), and Public Law 104-182 (SDWA amendments of 1996), as codified at 42 USC 300g-4~~)) in accordance with 40 CFR 141.4.

(iii) A variance shall not be granted from the MCL for presence of total coliform under WAC 246-290-310(2).

(b) Treatment techniques.

(i) The board may grant a treatment technique variance to a public water system if the system demonstrates that the treatment technique is not necessary to protect the health of consumers because of the nature of the system's source water.

(ii) A treatment technique variance ((~~shall not be~~)) granted ((~~from any treatment technique requirement under Part 6 of chapter 246-290 WAC~~)) in accordance with 40 CFR 141.4.

(iii) A variance shall not be granted from any treatment technique requirement under Part 6 of chapter 246-290 WAC.

(c) The board shall condition the granting of a variance upon a compliance schedule as described in subsection (6) of this section.

(3) Exemptions.

(a) The board may grant a MCL or treatment technique exemption to a public water system that cannot meet an MCL standard or provide the required treatment in a timely manner, or both, ((~~as specified under section 1416, Public Law 93-523 (federal Safe Drinking Water Act) as amended by Public Law 99-339 (SDWA amendments of 1986), and Public Law 104-182 (SDWA amendments of 1996), as codified at 42 USC 300g-4~~)) in accordance with 40 CFR 141.4.

(b) ((~~An exemption may be granted for up to one year if the system was:~~

~~(i) In operation on the effective date of the MCL or treatment technique requirement; or~~

~~(ii) Not in operation on the effective date, and no reasonable alternative source of drinking water is available.~~

~~(c)~~)) No exemption shall be granted from:

(i) The requirement to provide a residual disinfectant concentration in the water entering the distribution system under WAC 246-290-662 or 246-290-692; or

(ii) The MCL for presence of total coliform under WAC 246-290-310(2).

(((~~(d)~~))) (c) The board shall condition the granting of an exemption upon a compliance schedule as described in subsection (6) of this section.

(4) Waivers. The board may grant a waiver to a public water system if the system cannot meet the requirements of these regulations pertaining to any subject not covered by EPA variance and/or exemption regulations.

(5) Procedures.

(a) For variances and exemptions. The board shall consider granting a variance or exemption to a public water system ((~~upon completion of the following actions:~~

~~(i) The purveyor applies in writing to the department. The application, which may be in the form of a letter, shall clearly state the reason for the request and what actions the purveyor has taken to meet the requirement;~~

~~(ii) The purveyor provides notice of the purveyor's application to consumers and provides proof of such notice to the department;~~

~~(iii) The department prepares recommendations, including a compliance schedule for the board's consideration;~~

~~(iv) The board provides notice for and conducts a public hearing on the purveyor's request; and~~

~~(v) EPA reviews any variance or exemption granted by the board for concurrence, revocation, or revision as provided under sections 1415 and 1416 of Public Law 93-523 (federal Safe Drinking Water Act), as amended, codified at 42 USC 300g-4))~~ in accordance with 40 CFR 141.4.

(b) For waivers. The board shall consider granting a waiver upon completion of the following actions:

(i) The purveyor applies to the department in writing. The application, which may be in the form of a letter, shall clearly state the reason for the request;

(ii) The purveyor provides notice of the purveyor's application to consumers and provides proof of such notice to the department;

(iii) The department prepares a recommendation to the board; and

(iv) The board provides notice for and conducts a public hearing on the purveyor's request.

(6) Compliance schedule.

(a) The board shall condition the granting of a variance or exemption based on a compliance schedule. The compliance schedule shall include:

(i) Actions the purveyor shall undertake to comply with a MCL or treatment technique requirement within a specified time period; and

(ii) A description and time-table for implementation of interim control measures the department may require while the purveyor completes the actions required in (a)(i) of this subsection.

(b) The purveyor shall complete the required actions in the compliance schedule within the stated time frame.

(7) Extensions to variances and exemptions.

(a) The board may extend the final date of compliance prescribed in the compliance schedule for a ((~~period of up to three years after the date the exemption was granted upon a finding that the water system:~~

~~(i) Cannot meet the MCL or treatment technique requirements without capital improvements that cannot be completed within the original exemption period;~~

~~(ii) Has entered into an agreement to obtain needed financial assistance for necessary improvements; or~~

~~(iii) Has entered into an enforceable agreement to become part of a regional public water system and the system is taking all practicable steps to meet the MCL.~~

~~(b) The board may extend the final date of compliance prescribed in the compliance schedule of an exemption for one or more additional two-year periods if the purveyor:~~

~~(i) Is a community water system providing water to less than five hundred service connections;~~

~~(ii) Needs financial assistance for the necessary improvements; and~~

~~(iii) Is taking all practicable steps to meet the compliance schedule.~~

~~(c) Procedures listed in subsection (5) of this section shall be followed in the granting of extensions to exemptions~~)) variance and/or exemption in accordance with 40 CFR 141.4.

PROPOSED

WSR 03-03-079
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed January 15, 2003, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-17-111.

Title of Rule: Group A public drinking water system regulations, chapter 246-290 WAC.

Purpose: The purpose is to adopt revisions necessary to be consistent with federally promulgated Environmental Protection Agency (EPA) rules and regulations.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 70.119A.080.

Summary: The revisions include those sections associated with: Surface water sources or ground water; sources that use a disinfectant; sources that use filter backwash recycling; monitoring, reporting, maximum contaminant levels, follow-up action, and public notification regarding lead and copper, and monitoring of radionuclides.

Reasons Supporting Proposal: As the primacy agency, the Department of Health is responsible for implementing rules no less stringent than EPA rules and regulations. These rule revisions are required to maintain primacy with EPA and to sustain federal funding.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, Tumwater, (360) 236-3147; Implementation and Enforcement: Richard Siffert, Tumwater, (360) 236-3146.

Name of Proponent: Environmental Health Programs, governmental.

Rule is necessary because of federal law, 40 C.F.R. Parts 141 and 142.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule revisions will achieve compliance with the new federal requirements to maintain state primacy. The revisions are necessary to: (1) Strengthen protection against microbial contamination, while not causing increases in disinfection by-products; (2) strengthen protection against radionuclides, lead and copper in drinking water; and (3) ensure consumers are apprised of the quality of their drinking water.

Proposal Changes the Following Existing Rules: The proposed revisions change existing rules by adding requirements for those water systems that: Recycle filter backwash water within the treatment process; adds requirements for uranium, and revises monitoring requirements for radionuclides; minor revisions to lead and copper rule to improve implementation by eliminating unnecessary requirement, and streamline and reduce reporting burden; adds requirements for the form, manner, frequency and content of public notices; adds requirements to improve control of microbial

pathogens, specifically Cryptosporidium; addresses risk trade-offs with disinfection by-products; adds requirements for disinfection by-products by reducing the levels of disinfectants and their by-products in households that were not previously covered by this rule and provides public health protection from exposure to specific by-products.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule revision is exempt from the small business impact statement requirement under RCW 19.85.025(3) because it adopts federal requirements without material change.

RCW 34.05.328 does not apply to this rule adoption. Under RCW 34.05.328 (5)(b)(iii) and (iv), this statute does not apply to rule adoption because this rule adopts federal requirements without material change.

Hearing Location: Department of Health, 20435 72nd Avenue South, Suite 200, Kent, WA 98032, on February 25, 2003, at 1:00 p.m.

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Submit Written Comments to: Department of Health, Theresa Phillips, P.O. Box 47822, Olympia, WA 98504-7822, fax (360) 236-2253, by February 25, 2003.

Date of Intended Adoption: March 26, 2003.

January 13, 2003
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-002 Guidance. (1) The department has numerous guidance documents available to help purveyors comply with state and federal rules regarding drinking water. These include documents on the following subjects:

(a) Compliance;
(b) System management and financial assistance;
(c) Ground water protection;
(d) Growth management;
(e) Operations/maintenance;
(f) Operator certification;
(g) Water system planning;
(h) Monitoring and water quality;
(i) System approval;
(j) Small water systems;
(k) Water resources;
(l) Water system design; and
(m) General information.

(2) The department's guidance documents are available at minimal or no cost by contacting the division of drinking water's publication service at (360) 236-3099 or (800) 521-0323. Individuals can also request the documents via the Internet at http://www.doh.wa.gov/ehp/dw or through conventional mail at P.O. Box 47822, Olympia, Washington 98504-7822.

(3) Federal guidance documents are available from the Environmental Protection Agency for a wide range of topics. These are available from the EPA Office of Ground Water and Drinking Water website at www.epa.gov/safewater/index.html.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-010 Definitions. Abbreviations and acronyms:

ADD - average day demand;
AG - air gap;
ANSI - American National Standards Institute;
APWA - American Public Works Association;
ASCE - American Society of Civil Engineers;
AVB - atmospheric vacuum breaker;
AWWA - American Water Works Association;
BAT - best available technology;
BAT - backflow assembly tester (for WAC 246-29-490);
C - residual disinfectant concentration in mg/L;
CCS - cross-connection control specialist;
CFR - code of federal regulations;
CPE - comprehensive performance evaluation;
CT - the mathematical product in mg/L - minutes of "C" and "T";
CTA - comprehensive technical assistance;
CWSSA - critical water supply service area;
DBPs - disinfection by-products;
DCDA - double check detector assembly;
DCVA - double check valve assembly;
((~~DWSRF - drinking water state revolving fund;~~))
EPA - Environmental Protection Agency;
ERU - equivalent residential unit;
gph - gallons per hour;
gpm - gallons per minute;
GAC - granular activated carbon;
GAC10 - granular activated carbon with ten-minute empty bed contact time based on average daily flow and one hundred eighty-day reactivation frequency;
GWI - ground water under the direct influence of surface water;
HAA5 - haloacetic acids (five);
HPC - heterotrophic plate count;
IAPMO - International Association of Plumbing and Mechanical Officials;
kPa - kilo pascal (SI units of pressure);
((~~m - meter;~~))
MCL - maximum contaminant level;
MDD - maximum day demand;
mg/L - milligrams per liter (1 mg/L = 1 ppm);
mL - milliliter;
mm - millimeter;
MRDL - maximum residual disinfectant level;
MRDLG - maximum residual disinfectant level goal;
MTTP - maximum total trihalomethane potential;
NSF - National Sanitation Foundation;
NTNC - nontransient **noncommunity**;
NTU - nephelometric turbidity unit;

PAA - project approval application;
pCi/L - picocuries per liter;
PHD - peak hourly demand;
ppm - parts per million (1 ppm = 1 mg/L);
psi - pounds per square inch;
PVBA - pressure vacuum breaker assembly;
RPBA - reduced pressure backflow assembly;
RPDA - reduced pressure detector assembly;
SAL - state advisory level;
SCA - sanitary control area;
SDWA - Safe Drinking Water Act;
SEPA - State Environmental Policy Act;
SOC - synthetic organic chemical;
SMA - satellite management agency;
SPI - special purpose investigation;
SRF - state revolving fund;
SUVA - specific ultraviolet absorption;
SVBA - spill resistant vacuum breaker assembly;
SWTR - surface water treatment rule;
T - disinfectant contact time in minutes;
TTHM - total trihalomethane;
TNC - transient **noncommunity**;
TNTC - too numerous to count;
TOC - total organic carbon;
UBC - Uniform Building Code;
ug/L - micrograms per liter;
UL - Underwriters Laboratories, Inc.;
umhos/cm - micromhos per centimeter;
UPC - Uniform Plumbing Code;
UTC - utilities and transportation commission;
VOC - volatile organic chemical;
WAC - Washington Administrative Code;
((~~WADOT - Washington department of transportation;~~))
WFI - water facilities inventory and report form; and
WHPA - wellhead protection area.

"Acute" means posing an immediate risk to human health.

"Alternate filtration technology" means a filtration process for substantial removal of particulates (generally > 2 log *Giardia lamblia* cysts and/or, for systems serving at least 10,000 people, ≥ 2-log removal of *Cryptosporidium* oocysts) by other than conventional, direct, diatomaceous earth, or slow sand filtration processes.

"Analogous treatment system" means an existing water treatment system that has unit processes and source water quality characteristics that are similar to a proposed treatment system.

"Approved air gap" means a physical separation between the free-flowing end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel. To be an air gap approved by the department, the separation must be at least:

Twice the diameter of the supply piping measured vertically from the overflow rim of the receiving vessel, and in no case be less than one inch, when unaffected by vertical surfaces (sidewalls); and:

Three times the diameter of the supply piping, if the horizontal distance between the supply pipe and a vertical surface (sidewall) is less than or equal to three times the diameter of the supply pipe, or if the horizontal distance between the supply pipe and intersecting vertical surfaces (sidewalls) is less than or equal to four times the diameter of the supply pipe and in no case less than one and one-half inches.

"Approved atmospheric vacuum breaker" means an AVB of make, model, and size that is approved by the department. AVBs that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or that are listed or approved by other nationally recognized testing agencies (such as IAPMO, ANSI, or UL) acceptable to the local administrative authority are considered approved by the department.

"Approved backflow preventer" means an approved air gap, an approved backflow prevention assembly, or an approved AVB. The terms "approved backflow preventer," "approved air gap," or "approved backflow prevention assembly" refer only to those approved backflow preventers relied upon by the purveyor for the protection of the public water system. The requirements of WAC 246-290-490 do not apply to backflow preventers installed for other purposes.

"Approved backflow prevention assembly" means an RPBA, RPDA, DCVA, DCDA, PVBA, or SVBA of make, model, and size that is approved by the department. Assemblies that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or other entity acceptable to the department are considered approved by the department.

"As-built drawing" means the drawing created by an engineer from the collection of the original design plans, including changes made to the design or to the system, that reflects the actual constructed condition of the water system.

"Authorized agent" means any person who:

Makes decisions regarding the operation and management of a public water system whether or not he or she is engaged in the physical operation of the system;

Makes decisions whether to improve, expand, purchase, or sell the system; or

Has discretion over the finances of the system.

"Average day demand (ADD)" means the total quantity of water use from all sources of supply as measured or estimated over a calendar year divided by three hundred sixty-five. ADD is typically expressed as gallons per day per ERU (gpd/ERU).

"Backflow" means the undesirable reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

"Backflow assembly tester" means a person holding a valid BAT certificate issued in accordance with chapter 246-292 WAC.

"Backpressure" means a pressure (caused by a pump, elevated tank or piping, boiler, or other means) on the consumer's side of the service connection that is greater than the pressure provided by the public water system and which may cause backflow.

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"Backsiphonage" means backflow due to a reduction in system pressure in the purveyor's distribution system and/or consumer's water system.

"Best available technology (BAT)" means the best technology, treatment techniques, or other means that EPA finds, after examination for efficacy under field conditions, are available, taking cost into consideration.

"Blended sample" means a sample collected from two or more individual sources at a point downstream of the confluence of the individual sources and prior to the first connection.

"C" means the residual disinfectant concentration in mg/L at a point before or at the first consumer.

"Category red operating permit" means an operating permit identified as such ((~~pursuant to~~)) under chapter 246-294 WAC. Placement in this category results in permit issuance with conditions and a determination that the system is inadequate.

"Chemical contaminant treatment facility" means a treatment facility specifically used for the purpose of removing chemical contaminants.

"Clarification" means a treatment process that uses gravity (sedimentation) or dissolved air (flotation) to remove flocculated particles.

"Closed system" means any water system or portion of a water system in which water is transferred to a higher pressure zone closed to the atmosphere, such as when no gravity storage is present.

"Coagulant" means a chemical used in water treatment to destabilize particulates and accelerate the rate at which they aggregate into larger particles.

"Coagulation" means a process using coagulant chemicals and rapid mixing to destabilize colloidal and suspended particles and agglomerate them into flocs.

"Combination fire protection system" means a fire sprinkler system that:

Is supplied only by the purveyor's water;

Does not have a fire department pumper connection; and

Is constructed of approved potable water piping and materials that serve both the fire sprinkler system and the consumer's potable water system.

"Completely treated water" means water from a surface or GWI source that receives filtration or disinfection treatment that fully complies with the treatment technique requirements of Part 6 of this chapter as determined by the department.

"Composite sample" means a sample in which more than one source is sampled individually by the water system and then composited by a certified laboratory by mixing equal parts of water from each source (up to five different sources) and then analyzed as a single sample.

"Comprehensive monitoring plan" means a schedule that describes both the frequency and appropriate locations for sampling of drinking water contaminants as required by state and federal rules.

"Comprehensive performance evaluation (CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. The comprehensive performance evaluation must consist of at least the following components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Comprehensive technical assistance (CTA)" means technical assistance intended to identify specific steps that may help a water treatment plant overcome operational or design limitations identified during a comprehensive performance evaluation.

"Confirmation" means to demonstrate the accuracy of results of a sample by analyzing another sample from the same location within a reasonable period of time, generally not to exceed two weeks. Confirmation is when analysis results fall within plus or minus thirty percent of the original sample results.

"Confluent growth" means a continuous bacterial growth covering a portion or the entire filtration area of a membrane filter in which bacterial colonies are not discrete.

"Conservation program" means policies and activities implemented to encourage or cause efficient use of water on a long-term basis. Conservation programs shall include identification of the conservation objectives of the purveyor, evaluation of conservation measures considered, and identification of specific conservation measures identified for implementation.

"Construction completion report" means a form provided by the department and completed for each specific construction project to document:

- Project construction in accordance with this chapter and general standards of engineering practice;
- Physical capacity changes; and
- Satisfactory test results.

The completed form must be stamped with an engineer's seal, and signed and dated by a professional engineer.

"Consumer" means any person receiving water from a public water system from either the meter, or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

"Consumer's water system," as used in WAC 246-290-490, means any potable and/or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

"Contaminant" means a substance present in drinking water that may adversely affect the health of the consumer or the aesthetic qualities of the water.

"Contingency plan" means that portion of the wellhead protection program section of the water system plan or small water system management program that addresses the replacement of the major well(s) or wellfield in the event of loss due to ground water contamination.

"Continuous monitoring" means determining water quality with automatic recording analyzers that operate without interruption twenty-four hours per day.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, clarification, and filtration that together result in substantial particulate removal (((~~(>= 2.5 log Giardia lamblia cysts)~~))) in compliance with Part 6 of this chapter.

"Critical water supply service area (CWSSA)" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

"Cross-connection" means any actual or potential physical connection between a public water system or the consumer's water system and any source of nonpotable liquid, solid, or gas that could contaminate the potable water supply by backflow.

"Cross-connection control program" means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

"Cross-connection control specialist" means a person holding a valid CCS certificate issued in accordance with chapter 246-292 WAC.

"Cross-connection control summary report" means the annual report that describes the status of the purveyor's cross-connection control program.

"CT" or **"CTcalc"** means the product of "residual disinfectant concentration" (C) and the corresponding "disinfectant contact time" (T) i.e., "C" x "T".

"$CT_{99.9}$" means the CT value required for 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts.

"CTreq" means the CT value a system shall provide to achieve a specific percent inactivation of *Giardia lamblia* cysts or other pathogenic organisms of health concern as directed by the department.

"Curtailment" means short-term, infrequent actions by a purveyor and its consumers to reduce their water use during or in anticipation of a water shortage.

"Dead storage" means the volume of stored water not available to all consumers at the minimum design pressure in accordance with WAC 246-290-230 (5) and (6).

"Demand forecast" means an estimate of future water system water supply needs assuming historically normal weather conditions and calculated using numerous parameters, including population, historic water use, local land use plans, water rates and their impacts on consumption, employment, projected conservation savings from implementation of a conservation program, and other appropriate factors.

"Department" means the Washington state department of health or health officer as identified in a joint plan of operation in accordance with WAC 246-290-030(1).

"Design and construction standards" means department design guidance and other peer reviewed documents generally accepted by the engineering profession as containing fundamental criteria for design and construction of water facility projects. Design and construction standards are comprised of performance and sizing criteria and reference general construction materials and methods.

"Diatomaceous earth filtration" means a filtration process for substantial removal of particulates (> 2 log *Giardia lamblia* cysts) in which:

A precoat cake of graded diatomaceous earth filter media is deposited on a support membrane (septum); and

Water is passed through the cake on the septum while additional filter media, known as body feed, is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation, flocculation, and filtration (but excluding sedimentation) that together result in substantial particulate removal (((~~(> 2 log Giardia lamblia cysts)~~))) in compliance with Part 6 of this chapter.

"Direct service connection" means a service hookup to a property that is contiguous to a water distribution main and where additional distribution mains or extensions are not needed to provide service.

"Disinfectant contact time (T in CT)" means: When measuring the first or only C, the time in minutes it takes water to move from the point of disinfectant application to a point where the C is measured; and

For subsequent measurements of C, the time in minutes it takes water to move from one C measurement point to the C measurement point for which the particular T is being calculated.

"Disinfection" means the use of chlorine or other agent or process the department approves for killing or inactivating microbiological organisms, including pathogenic and indicator organisms.

"Disinfection profile" means a summary of *Giardia lamblia* inactivation through a surface water treatment plant.

"Distribution coliform sample" means a sample of water collected from a representative location in the distribution system at or after the first service and analyzed for coliform presence in compliance with this chapter.

"Distribution-related projects" means distribution projects such as storage tanks, booster pump facilities, transmission mains, pipe linings, and tank coating. It does not mean source of supply (including interties) or water quality treatment projects.

"Distribution reservoir" means a water storage structure that is integrated with a water system's distribution network to provide for variable system demands including, but not limited to, daily equalizing storage, standby storage, or fire reserves, or to provide for disinfectant contact time.

"Distribution system" means all piping components of a public water system that serve to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

"Domestic or other nondistribution system plumbing problem," means contamination of a system having more than one service connection with the contamination limited to

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the specific service connection from which the sample was taken.

"Drinking water state revolving fund (DWSRF)" means the revolving loan program financed by the state and federal governments and managed by the state for the purpose of assisting water systems to meet their capital needs associated with complying with the federal Safe Drinking Water Act.

"Duplicate (verification) sample" means a second sample collected at the same time and location as the first sample and used for verification.

"Emergency" means an unforeseen event that causes damage or disrupts normal operations and requires immediate action to protect public health and safety.

"Emergency source" means any source that is approved by the department for emergency purposes only, is not used for routine or seasonal water demands, is physically disconnected, and is identified in the purveyor's emergency response plan.

"Engineering design review report" means a form provided by the department and completed for a specific distribution-related project to document:

• Engineering review of a project report and/or construction documents under the submittal exception process in accordance with WAC 246-290-125(3); and

• Design in accordance with this chapter and general standards of engineering practice.

The completed form must be stamped with engineer's seal, and signed and dated by a professional engineer.

"Equalizing storage" means the volume of storage needed to supplement supply to consumers when the peak hourly demand exceeds the total source pumping capacity.

"Equivalent residential unit (ERU)" means a system-specific unit of measure used to express the amount of water consumed by a typical full-time single family residence.

"Expanding public water system" means a public water system installing additions, extensions, changes, or alterations to their existing source, transmission, storage, or distribution facilities that will enable the system to increase in size its existing service area and/or its number of approved service connections. Exceptions:

A system that connects new approved individual retail or direct service connections onto an existing distribution system within an existing service area; or

A distribution system extension in an existing service area identified in a current and approved water system plan or project report.

"Filter profile" means a graphical representation of individual filter performance in a direct or conventional surface water filtration plant, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Filtration" means a process for removal of particulate matter from water by passage through porous media.

"Financial viability" means the capability of a water system to obtain sufficient funds to construct, operate, maintain, and manage a public water system, on a continuing basis, in full compliance with federal, state, and local requirements.

"Fire flow" means the maximum rate and duration of water flow needed to suppress a fire under WAC 246-293-640 or as required under local fire protection authority standards.

"Fire suppression storage" means the volume of stored water available during fire suppression activities to satisfy minimum pressure requirements per WAC 246-290-230.

"First consumer" means the first service connection associated with any source (i.e., the point where water is first withdrawn for human consumption, excluding connections where water is delivered to another water system covered by these regulations).

"Flocculation" means a process enhancing agglomeration and collection of colloidal and suspended particles into larger, more easily settleable or filterable particles by gentle stirring.

"Flow-through fire protection system" means a fire sprinkler system that:

Is supplied only by the purveyor's water;

Does not have a fire department pumper connection;

Is constructed of approved potable water piping and materials to which sprinkler heads are attached; and

Terminates at a connection to a toilet or other plumbing fixture to prevent the water from becoming stagnant.

"Grab sample" means a water quality sample collected at a specific instant in time and analyzed as an individual sample.

"Ground water under the direct influence of surface water (GWI)" means any water beneath the surface of the ground that the department determines has the following characteristics:

Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or for systems serving ten thousand people or more, *Cryptosporidium;* or

Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

"Guideline" means a department document assisting the purveyor in meeting a rule requirement.

"Health officer" means the health officer of the city, county, city-county health department or district, or an authorized representative.

"Heterotrophic Plate Count (HPC)" means a procedure to measure a class of bacteria that use organic nutrients for growth. The density of these bacteria in drinking water is measured as colony forming units per milliliter and is referred to as the HPC.

"High health cross-connection hazard" means a cross-connection which could impair the quality of potable water and create an actual public health hazard through poi-

soning or spread of disease by sewage, industrial liquids or waste.

"Human consumption" means the use of water for drinking, bathing or showering, hand washing, food preparation, cooking, or oral hygiene.

"Hydraulic analysis" means the study of a water system's distribution main and storage network to determine present or future adequacy for provision of service to consumers within the established design parameters for the system under peak flow conditions, including fire flow. The analysis is used to establish any need for improvements to existing systems or to substantiate adequacy of design for distribution system components such as piping, elevated storage, booster stations or similar facilities used to pump and convey water to consumers.

"Inactivation" means a process which renders pathogenic microorganisms incapable of producing disease.

"Inactivation ratio" means the ratio obtained by dividing CTcalc by CTreq.

"Incompletely treated water" means water from a surface or GWI source that receives filtration and/or disinfection treatment that does not fully comply with the treatment technique requirements of Part 6 of this chapter as determined by the department.

"In-line filtration" means a series of processes, including coagulation and filtration (but excluding flocculation and sedimentation) that together result in particulate removal.

"In-premises protection" means a method of protecting the health of consumers served by the consumer's potable water system, located within the property lines of the consumer's premises by the installation of an approved air gap or backflow prevention assembly at the point of hazard, which is generally a plumbing fixture.

"Intertie" means an interconnection between public water systems permitting the exchange or delivery of water between those systems.

"Legionella" means a genus of bacteria containing species which cause a type of pneumonia called Legionnaires' Disease.

"Limited alternative to filtration" means a process that ensures greater removal and/or inactivation efficiencies of pathogenic organisms than would be achieved by the combination of filtration and chlorine disinfection.

"Local administrative authority" means the local official, board, department, or agency authorized to administer and enforce the provisions of the Uniform Plumbing Code as adopted under chapter 19.27 RCW.

"Low health cross-connection hazard" means a cross-connection that could cause an impairment of the quality of potable water to a degree that does not create a hazard to the public health, but does adversely and unreasonably affect the aesthetic qualities of such potable waters for domestic use.

"Major project" means all construction projects subject to SEPA in accordance with WAC 246-03-030 (3)(a) and include all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet and larger than eight inches in diameter located in new rights of way and major extensions to existing water distribution systems involving use of pipes greater than eight inches in diameter, that are designed to increase the existing service area by more than one square mile.

"Mandatory curtailment" means curtailment required by a public water system of specified water uses and consumer classes for a specified period of time.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table 3.

"Maximum contaminant level violation" means a confirmed measurement above the MCL and for a duration of time, where applicable, as outlined under WAC 246-290-310.

"Maximum day demand (MDD)" means the highest actual or estimated quantity of water that is, or is expected to be, used over a twenty-four hour period, excluding unusual events or emergencies. MDD is typically expressed as gallons per day per ERU (gpd/ERU).

"Monitoring waiver" means an action taken by the department ((~~pursuant to~~)) under WAC 246-290-300 (4)(g) or (7)(f) to allow a water system to reduce specific monitoring requirements based on a determination of low source vulnerability to contamination.

"Nested storage" means one component of storage is contained within the component of another.

"Nonacute" means posing a possible or less than immediate risk to human health.

"Nonresident" means a person having access to drinking water from a public water system, but who lives elsewhere. Examples include travelers, transients, employees, students, etc.

"Normal operating conditions" means those conditions associated with the designed, day-to-day provision of potable drinking water that meets regulatory water quality standards and the routine service expectations of the system's consumers at all times, including meeting fire flow demands. Operation under conditions such as power outages, floods, or unscheduled transmission or distribution disruptions, even if considered in the system design, are considered abnormal.

"Operational storage" means the volume of distribution storage associated with source or booster pump normal cycling times under normal operating conditions and is additive to the equalizing and standby storage components, and to fire flow storage if this storage component exists for any given tank.

"Peak hourly demand (PHD)" means the maximum rate of water use, excluding fire flow, that can be expected to occur within a defined service area over a continuous sixty minute time period. PHD is typically expressed in gallons per minute (gpm).

"Peak hourly flow" means, for the purpose of CT calculations, the greatest volume of water passing through the system during any one hour in a day.

"Performance criteria" means the level at which a system shall operate in order to maintain system reliability com-

pliance, in accordance with WAC 246-290-420, and to meet consumers' reasonable expectations.

"Permanent residence" means any dwelling that is, or could reasonably be expected to be, occupied on a continuous basis.

"Permanent source" means a public water system supply source that is used regularly each year, and based on expected operational requirements of the system, will be used more than three consecutive months in any twelve-month period. For seasonal water systems that are in operation for less than three consecutive months per year, their sources shall also be considered to be permanent.

"Point of disinfectant application" means the point where the disinfectant is added, and where water downstream of that point is not subject to contamination by untreated surface water.

"Population served" means the number of persons, resident and nonresident, having immediate access to drinking water from a public water system, whether or not such persons have actually consumed water from that system. The number of nonresidents shall be the average number of persons having immediate access to drinking water on days access was provided during that month. In the absence of specific population data, the number of residents shall be computed by multiplying the number of active services by two and one-half.

"Potable" means water suitable for drinking by the public.

"Potential GWI" means a source identified by the department as possibly under the influence of surface water, and includes, but is not limited to, all wells with a screened interval fifty feet or less from the ground surface at the wellhead and located within two hundred feet of a surface water, and all Ranney wells, infiltration galleries, and springs.

"Premises isolation" means a method of protecting a public water system by installation of approved air gaps or approved backflow prevention assemblies at or near the service connection or alternative location acceptable to the purveyor to isolate the consumer's water system from the purveyor's distribution system.

"Pressure filter" means an enclosed vessel containing properly sized and graded granular media through which water is forced under greater than atmospheric pressure.

"Primary disinfection" means a treatment process for achieving inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern to comply with the treatment technique requirements of Part 6 of this chapter.

"Primary standards" means standards based on chronic, nonacute, or acute human health effects.

"Primary turbidity standard" means an accurately prepared formazin solution or commercially prepared polymer solution of known turbidity (prepared in accordance with "standard methods") that is used to calibrate bench model and continuous turbidimeters (instruments used to measure turbidity).

"Project approval application (PAA)" means a department form documenting ownership of water system, design engineer for the project, and type of project.

"Protected ground water source" means a ground water source the purveyor shows to the department's satisfaction as protected from potential sources of contamination on the basis of hydrogeologic data and/or satisfactory water quality history.

"Public water system" is defined and referenced under WAC 246-290-020.

"Purchased source" means water a purveyor purchases from a public water system not under the control of the purveyor for distribution to the purveyor's consumers.

"Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities.

"Reclaimed water" means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for beneficial use or a controlled use that would not otherwise occur, and it is no longer considered wastewater.

"Record drawings" means the drawings bearing the seal and signature of a professional engineer that reflect the modifications made to construction documents, documenting actual constructed conditions of the water system facilities.

"Recreational tract" means an area that is clearly defined for each occupant, but has no permanent structures with internal plumbing, and the area has been declared as such in the covenants or on the recorded plat in order to be eligible for reduced design considerations.

"Regional public water supplier" means a water system that provides drinking water to one, or more, other public water systems.

"Regularly" means four hours or more per day for four days or more per week.

"Removal credit" means the level (expressed as a percent or log) of *Giardia* and virus removal the department grants a system's filtration process.

"Repeat sample" means a sample collected to confirm the results of a previous analysis.

"Resident" means an individual living in a dwelling unit served by a public water system.

"Residual disinfectant concentration" means the analytical level of a disinfectant, measured in milligrams per liter, that remains in water following the application (dosing) of the disinfectant after some period of contact time.

"Same farm" means a parcel of land or series of parcels that are connected by covenants and devoted to the production of livestock or agricultural commodities for commercial purposes and does not qualify as a **Group A** public water system.

"Sanitary survey" means a review, inspection, and assessment of a public water system by the department or department designee including, but not limited to: Source, facilities, equipment, administration and operation, mainte-

nance procedures, monitoring, recordkeeping, planning documents and schedules, and management practices. The purpose of the survey is to evaluate the adequacy of the water system for producing and distributing safe and adequate drinking water.

"Satellite management agency (SMA)" means a person or entity that is approved by the department to own or operate public water systems on a regional or county-wide basis without the necessity for a physical connection between such systems.

"Seasonal source" means a public water system source used on a regular basis, that is not a permanent or emergency source.

"Secondary standards" means standards based on factors other than health effects.

"Service connection" means a connection to a public water system designed to provide potable water to a single family residence, or other residential or nonresidential population. When the connection provides water to a residential population without clearly defined single family residences, the following formulas shall be used in determining the number of services to be included as residential connections on the WFI form:

Divide the average population served each day by two and one-half; or

Using actual water use data, calculate the total ERUs represented by the service connection in accordance with department design guidance.

In no case shall the calculated number of services be less than one.

"Significant noncomplier" means a system that is violating or has violated department rules, and the violations may create, or have created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeated violations of monitoring requirements, failure to address an exceedance of permissible levels of regulated contaminants, or failure to comply with treatment technique standards or requirements.

"Simple disinfection" means any form of disinfection that requires minimal operational control in order to maintain the disinfection at proper functional levels, and that does not pose safety concerns that would require special care, equipment, or expertise. Examples include hypochlorination, UV-light, contactor chlorination, or any other form of disinfection practice that is safe to use and easy to routinely operate and maintain.

"Slow sand filtration" means a process involving passage of source water through a bed of sand at low velocity (generally less than 0.10 gpm/ft^2) that results in substantial particulate removal (> 2 log *Giardia lamblia* cysts) by physical and biological mechanisms.

"Source meter" means a meter that measures total output of a water source over specific time periods.

"Source water" means untreated water that is not subject to recontamination by surface runoff and:

For unfiltered systems, enters the system immediately before the first point of disinfectant application; and

For filtered systems, enters immediately before the first treatment unit of a water treatment facility.

"Special purpose investigation (SPI)" means on-site inspection of a public water system by the department or designee to address a potential public health concern, regulatory violation, or consumer complaint.

"Special purpose sample" means a sample collected for reasons other than the monitoring compliance specified in this chapter.

"Spring" means a source of water where an aquifer comes in contact with the ground surface.

"Standard methods" means the 18th edition of the book, titled *Standard Methods for the Examination of Water and Waste Water,* jointly published by the American Public Health Association, American Water Works Association (AWWA), and Water Pollution Control Federation. This book is available through public libraries or may be ordered from AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235.

"Standby storage" means the volume of stored water available for use during a loss of source capacity, power, or similar short-term emergency.

"State advisory level (SAL)" means a level established by the department and state board of health for a contaminant without an existing MCL. The SAL represents a level that when exceeded, indicates the need for further assessment to determine if the chemical is an actual or potential threat to human health.

"State board of health" and **"board"** means the board created by RCW 43.20.030.

"Subpart H System" see definition for **"surface water system."**

"Surface water" means a body of water open to the atmosphere and subject to surface runoff.

"Surface water system" means a public water system that uses in whole, or in part, source water from a surface supply, or ground water under the direct influence of surface water (GWI) supply. This includes systems that operate surface water treatment facilities, and systems that purchase "completely treated water" (as defined in this subsection). A "surface water system" is also referred to as a "Subpart H System" in some federal regulatory language adopted by reference and the two terms are considered equivalent for the purposes of this chapter.

"Susceptibility assessment" means the completed Susceptibility Assessment Survey Form developed by the department to evaluate the hydrologic setting of the water source and assess its contribution to the source's overall susceptibility to contamination from surface activities.

"Synthetic organic chemical (SOC)" means a manufactured carbon-based chemical.

"System capacity" means the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

"System physical capacity" means the maximum number of service connections or equivalent residential units (ERUs) that the system can serve when considering the limitation of each system component such as source, treatment,

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storage, transmission, or distribution, individually and in combination with each other.

"Time-of-travel" means the time required for ground water to move through the water bearing zone from a specific point to a well.

"Too numerous to count (TNTC)" means the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

"Tracer study" means a field study conducted to determine the disinfectant contact time, T, provided by a water system component, such as a clearwell or storage reservoir, used for *Giardia lamblia* cyst and virus inactivation. The study involves introducing a tracer chemical at the inlet of the contact basin and measuring the resulting outlet tracer concentration as a function of time.

"Transmission line" means pipes used to convey water from source, storage, or treatment facilities to points of distribution or distribution mains, and from source facilities to treatment or storage facilities. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this transmission main is clearly defined as such on the plans and no service connections are allowed along the transmission main.

"Treatment technique requirement" means a department-established requirement for a public water system to provide treatment, such as filtration or disinfection, as defined by specific design, operating, and monitoring requirements. A "treatment technique requirement" is established in lieu of a primary MCL when monitoring for the contaminant is not economically or technologically feasible.

"Trihalomethane (THM)" means one of a family of organic compounds, named as derivatives of methane, where three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure. THMs may occur when chlorine, a halogen, is added to water containing organic material and are generally found in water samples as disinfection by-products.

"Turbidity event" means a single day or series of consecutive days, not to exceed fourteen, when one or more turbidity measurement each day exceeds 5 NTU.

"T10" means the time it takes ten percent of the water passing through a system contact tank intended for use in the inactivation of *Giardia lamblia* cysts, viruses, and other microorganisms of public health concern, as determined from a tracer study conducted at peak hourly flow or from published engineering reports or guidance documents for similarly configured tanks.

"Unapproved auxiliary water supply" means a water supply (other than the purveyor's water supply) on or available to the consumer's premises that is either not approved for human consumption by the health agency having jurisdiction or is not otherwise acceptable to the purveyor.

"Uncovered distribution reservoir" means a distribution reservoir that is open, without a suitable water-tight roof or cover, where the potable water supply is exposed to external contaminants, including but not limited to people, birds, animals, and insects and will undergo no further treatment except for residual disinfection.

"Uniform Plumbing Code" means the code adopted under RCW 19.27.031(4) and amended under chapter 51-46 WAC. This code establishes statewide minimum plumbing standards applicable within the property lines of the consumer's premises.

"Used water" means water which has left the control of the purveyor.

"Verification" means to demonstrate the results of a sample to be precise by analyzing a duplicate sample. Verification occurs when analysis results fall within plus or minus thirty percent of the original sample.

"Virus" means a virus of fecal origin which is infectious to humans and transmitted through water.

"Volatile organic chemical (VOC)" means a manufactured carbon-based chemical that vaporizes quickly at standard pressure and temperature.

"Voluntary curtailment" means a curtailment of water use requested, but not required of consumers.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with drinking water from a public water system, as determined by the appropriate local health agency or the department.

"Water facilities inventory (WFI) form" means the department form summarizing each public water system's characteristics.

"Water right" means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

"Water right assessment" means an evaluation of the legal ability of a water system to use water for existing or proposed usages in conformance with state water right laws. Such an assessment may be done by a water system, a purveyor, the department of ecology, or any combination thereof.

"Watershed" means the region or area that:

Ultimately drains into a surface water source diverted for drinking water supply; and

Affects the physical, chemical, microbiological, and radiological quality of the source.

"Water shortage" means a situation during which the water supplies of a system cannot meet normal water demands for the system, including peak periods.

"Water shortage response plan" means a plan outlining policies and activities to be implemented to reduce water use on a short-term basis during or in anticipation of a water shortage.

"Well field" means a group of wells one purveyor owns or controls that:

Draw from the same aquifer or aquifers as determined by comparable inorganic chemical analysis and comparable static water level and top of the open interval elevations; and

Discharge water through a common pipe and the common pipe shall allow for collection of a single sample before the first distribution system connection.

"Wellhead protection area (WHPA)" means the portion of a well's, wellfield's or spring's zone of contribution

defined as such using WHPA criteria established by the department.

"Zone of contribution" means the area surrounding a pumping well or spring that encompasses all areas or features that supply ground water recharge to the well or spring.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-025 Adoption by reference. The following sections and subsections of Title 40 Code of Federal Regulations (CFR) Part 141 National Primary Drinking Water Regulations revised as of July 1, ((~~1996~~)) 2002, and including all amendments and modifications thereto effective as of the date of adoption of this chapter are adopted by reference:

141.2 Definitions. Only those definitions listed as follows:

Action level;
Corrosion inhibitor;
Effective corrosion inhibitor residual;
Enhanced coagulation;
Enhanced softening;
Granular activated carbon (GAC10);
Haloacetic acids (five) (HAA5);
First draw sample;
Large water system;
Lead service line;
Maximum residual disinfectant level (MRDL);
Maximum residual disinfectant level goal (MRDLG);
Medium-size water system;
Optimal corrosion control treatment;
Service line sample;
Single family structure; ((~~and~~))
Small water system;
Specific ultraviolet absorption (SUVA); and
Total Organic Carbon (TOC).

141.12	Maximum contaminant levels for organic chemicals.
141.13	Maximum contaminant levels for turbidity.
141.21	Coliform monitoring.
141.22	Turbidity sampling and analytical requirements.
141.23(a) -	141.23(j), Inorganic chemical sampling.
141.23(m) -	141.23(o)
141.24(a) -	141.24(d), Organic chemicals other than total trihalomethanes.

141.24 (f)(1) - 141.24 (f)(15),
141.24 (f)(18), 141.24 (f)(19),
141.24 (f)(21),
141.24 (g)(1) - 141.24 (g)(9),
141.24 (g)(12) - 141.24 (g)(14),
141.24 (h)(1) - 141.24 (h)(11),
141.24 (h)(14) - 141.24 (h)(17)

141.25(a),	141.25 (c) - (d), Analytical methods for radioactivity.
141.26	Monitoring frequency and compliance for radioactivity in community water systems.
141.31(d)	Reporting of public notices and compliance certifications.
141.33(e)	Record maintenance of public notices and certifications.
141.40(a) -	141.40(e), Special monitoring for inorganic and organic chemicals.

141.40(g), 141.40(i) - 141.40(n)

141.61	Maximum contaminant levels for organic contaminants.
141.62	Maximum contaminant levels for inorganic chemical and physical contaminants.
141.64(c)	Best Available Technologies (BATs) for Disinfection By-Products.
141.65(c)	Best Available Technologies (BATs) for Maximum Residual Disinfectant Levels.
141.66	Maximum contaminant levels for radionuclides.

Control of Lead and Copper

141.80	General requirements.
141.81	Applicability of corrosion control treatment steps to small, medium-size and large water systems.
141.82(a) -	141.82(h) Description of corrosion control treatment requirements.
141.83	Source water treatment requirements.
141.84	Lead service line replacement requirements.
141.85	Public education and supplemental monitoring requirements.
141.86 (a) - (f)	Monitoring requirements for lead and copper in tap water.
141.87	Monitoring requirements for water quality parameters.
141.88	Monitoring requirements for lead and copper in source water.
141.89	Analytical methods for lead and copper testing.
141.90, excluding (a)(4)	Reporting requirements.
141.91	Recordkeeping requirements.
((~~143.1-143.5~~	~~Secondary contaminants.~~))

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Disinfectants and Disinfection By-Products (D/DBP)	
141.130	General requirements.
141.131	Analytical requirements.
141.132	Monitoring requirements.
141.133	Compliance.
141.134	Reporting and recordkeeping.
141.135	Treatment technique for control of disinfection by-product precursors.
Enhanced Filtration - Reporting and Recordkeeping	
141.175(b)	Individual filter reporting and follow-up action requirements for systems treating surface water with conventional, direct, or in-line filtration and serving at least 10,000 people.
141.201, excluding (3)(ii) of Table 1	General public notification requirements.
141.202, excluding (3) of Table 1	Tier 1 Public Notice - Form, manner, and frequency of notice.
141.203	Tier 2 Public Notice - Form, manner, and frequency of notice.
141.204	Tier 3 Public Notice - Form, manner, and frequency of notice.
141.205	Content of the public notice.
141.206	Notice to new billing units or new customers.
141.207	Special notice of the availability of unregulated contaminant monitoring results.
141.208	Special notice for exceedances of the SMCL for fluoride.
Subpart Q - Public Notification Rule, Appendix A and B	
143.1 - 143.4	Secondary contaminants.

Copies of the incorporated sections and subsections of Title 40 CFR are available from the Department of Health, Airdustrial Center Building 3, P.O. Box 47822, Olympia, Washington 98504-7822, or by calling the department's drinking water hotline at 1-800-521-0323.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-060 Variances, exemptions, and waivers. (1) General.

(a) The state board of health may grant variances, exemptions, and waivers of the requirements of this chapter according to the procedures outlined in subsection (5) of this section. See WAC 246-290-300 (4)(g) and (((~~7~~))) (8)(f) for monitoring waivers.

(b) Consideration by the board of requests for variances, exemptions, and waivers shall not be considered adjudicative proceedings as that term is defined in chapter 34.05 RCW.

(c) Statements and written material regarding the request may be presented to the board at or before the public hearing ((~~wherein~~)) where the application will be considered. Allowing cross-examination of witnesses shall be within the discretion of the board.

(d) The board may grant a variance, exemption, or waiver if it finds:

(i) Due to compelling factors, the public water system is unable to comply with the requirements; and

(ii) The granting of the variance, exemption, or waiver will not result in an unreasonable risk to the health of consumers.

(2) Variances.

(a) MCL.

(i) The board may grant a MCL variance to a public water system that cannot meet the MCL requirements because of characteristics of the source water that is reasonably available to the system.

(ii) A MCL variance may only be granted after the system has applied the best available technology (BAT), treatment techniques, or other means as identified by the environmental protection agency (EPA) and still cannot meet an MCL standard as specified in section 1415, Public Law 93-523 (federal Safe Drinking Water Act) as amended by Public Law 99-339 (SDWA amendments of 1986), and Public Law 104-182 (SDWA amendments of 1996), as codified at 42 USC 300g-4.

(iii) A variance shall not be granted from the MCL for presence of total coliform under WAC 246-290-310(2).

(b) Treatment techniques.

(i) The board may grant a treatment technique variance to a public water system if the system demonstrates that the treatment technique is not necessary to protect the health of consumers because of the nature of the system's source water.

(ii) A variance shall not be granted from any treatment technique requirement under Part 6 of chapter 246-290 WAC.

(c) The board shall condition the granting of a variance upon a compliance schedule as described in subsection (6) of this section.

(3) Exemptions.

(a) The board may grant a MCL or treatment technique exemption to a public water system that cannot meet an MCL standard or provide the required treatment in a timely manner, or both, as specified under section 1416, Public Law 93-523 (federal Safe Drinking Water Act) as amended by Public Law 99-339 (SDWA amendments of 1986), and Public Law 104-182 (SDWA amendments of 1996), as codified at 42 USC 300g-4.

(b) An exemption may be granted for up to one year if the system was:

(i) In operation on the effective date of the MCL or treatment technique requirement; or

(ii) Not in operation on the effective date, and no reasonable alternative source of drinking water is available.

(c) No exemption shall be granted from:

(i) The requirement to provide a residual disinfectant concentration in the water entering the distribution system under WAC 246-290-662 or 246-290-692; or

(ii) The MCL for presence of total coliform under WAC 246-290-310(2).

(d) The board shall condition the granting of an exemption upon a compliance schedule as described in subsection (6) of this section.

(4) Waivers. The board may grant a waiver to a public water system if the system cannot meet the requirements of these regulations pertaining to any subject not covered by EPA regulations.

(5) Procedures.

(a) For variances and exemptions. The board shall consider granting a variance or exemption to a public water system upon completion of the following actions:

(i) The purveyor applies in writing to the department. The application, which may be in the form of a letter, shall clearly state the reason for the request and what actions the purveyor has taken to meet the requirement;

(ii) The purveyor provides notice of the purveyor's application to consumers and provides proof of ((~~such~~)) the notice to the department;

(iii) The department prepares recommendations, including a compliance schedule for the board's consideration;

(iv) The board provides notice for and conducts a public hearing on the purveyor's request; and

(v) EPA reviews any variance or exemption granted by the board for concurrence, revocation, or revision as provided under sections 1415 and 1416 of Public Law 93-523 (federal Safe Drinking Water Act), as amended, codified at 42 USC 300g-4.

(b) For waivers. The board shall consider granting a waiver upon completion of the following actions:

(i) The purveyor applies to the department in writing. The application, which may be in the form of a letter, shall clearly state the reason for the request;

(ii) The purveyor provides notice of the purveyor's application to consumers and provides proof of ((~~such~~)) the notice to the department;

(iii) The department prepares a recommendation to the board; and

(iv) The board provides notice for and conducts a public hearing on the purveyor's request.

(6) Compliance schedule.

(a) The board shall condition the granting of a variance or exemption based on a compliance schedule. The compliance schedule shall include:

(i) Actions the purveyor shall undertake to comply with a MCL or treatment technique requirement within a specified time period; and

(ii) A description and time-table for implementation of interim control measures the department may require while the purveyor completes the actions required in (a)(i) of this subsection.

(b) The purveyor shall complete the required actions in the compliance schedule within the stated time frame.

(7) Extensions to exemptions.

(a) The board may extend the final date of compliance prescribed in the compliance schedule for a period of up to three years after the date the exemption was granted upon a finding that the water system:

(i) Cannot meet the MCL or treatment technique requirements without capital improvements that cannot be completed within the original exemption period;

(ii) Has entered into an agreement to obtain needed financial assistance for necessary improvements; or

(iii) Has entered into an enforceable agreement to become part of a regional public water system and the system is taking all practicable steps to meet the MCL.

(b) The board may extend the final date of compliance prescribed in the compliance schedule of an exemption for one or more additional two-year periods if the purveyor:

(i) Is a community water system providing water to less than five hundred service connections;

(ii) Needs financial assistance for the necessary improvements; and

(iii) Is taking all practicable steps to meet the compliance schedule.

(c) Procedures listed in subsection (5) of this section shall be followed in the granting of extensions to exemptions.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-100 Water system plan. (1) The purpose of this section is to establish a uniform process for purveyors to:

(a) Demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with relevant local, state, and federal plans and regulations;

(b) Demonstrate how the system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans;

(c) Establish eligibility for funding ((~~pursuant to~~)) under the drinking water state revolving fund (SRF).

(2) Purveyors of the following categories of community public water systems shall submit a water system plan for review and approval by the department:

(a) Systems having one thousand or more services;

(b) Systems required to develop water system plans under the Public Water System Coordination Act of 1977 (chapter 70.116 RCW);

(c) Any system experiencing problems related to planning, operation, and/or management as determined by the department;

(d) All new systems;

(e) Any expanding system; and

(f) Any system proposing to use the document submittal exception process in WAC 246-290-125.

(3) The purveyor shall work with the department and other parties to establish the level of detail for a water system plan. In general, the scope and detail of the plan will be related to size, complexity, past performance, and use of the water system. Project reports may be combined with a water system plan.

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(4) In order to demonstrate system capacity, the water system plan shall address the following elements, as a minimum, for a period of at least twenty years into the future:

(a) Description of the water system, including:

(i) Ownership and management, including the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system;

(ii) System history and background;

(iii) Related plans, such as coordinated water system plans, abbreviated coordinated water system plans, local land use plans, ground water management plans, and basin plans;

(iv) Service area map, characteristics, agreements, and policies; and

(v) Satellite management, if applicable.

(b) Basic planning data, including:

(i) Current population, service connections, water use, and equivalent residential units; and

(ii) Projected land use, future population, and water demand for a consecutive six-year and final twenty-year planning period within the system's service area.

(c) System analysis, including:

(i) System design standards;

(ii) Water quality analysis;

(iii) System inventory description and analysis; and

(iv) Summary of system deficiencies.

(d) Water resource analysis, including:

(i) Development and implementation of a cost-effective conservation program, which includes evaluation of conservation-oriented water rate structures;

(ii) Water demand forecasts;

(iii) Water use data collection;

(iv) Source of supply analysis, which includes an evaluation of water supply alternatives if additional water rights will be pursued within twenty years;

(v) Water shortage response plan if a water system experiences a water shortage, or anticipates it will experience a water shortage within the next six-year planning period;

(vi) Water right assessment;

(vii) Water supply reliability analysis; and

(viii) Interties.

(e) Source water protection in accordance with WAC 246-290-135.

(f) Operation and maintenance program in accordance with WAC 246-290-415 and 246-290-654(5), as applicable.

(g) Improvement program, including a six-year capital improvement schedule.

(h) Financial program, including demonstration of financial viability by providing:

(i) A summary of past income and expenses;

(ii) A one-year balanced operational budget for systems serving one thousand or more connections or a six-year balanced operational budget for systems serving less than one thousand connections;

(iii) A plan for collecting the revenue necessary to maintain cash flow stability and to fund the capital improvement program and emergency improvements; and

(iv) A rate structure that has considered:

(A) The affordability of water rates; and

(B) The feasibility of adopting and implementing a rate structure that encourages water conservation.

(i) Other documents, such as:

(i) Documentation of SEPA compliance;

(ii) Agreements; and

(iii) Comments from the county and adjacent utilities.

(5) Purveyors intending to implement the project report and construction document submittal exceptions authorized under WAC 246-290-125 must include:

(a) Standard construction specifications for distribution mains; and/or

(b) Design and construction standards for distribution-related projects, including:

(i) Description of project report and construction document internal review procedures, including engineering design review and construction completion reporting requirements;

(ii) Construction-related policies and requirements for external parties, including consumers and developers;

(iii) Performance and sizing criteria; and

(iv) General reference to construction materials and methods.

(6) The department, at its discretion, may require reports from purveyors identifying the progress in developing their water system plans.

(7) Purveyors shall transmit water system plans to adjacent utilities and local governments having jurisdiction, to assess consistency with ongoing and adopted planning efforts.

(8) For community systems, the purveyor shall hold an informational meeting for system consumers prior to departmental approval of a water system plan or a water system plan update. The purveyor shall notify consumers in a way that is appropriate to the size of the system.

(9) Department approval of a water system plan shall be in effect for six years from the date of written approval unless:

(a) Major projects subject to SEPA as defined in WAC 246-03-030 (3)(a) are proposed that are not addressed in the plan;

(b) Changes occur in the basic planning data significantly affecting system improvements identified; or

(c) The department requests an updated plan or plan amendment.

(10) The purveyor shall update the plan and submit it for approval at least every six years. If the system no longer meets the conditions of subsection (2) of this section, the purveyor shall as directed by the department, submit either a plan amendment the scope of which will be determined by the department, or a small water system management program under WAC 246-290-105.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-105 Small water system management program. (1) The purpose of a small water system management program is to:

(a) Demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations; and

(b) Establish eligibility for funding ((~~pursuant to~~)) under the drinking water state revolving fund (SRF).

(2) All noncommunity and all community systems not required to complete a water system plan as described under WAC 246-290-100(2) shall develop and implement a small water system management program.

(3) The purveyor shall submit this program for review and approval to the department when:

(a) A new NTNC public water system is created; or

(b) An existing system has operational, technical, managerial, or financial problems, as determined by the department.

(4) Content and detail shall be consistent with the size, complexity, past performance, and use of the public water system. General content topics shall include, but not be limited to, the following elements:

(a) System management;

(b) Annual operating permit;

(c) Water facilities inventory form;

(d) Service area and facility map;

(e) Documentation of water rights, through a water right assessment;

(f) Record of source water pumped;

(g) Water usage;

(h) Water conservation program;

(i) Source protection;

(j) Component inventory and assessment;

(k) List of planned system improvements;

(l) Water quality monitoring program;

(m) Operation and maintenance program;

(n) Cross-connection control program;

(o) Emergency response plan; and

(p) Budget.

(5) The department may require changes be made to a small water system management program if necessary to effectively accomplish the program's purpose.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-125 Project report and construction document submittal exceptions. (1) The following projects do not require project reports in accordance with WAC 246-290-110 and construction documents in accordance with WAC 246-290-120 to be submitted to the department for review and approval prior to installation:

(a) Installation of valves, fittings, and meters, including backflow prevention assemblies;

(b) Installation of hydrants in accordance with WAC 246-290-230 (3) and (6);

(c) Repair of a system component or replacement with a component of a similar capacity and material in accordance with the original construction specifications of the approved design; or

(d) Maintenance or painting of surfaces not contacting potable water.

(2) Purveyors may elect to not submit to the department for review and approval project reports in accordance with WAC 246-290-110 and construction documents in accordance with WAC 246-290-120 for new distribution mains ((~~providing~~)) if:

(a) The purveyor ((~~water system~~)) has on file with the department a current department-approved water system plan that includes standard construction specifications for distribution mains; and

(b) The purveyor maintains on file a completed construction completion report (departmental form) in accordance with WAC 246-290-120(5) and makes it available for review upon request by the department.

(3) Purveyors may elect to not submit to the department for review and approval project reports in accordance with WAC 246-290-110 and construction documents in accordance with WAC 246-290-120 for review and approval of other distribution-related projects as defined in WAC 246-290-010 providing:

(a) The purveyor has on file with the department a current department-approved water system plan, in accordance with WAC 246-290-100(5);

(b) The purveyor submits a written request with a new water system plan or an amendment to a water system plan, and updates the request with each water system plan update. The written request should specifically identify the types of projects or facilities for which the submittal exception procedure is requested;

(c) The purveyor has documented that they have employed or hired under contract the services of a professional engineer licensed in the state of Washington to review distribution-related projects not submitted to the department for review and approval. The review engineer and design engineer shall not be the same individual. The purveyor shall provide written notification to the department whenever they ((~~proposed~~)) propose to change their designated review engineer;

(d) If the project is a new transmission main, storage tank, or booster pump station, it must be identified in the capital improvement program of the utility's water system plan. If not, either the project report must be submitted to the department for review and approval, or the water system plan must be amended;

(e) A project summary file is maintained by the purveyor for each project and made available for review upon request by the department, and includes:

(i) Descriptive project summary;

(ii) Anticipated completion schedule;

(iii) Consistency with utility's water system plan;

(iv) Water right assessment, where applicable;

(v) Change in system physical capacity;

(vi) Copies of original design and record drawings;

(vii) Engineering design review report (departmental form). The form shall:

(A) Bear the seal, date, and signature of a professional engineer licensed in the state of Washington prior to the start of construction;

(B) Provide a descriptive reference to completed project report and/or construction documents reviewed, including date of design engineer's seal and signature; and

(C) State the project report and/or construction documents have been reviewed, and the design is in accordance

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with department regulations and principles of standard engineering practice;

(f) The construction completion report is submitted to the department in accordance with WAC 246-290-120(5) for new storage tanks and booster pump stations, and maintained on file with the water system for all other distribution-related projects;

(g) A WFI is completed in accordance with WAC 246-290-120(6); and

(h) The purveyor meets the requirements of chapter 246-294 WAC to have a category "green" operating permit.

(4) Source of supply (including interties) and water quality treatment-related projects shall not be eligible for the submittal exception procedure.

(5) Purveyors not required to prepare a water system plan under WAC 246-290-100 shall be eligible for the submittal exception procedure ((~~provided that~~)) if the purveyor:

(a) ((~~They have~~)) Has a department-approved water system plan meeting the requirements of WAC 246-290-100; and

(b) ((~~They comply~~)) Complies with all other requirements in this section.

(6) ((~~Purveyors shall~~)) Ensures that all work required to be prepared under the direction of a professional engineer be accomplished per WAC 246-290-040 and chapter 18.43 RCW.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-220 Drinking water materials and additives. (1) All materials shall conform to the ANSI/NSF Standard 61 if in substantial contact with potable water supplies. For the purposes of this section, "substantial contact" means the elevated degree that a material in contact with water may release leachable contaminants into the water such that levels of these contaminants may be unacceptable with respect to either public health or aesthetic concerns. It should take into consideration the total material/water interface area of exposure, volume of water exposed, length of time water is in contact with the material, and level of public health risk. Examples of water system components that would be considered to be in "substantial contact" with drinking water are filter media, storage tank interiors or liners, distribution piping, membranes, exchange or adsorption media, or other similar components that would have high potential for contacting the water. Materials associated with ((~~such~~)) components such as valves, pipe fittings, debris screens, gaskets, or similar appurtenances would not be considered to be in substantial contact.

(2) Materials or additives in use prior to the effective date of these regulations that have not been listed under ANSI/NSF Standard 60 or 61 ((~~shall~~)) may be ((~~allowed~~)) used for their current applications until ((~~such time that~~)) the materials are scheduled for replacement, or that stocks of existing additives are depleted and scheduled for reorder.

(3) Any treatment chemicals, with the exception of commercially retailed hypochlorite compounds such as unscented Clorox, Purex, etc., added to water intended for potable use ((~~shall~~)) must comply with ANSI/NSF Standard 60. The maximum application dosage recommendation for the product certified by the ANSI/NSF Standard 60 shall not be exceeded in practice.

(4) Any products used to coat, line, seal, patch water contact surfaces or that have substantial water contact within the collection, treatment, or distribution systems ((~~shall~~)) must comply with the appropriate ANSI/NSF Standard 60 or 61. Application of these products ((~~shall~~)) must comply with recommendations contained in the product certification.

(5) The department may accept continued use of, and proposals involving, certain noncertified chemicals or materials on a case-by-case basis, ((~~provided~~)) if all of the following criteria are met:

(a) The chemical or material has an acknowledged and demonstrable history of use in the state for drinking water applications;

(b) There exists no substantial evidence that the use of the chemical or material has caused consumers to register complaints about aesthetic issues, or health related concerns, that could be associated with leachable residues from the material; and

(c) The chemical or material has undergone testing through a protocol acceptable to the department and has been found to not contribute leachable compounds into drinking water at levels that would be of public health concern.

(6) Any pipe, pipe fittings, fittings, fixtures, solder, or flux used in the installation or repair of a public water system shall be lead-free:

(a) This prohibition shall not apply to leaded joints necessary for the repair of cast iron pipes; and

(b) Within the context of this section, lead-free shall mean:

(i) No more than eight percent lead in pipes and pipe fittings; ((~~and~~))

(ii) No more than two-tenths of one percent lead in solder and flux; and

(iii) Fittings and fixtures that are in compliance with standards established in accordance with 42 USC 300g-6(e).

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-300 Monitoring requirements. (1) General.

(a) The monitoring requirements specified in this section are minimums. The department may require additional monitoring when:

(i) Contamination is present or suspected in the water system;

(ii) A ground water source is determined to be a potential GWI;

(iii) The degree of source protection is not satisfactory;

(iv) Additional monitoring is needed to verify source vulnerability for a requested monitoring waiver;

(v) Under other circumstances as identified in a departmental order; or

(vi) Additional monitoring is needed to evaluate continuing effectiveness of a treatment process where problems with the treatment process may exist.

(b) Special purpose samples collected by the purveyor shall not count toward fulfillment of the monitoring requirements of this chapter unless the quality of data and method of sampling and analysis are acceptable to the department.

(c) The purveyor shall ensure samples required by this chapter are collected, transported, and submitted for analysis according to ((~~department~~)) EPA-approved methods. The analyses shall be performed by ((~~the state public health~~)) a laboratory ((~~or another laboratory certified~~)) accredited by the ((~~department~~)) state. ((~~Qualified water utility, certified laboratory, or health department personnel~~)) Other parties approved by the department may conduct measurements for pH, temperature, residual disinfectant concentration, alkalinity, bromide, chlorite, TOC, SUVA, and turbidity as required by this chapter, provided, these measurements are made in accordance with ((~~"standard methods."~~)) EPA approved methods.

(d) Compliance samples required by this chapter shall be taken at locations listed in Table 3 of this section.

(e) Purveyors failing to comply with a monitoring requirement shall notify:

(i) The department in accordance with WAC 246-290-480; and

(ii) The owner or operator of any consecutive system served and the appropriate water system users in accordance with ((~~WAC 246-290-495~~)) 40 CFR 141.201 and Part 7, Subpart A of this chapter.

(2) Selling and receiving water.

(a) Source monitoring. Purveyors, with the exception of those that "wheel" water to their consumers (i.e., sell water that has passed through another purchasing purveyor's distribution system), shall conduct source monitoring in accordance with this chapter for the sources under their control. The level of monitoring shall satisfy the monitoring requirements associated with the total population served by the source.

(b) Distribution system monitoring. The purveyor of a system that receives and distributes water shall perform distribution-related monitoring requirements. Monitoring shall include, but not be limited to, the following:

(i) Collect coliform samples in accordance with subsection (3) of this section;

(ii) Collect trihalomethane samples ((~~in accordance with~~)) if required by subsection (6) of this section or disinfection by-product samples if required by subsection (7) of this section;

(iii) Perform the distribution system residual disinfectant concentration monitoring in accordance with subsection (7) of this section, and as required under WAC 246-290-451 or 246-290-694;

(iv) Perform lead and copper monitoring required under 40 CFR 141.86, 141.87, and 141.88;

(v) Perform the distribution system monitoring in accordance with 40 CFR 141.23(b) for asbestos if applicable;

(vi) Other monitoring as required by the department.

(c) Reduced monitoring for regional programs. The receiving purveyor may receive reductions in the coliform, lead and copper, ((~~THM~~)) disinfection by-product (including THMs) and distribution system disinfectant residual concentration monitoring requirements, provided the receiving system:

(i) ((~~Has a satisfactory water quality history as determined by the department;~~

~~(ii) Operates in a satisfactory manner consistent with this chapter;~~

~~(iii)~~)) Purchases water from a purveyor that has a department-approved regional monitoring program; and

((~~(iv)~~)) (ii) Has a written agreement with the supplying system or regional water supplier that is acceptable to the department, and which identifies the responsibilities of both the supplying and receiving system(s) with regards to monitoring, reporting and maintenance of the distribution system.

(d) Periodic review of regional programs. The department may periodically review the sampling records of public water systems participating in a department-approved monitoring program to determine if continued reduced monitoring is appropriate. If the department determines a change in the monitoring requirements of the receiving system is appropriate:

(i) The department shall notify the purveyor of the change in monitoring requirements; and

(ii) The purveyor shall conduct monitoring as directed by the department.

(3) Bacteriological.

(a) The purveyor shall be responsible for collection and submittal of coliform samples from representative points throughout the distribution system. Samples shall be collected after the first service and at regular time intervals each month the system provides water to consumers. Samples shall be collected that represent normal system operating conditions.

(i) Systems providing disinfection treatment shall, when taking a routine or repeat sample, measure residual disinfectant concentration within the distribution system at the same time and location and comply with the residual disinfection monitoring requirements under WAC 246-290-451.

(ii) Systems providing disinfection treatment shall assure that disinfectant residual concentrations are measured and recorded on all coliform sample report forms submitted for compliance purposes.

(b) Coliform monitoring plan.

(i) The purveyor shall prepare a written coliform monitoring plan and base routine monitoring upon the plan. The plan shall include coliform sample collection sites and a sampling schedule.

(ii) The purveyor shall:

(A) Keep the coliform monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer ensures representative monitoring of the system, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(c) Monitoring frequency. The number of required routine coliform samples is based on total population served.

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(i) Purveyors of **community** systems shall collect and submit for analysis no less than the number of routine samples listed in Table 2 during each calendar month of operation;

(ii) Unless directed otherwise by the department, purveyors of **noncommunity** systems shall collect and submit for analysis no less than the number of samples required in Table 2, and no less than required under 40 CFR 141.21. Each month's population shall be based on the average daily population and shall include all residents and nonresidents served during that month. During months when the average daily population served is less than twenty-five, routine sample collection is not required when:

(A) Using only protected ground water sources;

(B) No coliform were detected in samples during the previous month; and

(C) One routine sample has been collected and submitted for analysis during one of the previous two months.

(iii) Purveyors of systems serving both a resident and a nonresident population shall base their minimum sampling requirement on the total of monthly populations served, both resident and nonresident as determined by the department, but no less than the minimum required in Table 2; and

(iv) Purveyors of systems with a nonresident population lasting two weeks or less during a month shall sample as directed by the department. Sampling shall be initiated at least two weeks prior to the time service is provided to consumers.

(v) Purveyors of TNC systems shall not be required to collect routine samples in months where the population served is zero or the system has notified the department of an unscheduled closure.

(d) Invalid samples. When a coliform sample is determined invalid under WAC 246-290-320 (2)(d), the purveyor shall:

(i) Not include the sample in the determination of monitoring compliance; and

(ii) Take follow-up action as defined in WAC 246-290-320 (2)(d).

(e) The purveyor using a surface water or GWI source shall collect representative source water samples for bacteriological density analysis in accordance with WAC 246-290-664 and 246-290-694 as applicable.

TABLE 2
MINIMUM MONTHLY ROUTINE COLIFORM SAMPLING REQUIREMENTS

Population Served [1] During Month		Minimum Number of Routine Samples/Calendar Month: When NO samples with a coliform presence were collected during the previous month	Minimum Number of Routine Samples/Calendar Month: When ANY samples with a coliform presence were collected during the previous month
1 -	1,000	1*	5
1,001 -	2,500	2*	5
2,501 -	3,300	3*	5
3,301 -	4,100	4*	5
4,101 -	4,900	5	5
4,901 -	5,800	6	6
5,801 -	6,700	7	7
6,701 -	7,600	8	8
7,601 -	8,500	9	9
8,501 -	12,900	10	10
12,901 -	17,200	15	15
17,201 -	21,500	20	20
21,501 -	25,000	25	25
25,001 -	33,000	30	30
33,001 -	41,000	40	40
41,001 -	50,000	50	50
50,001 -	59,000	60	60
59,001 -	70,000	70	70
70,001 -	83,000	80	80
83,001 -	96,000	90	90
96,001 -	130,000	100	100
130,001 -	220,000	120	120
220,001 -	320,000	150	150
320,001 -	450,000	180	180
450,001 -	600,000	210	210
600,001 -	780,000	240	240
780,001 -	970,000	270	270
970,001 -	1,230,000[3]	300	300

[1] Does not include the population of a consecutive system that purchases water. The sampling requirement for consecutive systems is a separate determination based upon the population of that system.

[2] Noncommunity systems using only protected ground water sources and serving less than 25 individuals, may collect and submit for analysis, one sample every three months.

[3] Systems serving populations larger than 1,230,000 shall contact the department for the minimum number of samples required per month.

*In addition to the provisions of subsection (1)(a) of this section, if a system of this size cannot show evidence of having been subject to a sanitary survey on file with the department, or has been determined to be at risk to bacteriological concerns following a survey, the minimum number of samples required per month may be increased by the department after additional consideration of such factors as monitoring history, compliance record, operational problems, and water quality concerns for the system.

(4) Inorganic chemical and physical.

(a) A complete inorganic chemical and physical analysis shall consist of the primary and secondary chemical and physical substances.

(i) Primary chemical and physical substances are antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate (as N), nitrite (as N), selenium, sodium, thallium, and for unfiltered surface water, turbidity.

(ii) Secondary chemical and physical substances are chloride, color, hardness, iron, manganese, specific conductivity, silver, sulfate, total dissolved solids*, and zinc.

* Required only when specific conductivity exceeds seven hundred micromhos/centimeter.

(b) Purveyors shall monitor for all primary and secondary chemical and physical substances identified in Table 4 and Table 5. Samples shall be collected in accordance with the monitoring requirements referenced in 40 CFR 141.23(a) through 141.23(j) and 40 CFR 143.4, except for composite samples for systems serving less than three thousand three hundred one persons. For these systems, compositing among different systems may be allowed if the systems are owned or operated by a department-approved satellite management agency.

(c) Samples required by this subsection shall be taken at designated locations in accordance with 40 CFR 141.23(a) through 141.23(j), and 40 CFR 143.4, and Table 3 herein.

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) In accordance with 40 CFR 141.23 (a)(3), alternate sampling locations may be used if approved by the department. The process for determining these alternate sites is described in department guidance. Purveyors of community and NTNC systems may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. Alternate sampling plans shall address the following:

(A) Source vulnerability;

(B) Individual source characteristics;

(C) Previous water quality information;

(D) Status of monitoring waiver applications; and

(E) Other information deemed necessary by the department.

(d) Composite samples:

(i) In accordance with CFR 141.23 (a)(4), purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance; and

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(e) When the purveyor provides treatment for one or more inorganic chemical or physical contaminants, the department may require the purveyor to sample before and after treatment. The department shall notify the purveyor if and when this additional source sampling is required.

(f) Inorganic monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an inorganic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(g) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any nonnitrate/nitrite inorganic chemical and physical monitoring requirements identified in this chapter.

(ii) Purveyors requesting a monitoring waiver shall comply with applicable subsections of 40 CFR 141.23 (b)(3), 141.23 (c)(3), and 141.40 (n)(4).

(iii) Purveyors shall update and resubmit requests for waiver renewals as applicable during each compliance cycle or period or more frequently as directed by the department.

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(h) The department may require the purveyor to repeat sample for confirmation of results.

(i) Purveyors with emergency and seasonal sources shall monitor those sources when they are in use.

(5) Lead and copper. Monitoring for lead and copper shall be conducted in accordance with 40 CFR 141.86 (a) - (f), 141.87, and 141.88.

(6) Trihalomethanes (THMs).

(a) Purveyors of **community** systems serving ((~~a population of~~)) at least ten thousand ((~~or more~~)) people and providing water treated with chlorine or other halogenated disinfectant shall monitor as follows:

(i) Ground water sources. Until December 31, 2003, the purveyor shall collect one sample from each treated ground water source every twelve months. This sample shall be taken at the source before treatment and analyzed for maximum total trihalomethane potential (MTTP). The purveyor may receive approval from the department for an alternate sample location if it would provide essentially the same information as an MTTP analysis regarding the levels of THMs that the consumers are, or could potentially be, exposed to in the drinking water. Beginning January 1, 2004, systems that add a chemical disinfectant shall meet the monitoring requirements in subsection (7) of this section.

(ii) Surface water sources. ((~~The purveyor shall collect four samples per treated source every three months. The samples shall be taken within a twenty-four-hour period. The purveyor shall take one of the samples from the extreme end of the distribution system, the farthest point possible from the source of supply, and three samples from representative intermediate locations in the distribution system. The samples shall be analyzed for TTHM (i.e., the sum of trichloromethane, bromodichloromethane, dibromochloromethane, and tribromomethane). After one year of monitoring, the department may reduce the monitoring frequency to one sample every three months per treatment plant if the TTHM levels are less than 0.10 mg/L. The purveyor shall take the sample at the extreme end of the distribution system; or~~)) The purveyor shall meet the monitoring requirements in subsection (7) of this section.

(iii) Purchased surface water sources. ((~~The~~)) Purveyors of ((~~a~~)) consecutive systems ((~~shall collect one water sample~~

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~~per each purchased source originating from a surface supply or confirmed GWI every three months. The sample shall be taken at the extreme end of the distribution system and analyzed for TTHM.~~)) that add a chemical disinfectant to either the surface water they purchase, or to additional ground water supplies they use, shall meet the monitoring requirements in subsection (7) of this section.

(b) Until December 31, 2003, purveyors of **community** systems shall monitor for TTHM(s) when serving a population less than ten thousand and providing surface water treated with chlorine or other halogenated disinfectant. The purveyor shall collect one water sample per treated source every three months for one year. The sample shall be taken at the extreme end of the distribution system and analyzed for TTHM(s). After the first year, the purveyor shall monitor surface water sources every thirty-six months. Beginning January 1, 2004, systems that add a chemical disinfectant shall meet the monitoring requirements in subsection (7) of this section.

(c) Until December 31, 2003, purveyors of **community** systems shall monitor for TTHM(s) when serving less than ten thousand people and purchasing surface water treated with chlorine or other halogenated disinfectant or adding a halogenated disinfectant after purchase. The purveyor shall collect one water sample every three months at the extreme end of the distribution system or at a department-acceptable location. The sample shall be analyzed for TTHM(s). After the first year, the purveyor shall monitor every thirty-six months. Beginning January 1, 2004, systems that add a chemical disinfectant to either the surface water they purchase, or to additional ground water supplies they use, shall meet the monitoring requirements in subsection (7) of this section.

(d) After December 31, 2003, subsection (6) of this section no longer applies to any public water system.

(7) Disinfection by-products (DBP), disinfectant residuals, and disinfection by-product precursors (DBPP). Purveyors of community and NTNC systems providing water treated with chemical disinfectants and TNC systems using chlorine dioxide shall monitor as follows:

(a) General requirements.

(i) Systems shall collect samples during normal operating conditions.

(ii) All monitoring shall be conducted in accordance with the analytical requirements in 40 CFR 141.131.

(iii) Systems may consider multiple wells drawing from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with department approval in accordance with department guidance.

(iv) Systems required to monitor under this subsection shall prepare and implement a monitoring plan in accordance with 40 CFR 141.132(f).

(A) Community and NTNC surface water systems that add a chemical disinfectant and serve at least ten thousand people shall submit a monitoring plan to the department.

(B) Community and NTNC surface water systems that add a chemical disinfectant and serve less than ten thousand people, but more than three thousand three hundred people, shall submit a monitoring plan to the department by April 10, 2004.

(C) The department may require submittal of a monitoring plan from systems not specified in subsection (7)(a)(iv)(A) or (B) of this section, and may require revision of any monitoring plan.

(D) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the systems' failure to monitor makes it impossible to determine compliance with MCL's or MRDL's.

(b) Disinfection by-products - **Community** and **NTNC** systems only.

(i) Compliance dates.

(A) A system that is installing Granular Activated Carbon (GAC) with a minimum ten minutes of empty bed contact time (GAC10) or membrane technology to comply with WAC 246-290-310(5) may apply to the department for an extension of time to comply with this subsection. The extension may not go beyond December 31, 2003.

(B) Surface water systems that serve less than ten thousand people, or systems using only ground water, and that add a chemical disinfectant, including, but not limited to, chlorine, chloramines, chlorine dioxide, and/or ozone, shall comply with the applicable requirements of this subsection beginning January 1, 2004.

(ii) TTHMs and HAA5.

(A) Systems shall monitor for TTHMs and HAA5 in accordance with 40 CFR 141.132 (b)(1)(i).

(B) With department approval, systems may reduce monitoring in accordance with 40 CFR 141.132 (b)(1)(ii).

(C) Systems on department-approved reduced monitoring schedules may be required to return to routine monitoring, or initiate increased monitoring in accordance with 40 CFR 141.132 (b)(1)(iii).

(D) The department may return systems on increased monitoring to routine monitoring if, after one year, annual average results for TTHMs and HAA5 are less than or equal to 0.060 mg/L and 0.045 mg/L, respectively, or monitoring results are consistently below the MCLs indicating that increased monitoring is no longer necessary.

(iii) Chlorite - Only systems that use **chlorine dioxide.**

(A) Systems using chlorine dioxide shall conduct daily and monthly monitoring in accordance with 40 CFR 141.132 (b)(2)(i) and additional chlorite monitoring in accordance with 40 CFR 141.132 (b)(2)(ii).

(B) With department approval, monthly monitoring may be reduced in accordance with 40 CFR 141.132 (b)(2)(iii)(B). Daily monitoring at entry to distribution required by 40 CFR 141.132 (b)(2)(i)(A) may not be reduced.

(iv) Bromate - Only systems that use **ozone.**

(A) Systems using ozone for disinfection or oxidation must conduct bromate monitoring in accordance with 40 CFR 141.132 (b)(3)(i).

(B) With department approval, monthly bromate monitoring may be reduced to once per quarter, in accordance with the provisions and requirements of 40 CFR 141.132 (b)(3)(ii) and 40 CFR 141.132(e).

(c) Disinfectant residuals.

(i) Compliance dates.

(A) Community and NTNC surface water systems that add a chemical disinfectant, including, but not limited to, chlorine, chloramines, chlorine dioxide, and/or ozone, and serve less than ten thousand people, or systems using only ground water, shall comply with the applicable requirements of this section beginning January 1, 2004.

(B) TNC surface water systems that add chlorine dioxide as a disinfectant or oxidant, and serve less than ten thousand people, or systems using only ground water, shall comply with the chlorine dioxide MRDL beginning January 1, 2004.

(ii) Chlorine and chloramines. Systems that use chlorine or chloramines shall monitor and record the residual disinfectant level in the distribution system in accordance with WAC 246-290-451(6), 246-290-664 (6)(a), or 246-290-694 (8)(a).

(iii) Chlorine dioxide. Community, NTNC, or TNC systems that use chlorine dioxide shall monitor in accordance with 40 CFR 141.132 (c)(2) and record results.

(d) Disinfection by-product precursors.

(i) Compliance dates.

Community and NTNC surface water systems serving less than ten thousand people using conventional filtration that employs sedimentation shall comply with the applicable requirements of this subsection beginning January 1, 2004.

(ii) Surface water systems that use conventional filtration with sedimentation shall monitor in accordance with 40 CFR 141.132(d), and meet the requirements of 40 CFR 141.135.

((~~(7)~~)) (8) Organic chemicals.

(a) Purveyors of community and NTNC water systems shall comply with monitoring requirements in accordance with 40 CFR 141.24 (a) - (d), 141.24 (f)(1) - (f)(15), 141.24 (f)(18) - (19), 141.24 (f)(21), 141.24 (g)(1) - (9), 141.24 (g)(12) - (14), 141.24 (h)(1) - (11), 141.24 (h)(14) - (17), 141.40(a), 141.40(d), and 141.40(e).

(b) Sampling locations shall be as defined in 40 CFR 141.24(f), 141.24(g), 141.24(h), 141.40(b) and 141.40(c).

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) In accordance with 40 CFR 141.24 (f)(3) and 141.24 (h)(3), alternate sampling locations may be allowed if approved by the department. These alternate locations are described in department guidance. Purveyors may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. The alternate sampling location shall consider the following:

(A) Source vulnerability;

(B) An updated organic monitoring plan showing location of all sources with current and proposed sampling locations;

(C) Individual source characteristics;

(D) Previous water quality information;

(E) Status of monitoring waiver applications; and

(F) Other information deemed necessary by the department.

(c) Composite samples:

(i) Purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance;

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(d) The department may require the purveyor to sample both before and after treatment for one or more organic contaminants. The department shall notify the purveyor if and when this additional source sampling is required.

(e) Organic chemical monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an organic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(f) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any organic monitoring requirement except those relating to unregulated VOCs;

(ii) Purveyors requesting a monitoring waiver shall comply with 40 CFR 141.24 (f)(7), 141.24 (f)(10), 141.24 (h)(6), 141.24 (h)(7) or 141.40 (n)(4);

(iii) Purveyors shall update and resubmit requests for waiver renewals as directed by the department; and

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(g) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of this section when they are actively providing water to consumers.

((~~(8)~~)) (9) Unregulated chemicals.

(a) Unregulated inorganic contaminants. Purveyors of community and NTNC systems shall:

(i) Monitor for the unregulated inorganic chemicals listed in 40 CFR 141.40 (n)(12);

(ii) Comply with monitoring methods, frequencies, and sampling locations in accordance with 40 CFR 141.40 (n)(2) through 141.40 (n)(9) and 141.40 (n)(12); and

(iii) Apply in writing for a monitoring waiver according to the conditions outlined in 40 CFR 141.40 (n)(3), and the departmental procedures described in subsection ((~~(7)~~)) (8)(f) of this section.

(b) Unregulated VOCs. Purveyors shall:

(i) Monitor in accordance with 40 CFR 141.40(e) and 141.40(j);

(ii) Comply with monitoring methods, frequency and sampling locations in accordance with 40 CFR 141.40(a) through 141.40(d), 141.40(g) and 141.40(i); and

(iii) Perform repeat monitoring for these compounds in accordance with 40 CFR 141.40(l).

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(c) Unregulated SOCs. Purveyors shall:

(i) Monitor for the unregulated SOCs listed in 40 CFR 141.40 (n)(11); and

(ii) Comply with monitoring methods, frequencies, and sampling locations in accordance with 40 CFR 141.40 (n)(1) through 141.40 (n)(9).

Purveyors may request that the department defer this monitoring if a system has less than one hundred fifty service connections.

(d) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of this section whenever they are actively providing water to consumers.

(((~~(9)~~))) (10) Radionuclides. Monitoring for radionuclides shall be conducted in accordance with 40 CFR 141.26.

(((~~(a) The purveyor's monitoring requirements for gross alpha particle activity, radium-226 and radium-228 shall be:~~

~~(i) Community systems shall monitor once every forty-eight months. Compliance shall be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analyses of four samples obtained at quarterly intervals;~~

~~(ii) The purveyor may omit analysis for radium-226 and radium-228 if the gross alpha particle activity is less than five pCi/L; and~~

~~(iii) If the results of the initial analysis are less than half of the established MCL, the department may allow compliance with the monitoring requirements based on analysis of a single sample collected every forty-eight months.~~

~~(b) The purveyor's monitoring requirements for man-made radioactivity shall be:~~

~~(i) Purveyors of community systems using surface water sources and serving more than one hundred thousand persons and other department-designated water systems shall monitor for man-made radioactivity (beta particle and photon) every forty-eight months. Compliance shall be based on the analysis of a composite of four consecutive quarterly samples or the analysis of four quarterly samples; and~~

~~(ii) The purveyor of a water system located downstream from a nuclear facility as determined by the department, shall monitor once every three months for gross beta and iodine-131, and monitor once every twelve months for strontium-90 and tritium. The department may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity if the department determines that such data is applicable to a particular public water system.~~

~~(10)~~))) (11) Other substances.

On the basis of public health concerns, the department may require the purveyor to monitor for additional substances.

TABLE 3
MONITORING LOCATION

Sample Type	Sample Location
Asbestos	One sample from distribution system or if required by department, from the source.
Bacteriological	From representative points throughout distribution system.
Complete Inorganic Chemical & Physical	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Lead/Copper	From the distribution system at targeted sample tap locations.
Nitrate/Nitrite	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Total Trihalomethanes - Surface Water (WAC 246-290-300(6) only)	From points at extreme end, and at intermediate locations, in the distribution system from the source after treatment.
Potential Trihalomethanes -Ground Water (WAC 246-290-300(6) only)	From the source before treatment.
Disinfection By-Products - TTHMs and HAA5 - WAC 246-290-300(7)	In accordance with 40 CFR 141.132 (b)(1).
Disinfection By-Products - Chlorite (Systems adding chlorine dioxide)	In accordance with 40 CFR 141.132 (b)(2).
Disinfection By-Products - Bromate (Systems adding ozone)	In accordance with 40 CFR 141.132 (b)(3).
Disinfectant Residuals - Chlorine and Chloramines	In accordance with 40 CFR 141.132 (c)(1).
Disinfectant Residuals - Chlorine dioxide	In accordance with 40 CFR 141.132 (c)(2).
Disinfection Precursors - Total Organic Carbon (TOC)	In accordance with 40 CFR 141.132(d).
Disinfection Precursors - Bromide (Systems using ozone)	From the source before treatment.
Radionuclides	From the source.
Organic Chemicals (VOCs & SOCs)	From a point representative of the source, after treatment and prior to entry to distribution system.
Other Substances (unregulated chemicals)	From a point representative of the source, after treatment, and prior to entry to the distribution system, or as directed by the department.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-310 Maximum contaminant levels (MCLs) and maximum residual disinfectant levels (MRDLs). (1) General.

(a) The purveyor shall be responsible for complying with the standards of water quality identified in this section. If a substance exceeds its maximum contaminant level (MCL) or

its maximum residual disinfectant level (MRDL), the purveyor shall take follow-up action in accordance with WAC 246-290-320.

(b) When enforcing the standards described under this section, the department shall enforce compliance with the primary standards as its first priority.

(2) Bacteriological.

(a) MCLs under this subsection shall be considered primary standards.

(b) Notwithstanding subsection (1) of this section, if coliform presence is detected in any sample, the purveyor shall take follow-up action in accordance with WAC 246-290-320(2).

(c) Acute MCL. An acute MCL for coliform bacteria occurs when there is:

(i) Fecal coliform presence in a repeat sample;

(ii) *E. coli* presence in a repeat sample; or

(iii) Coliform presence in any repeat samples collected as a follow-up to a sample with fecal coliform or *E. coli* presence.

Note: For the purposes of the public notification requirements in Part 7, Subpart A of this chapter, an acute MCL is a violation that requires Tier 1 public notification.

(d) Nonacute MCL. A nonacute MCL for coliform bacteria occurs when:

(i) Systems taking less than forty routine samples during the month have more than one sample with coliform presence; or

(ii) Systems taking forty or more routine samples during the month have more than 5.0 percent with coliform presence.

(e) MCL compliance. The purveyor shall determine compliance with the coliform MCL for each month the system provides drinking water to the public. In determining MCL compliance, the purveyor shall:

(i) Include:

(A) Routine samples; and

(B) Repeat samples.

(ii) Not include:

(A) Samples invalidated under WAC ((~~246-290-694 (1)(e)~~)) 246-290-320 (2)(d); and

(B) Special purpose samples.

(3) Inorganic chemical and physical.

The primary and secondary MCLs are listed in Table 4 and 5:

TABLE 4
INORGANIC CHEMICAL CHARACTERISTICS

Substance	Primary MCLs (mg/L)
Antimony (Sb)	0.006
Arsenic (As)	0.05
Asbestos	7 million fibers/liter (longer than 10 microns)
Barium (Ba)	2.0
Beryllium (Be)	0.004
Cadmium (Cd)	0.005
Chromium (Cr)	0.1
Copper (Cu)	*
Cyanide (HCN)	0.2
Fluoride (F)	4.0
Lead (Pb)	*
Mercury (Hg)	0.002
Nickel (Ni)	0.1
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Selenium (Se)	0.05
Sodium (Na)	*
Thallium (Tl)	0.002

Substance	Secondary MCLs (mg/L)
Chloride (Cl)	250.0
Fluoride (F)	2.0
Iron (Fe)	0.3
Manganese (Mn)	0.05
Silver (Ag)	0.1
Sulfate (SO_4)	250.0
Zinc (Zn)	5.0

Note* Although the state board of health has not established MCLs for copper, lead, and sodium, there is sufficient public health significance connected with copper, lead, and sodium levels to require inclusion in inorganic chemical and physical source monitoring. For lead and copper, the EPA has established distribution system related levels at which a system is required to consider corrosion control. These levels, called "action levels," are 0.015 mg/L for lead and 1.3 mg/L for copper and are applied to the highest concentration in ten percent of all samples collected from the distribution system. The EPA has also established a recommended level of twenty mg/L for sodium as a level of concern for those consumers that may be restricted for daily sodium intake in their diets.

TABLE 5
PHYSICAL CHARACTERISTICS

Substance	Secondary MCLs
Color	15 Color Units
Specific Conductivity	700 umhos/cm
Total Dissolved Solids (TDS)	500 mg/L

(4) Trihalomethanes.

(a) The department shall consider standards under this subsection primary standards.

(b) The MCL for total trihalomethanes (TTHMs) is 0.10 mg/L calculated on the basis of a running annual average of quarterly samples. The concentrations of each of the trihalomethane compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) are totaled to determine the TTHM level.

(c) There is no MCL for maximum total trihalomethane potential (MTTP). When the MTTP value exceeds 0.10 mg/L, the purveyor shall follow up as described under WAC 246-290-320(6).

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(((~~5~~))) (d) The MCL for total trihalomethanes in this subsection applies only to monitoring required under WAC 246-290-300(6). After December 31, 2003, this section no longer applies to any public water system.

(5) Disinfection by-products.

(a) The department shall consider standards under this subsection as primary standards. The MCLs in this subsection apply to monitoring required by WAC 246-290-300(7).

(b) The MCLs for disinfection by-products are as follows:

Disinfection By-Product	MCL (mg/L)
Total Trihalomethanes (TTHMs)	0.080
Haloacetic acids (five) (HAA5)	0.060
Bromate	0.010
Chlorite	1.0

(c) Whether a system has exceeded MCLs shall be determined in accordance with 40 CFR 141.133.

(6) Disinfectant residuals.

(a) The department shall consider standards under this subsection primary standards. The MRDLs in this subsection apply to monitoring required by WAC 246-290-300(7).

(b) The MRDL for disinfectants is as follows:

Disinfectant Residual	MRDL (mg/L)
Chlorine	4.0 (as Cl_2)
Chloramines	4.0 (as Cl_2)
Chlorine Dioxide	0.8 (as ClO_2)

(c) Whether a system has exceeded MRDLs shall be determined in accordance with 40 CFR 141.133.

(7) Radionuclides.

(a) The department shall consider standards under this subsection primary standards.

(b) The MCLs for radium-226((~~,~~)) and radium-228, ((~~and~~)) gross alpha particle activity, beta particle and photon radioactivity ((~~are:~~)), and uranium shall be as listed in 40 CFR 141.66.

((~~TABLE 6~~

~~Substance~~	~~MCL (pCi/L)~~
~~Radium-226~~	~~3~~
~~Combined Radium-226 and Radium-228~~	~~5~~
~~Gross alpha particle activity (excluding uranium)~~	~~15~~

~~(c) The MCL for beta particle and photon radioactivity from man-made radionuclides is: The average annual concentration shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.~~

~~NOTE: The department shall assume compliance with the four millirem/year dose limitation if the average annual concentration for gross beta activity, tritium, and strontium-90 are less than 50 pCi/L, 20,000 pCi/L, and 8 pCi/L respectively. When both tritium and strontium-90 are present, the sum of their annual dose equivalents to bone marrow shall not exceed four millirem/year.~~

~~(6)~~))) (8) Organic chemicals.

(a) The department shall consider standards under this subsection primary standards.

(b) VOCs.

(i) The MCLs for VOCs shall be as listed in 40 CFR 141.61(a).

(ii) The department shall determine compliance with this subsection based on compliance with 40 CFR 141.24(f).

(c) SOCs.

(i) MCLs for SOCs shall be as listed in 40 CFR 141.61(c).

(ii) The department shall determine compliance with this subsection based on compliance with 40 CFR 141.24(h).

(((~~7~~))) (9) Other chemicals.

(a) The state board of health shall determine maximum contaminant levels for any additional substances.

(b) Purveyors may be directed by the department to comply with state advisory levels (SALs) for contaminants that do not have a MCL established in chapter 246-290 WAC. SALs shall be:

(i) MCLs that have been promulgated by the EPA, but which have not yet been adopted by the state board of health; or

(ii) State board of health adopted levels for substances recommended by the department and not having an EPA established MCL. A listing of these may be found in the department document titled *Procedures and References for the Determination of State Advisory Levels for Drinking Water Contaminants* dated June 1996, that has been approved by the state board of health and is available.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-320 Follow-up action. (1) General.

(a) When an MCL or MRDL violation occurs, the purveyor shall take follow-up action as described in this section.

(b) When a primary standard violation occurs, the purveyor shall:

(i) Notify the department in accordance with WAC 246-290-480;

(ii) Notify the consumers served by the system and the owner or operator of any consecutive system served in accordance with ((~~WAC 246-290-495~~)) 40 CFR 141.201 through 208, and Part 7, Subpart A of this chapter;

(iii) Determine the cause of the contamination; and

(iv) Take action as directed by the department.

(c) When a secondary standard violation occurs, the purveyor shall notify the department and take action as directed by the department.

(d) The department may require additional sampling for confirmation of results.

(2) Bacteriological.

(a) When coliform bacteria are present in any sample and the sample is not invalidated under (d) of this subsection, the purveyor shall ensure the following actions are taken:

(i) The sample is analyzed for fecal coliform or E. coli. When a sample with a coliform presence is not analyzed for E. coli or fecal coliforms, the sample shall be considered as having a fecal coliform presence for MCL compliance purposes;

(ii) Repeat samples are collected in accordance with (b) of this subsection;

(iii) The department is notified in accordance with WAC 246-290-480; and

(iv) The cause of the coliform presence is determined and corrected.

(b) Repeat samples.

(i) The purveyor shall collect repeat samples in order to confirm the original sample results and to determine the cause of the coliform presence. Additional treatment, such as batch or shock chlorination, shall not be instituted prior to the collection of repeat samples unless prior authorization ((~~is given~~)) by the department is given. Following collection of repeat samples, and before the analytical results are known, there may be a need to provide interim precautionary treatment or other means to insure public health protection. The purveyor shall contact the department to determine the best interim approach in this situation.

(ii) The purveyor shall collect and submit for analysis a set of repeat samples for every sample in which the presence of coliforms is detected. A set of repeat coliform samples consists of:

(A) Four repeat samples for systems collecting one routine coliform sample each month; or

(B) Three repeat samples for all systems collecting more than one routine coliform sample each month.

(iii) The purveyor shall collect repeat sample sets according to Table 7;

(iv) The purveyor shall collect one set of repeat samples for each sample with a coliform presence. All samples in a set of repeat samples shall be collected on the same day and submitted for analysis within twenty-four hours after notification by the laboratory of a coliform presence, or as directed by the department.

(v) When repeat samples have coliform presence, the purveyor shall:

(A) Contact the department and collect a minimum of one additional set of repeat samples as directed by the department; or

(B) Collect one additional set of repeat samples for each sample where coliform presence was detected.

(vi) The purveyor of a system providing water to consumers via a single service shall collect repeat samples from the same location as the sample with a coliform presence. The set of repeat samples shall be collected:

(A) On the same collection date;

(B) Over consecutive days with one sample collected each day until the required samples in the set of repeat samples are collected; or

(C) As directed by the department.

(vii) If a sample with a coliform presence was collected from the first two or last two active services, the purveyor shall monitor as directed by the department;

(viii) The purveyor may change a previously submitted routine sample to a sample in a set of repeat samples when the purveyor:

(A) Collects the sample within five adjacent service connections of the location from which the initial sample with a coliform presence was collected;

(B) Collects the sample after the initial sample with a coliform presence was submitted for analysis;

(C) Collects the sample on the same day as other samples in the set of repeat samples, except under (b)(iv) of this subsection; and

(D) Requests and receives approval from the department for the change.

(ix) The department may determine that sets of repeat samples specified under this subsection are not necessary during a month when a nonacute coliform MCL violation is determined for the system.

Table 7

REPEAT SAMPLE REQUIREMENTS

# OF ROUTINE SAMPLES COLLECTED EACH MONTH	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
1	4	♦ Site of previous sample with a coliform presence ♦ Within 5 active services upstream of site of sample with a coliform presence ♦ Within 5 active services downstream of site of sample with a coliform presence ♦ At any other active service or from a location most susceptible to contamination (i.e., well or reservoir)
more than 1	3	♦ Site of previous sample with a coliform presence ♦ Within 5 active services upstream of site of sample with a coliform presence ♦ Within 5 active services downstream of site of sample with a coliform presence

(c) Monitoring frequency following a coliform presence. Systems having one or more coliform presence samples that were not invalidated during the previous month shall collect and submit for analysis the minimum number of samples shown in the last column of Table 2.

(i) The purveyor may obtain a reduction in the monitoring frequency requirement when one or more samples with a coliform presence were collected during the previous month, if the purveyor proves to the satisfaction of the department;

(A) The cause of the sample with a coliform presence; and

(B) The problem is corrected before the end of the next month the system provides water to the public.

(ii) If the monitoring frequency requirement is reduced, the purveyor shall collect and submit at least the minimum number of samples required when no samples with a coliform presence were collected during the previous month.

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(d) Invalid samples. Coliform samples may be determined to be invalid under any of the following conditions:

(i) A certified laboratory determines that the sample results show:

(A) Multiple tube technique cultures that are turbid without appropriate gas production;

(B) Presence-absence technique cultures that are turbid in the absence of an acid reaction;

(C) Occurrence of confluent growth patterns or growth of TNTC (too numerous to count) colonies without a surface sheen using a membrane filter analytic technique;

(ii) The analyzing laboratory determines there is excess debris in the sample.

(iii) The analyzing laboratory establishes that improper sample collection or analysis occurred;

(iv) The department determines that a nondistribution system problem has occurred as indicated by:

(A) All samples in the set of repeat samples collected at the same location, including households, as the original coliform presence sample also are coliform presence; and

(B) All other samples from different locations (households, etc.) in the set of repeat samples are free of coliform.

(v) The department determines a coliform presence result is due to a circumstance or condition that does not reflect water quality in the distribution system.

(e) Follow-up action when an invalid sample is determined. The purveyor shall take the following action when a coliform sample is determined to be invalid:

(i) Collect and submit for analysis an additional coliform sample from the same location as each invalid sample within twenty-four hours of notification of the invalid sample; or

(ii) In the event that it is determined that the invalid sample resulted from circumstances or conditions not reflective of distribution system water quality, collect a set of samples in accordance with Table 7; and

(iii) Collect and submit for analysis samples as directed by the department.

(f) Invalidated samples shall not be included in determination of the sample collection requirement for compliance with this chapter.

(3) Inorganic chemical and physical follow-up monitoring shall be conducted in accordance with the following:

(a) For nonnitrate/nitrite primary inorganic chemicals, 40 CFR 141.23 (a)(4), 141.23 (b)(8), 141.23 (c)(7), 141.23 (f)(1), 141.23(g), 141.23(m) and 141.23(n);

(b) For nitrate, 40 CFR 141.23 (a)(4), 141.23 (d)(2), 141.23 (d)(3), 141.23 (f)(2), 141.23(g), 141.23(m), 141.23(n), and 141.23(o);

(c) For nitrite, 40 CFR 141.23 (a)(4), 141.23 (e)(3), 141.23 (f)(2), and 141.23(g); or

(d) The purveyor of any public water system providing service that has secondary inorganic MCL exceedances shall take follow-up action as required by the department. Follow-up action shall be commensurate with the degree of consumer acceptance of the water quality and their willingness to bear the costs of meeting the secondary standard. For new community water systems and new nontransient noncommunity water systems without active consumers, treatment for secondary contaminant MCL exceedances will be required.

(4) Lead and copper follow-up monitoring shall be conducted in accordance with 40 CFR 141.85(d), 141.86 (d)(2), 141.86 (d)(3), 141.87(d) and 141.88(b) through 141.88(d).

(5) Turbidity.

Purveyors monitoring turbidity in accordance with Part 6 of this chapter shall provide follow-up in accordance with WAC 246-290-634.

(6) Trihalomethanes. For public water systems subject to WAC 246-290-300(6):

(a) When the average of all samples taken during any twelve-month period exceeds the MCL for total trihalomethanes as referenced in WAC 246-290-310 (4)(b), the violation is confirmed and the purveyor shall take corrective action as required by the department, and consistent with 40 CFR 141.30 (b)(3). When the maximum trihalomethane potential (MTTP) result is equal to or greater than 0.10 mg/L and the result is confirmed by a promptly collected repeat sample, the purveyor shall provide for additional monitoring and take action as directed by the department.

(7) Organic chemicals. Follow-up monitoring shall be conducted in accordance with the following:

(a) For VOCs, 40 CFR 141.24 (f)(11) through 141.24 (f)(15); or

(b) For SOCs, 40 CFR 141.24(b), 141.24(c) and 141.24 (h)(7) through 141.24 (h)(11).

(8) Unregulated inorganic and organic chemicals.

(a) Follow-up monitoring shall be conducted in accordance with 40 CFR 141.40 (n)(8) and 141.40 (n)(9).

(b) When an unregulated chemical is verified at a concentration above the detection limit, the purveyor shall:

(i) Submit the sample analysis results to the department within seven days of receipt from the laboratory; and

(ii) Sample the source a minimum of once every three months for one year and then annually thereafter during the three-month period when the highest previous measurement occurred.

(c) If the department determines that an unregulated chemical is verified at a level greater than a SAL, the department shall notify the purveyor in writing. The purveyor shall repeat sample the source as soon as possible after initial department notice that a SAL has been exceeded. The purveyor shall submit the analysis results to the department within seven days of receipt from the laboratory. If any repeat sample confirms that a SAL has been exceeded, the purveyor shall:

(i) Provide consumer information in accordance with ((~~WAC 246-290-495~~)) Part 7, Subpart A of this chapter;

(ii) Investigate the cause of the contamination; and

(iii) Take follow-up or corrective action as required by the department.

(d) The department may reduce the purveyor's monitoring requirement for a source detecting an unregulated chemical if the source has been monitored annually for at least three years, and all analysis results are less than the SAL.

(9) Radionuclide follow-up monitoring shall be conducted in accordance with 40 CFR 141.26 (a)(2)(iv), 141.26 (a)(3)(ii) through (v), 141.26 (a)(4), 141.26 (b)(6), and 141.26 (c)(5).

(10) The department shall determine the purveyor's follow-up action when a substance not included in this chapter is detected.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-416 Sanitary surveys. (1) All public water systems shall submit to a sanitary survey conducted by the department, or the department's designee, based upon the following schedule:

(a) For community and nontransient noncommunity water systems, every five years, or more frequently as determined by the department. The sanitary surveys shall be consistent with the schedules presented in 40 CFR 141.21; and

(b) For transient noncommunity water systems, every five years unless the system uses only disinfected ground water and has an approved wellhead protection program, in which case the survey shall be every ten years. The sanitary surveys shall be conducted consistent with schedules presented in 40 CFR 141.21.

(c) For community public water systems that use a surface water or GWI source, every three years. Surveys may be reduced to every five years upon written approval from the department.

(2) All public water system purveyors shall be responsible for:

(a) Ensuring cooperation in scheduling sanitary surveys with the department, or its designee; and

(b) Ensuring the unrestricted availability of all facilities and records at the time of the sanitary survey.

(3) All public water systems that use a surface water or GWI source shall:

(a) Correct deficiencies identified by the department as significant in a written sanitary survey report.

(b) Within forty-five days following receipt of a sanitary survey report that identifies significant deficiencies, identify in writing to the department how the system will correct the deficiencies and propose a schedule to complete the corrections. The department may modify the schedule if necessary to protect the health of water system users.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-451 Disinfection of drinking water. (1) No portion of a public water system containing potable water shall be put into service, nor shall service be resumed until the facility has been effectively disinfected.

(a) In cases of new construction, drinking water shall not be furnished to the consumer until satisfactory bacteriological samples have been analyzed by a laboratory certified by the state; and

(b) In cases of existing water mains, when the integrity of the main is lost resulting in a significant loss of pressure that places the main at risk to cross-connection contamination, the purveyor shall use standard industry practices such as flushing, disinfection, and/or bacteriological sampling to ensure adequate and safe water quality prior to the return of the line to service;

(c) If a cross-connection is confirmed, the purveyor shall satisfy the reporting requirements as described under WAC 246-290-490(8).

(2) The procedure used for disinfection shall conform to standards published by the American Water Works Association, or other industry standards acceptable to the department.

(3) The purveyor of a system using ground water and required to disinfect, shall meet the following disinfection requirements, unless otherwise directed by the department:

(a) Minimum contact time at a point at or before the first consumer of:

(i) Thirty minutes if 0.2 mg/L free chlorine residual is maintained;

(ii) Ten minutes if 0.6 mg/L free chlorine residual is maintained; or

(iii) Any combination of free chlorine residual concentration (C), measured in mg/L, and contact time (T), measured in minutes, that results in a CT product (C X T) of greater than or equal to six; or

(iv) Contact time (T) for surface water or GWI sources shall be determined in accordance with WAC 246-290-636.

(b) Detectable residual disinfectant concentration in all active parts of the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide;

(c) Water in the distribution system with an HPC level less than or equal to 500 organisms/mL is considered to have a detectable residual disinfectant concentration.

(4) The department may require the purveyor to provide longer contact times, higher chlorine residuals, or additional treatment to protect the health of consumers served by the public water system.

(5) The purveyor of a system using surface water or GWI shall meet disinfection requirements specified in Part 6 of this chapter.

(6) The purveyor of a system ((~~providing ground water disinfection~~)) adding a chemical disinfectant shall monitor residual disinfectant concentration at representative points in the system on a daily basis, and at the same time and location of routine and repeat coliform sample collection. Frequency of disinfection residual monitoring may be reduced upon written request to the department if it can be shown that disinfection residuals can be maintained on a reliable basis without the provision of daily monitoring, but shall be no less frequent than specified in WAC 246-290-300 (3)(a)(i).

(7) The analyses shall be conducted in accordance with "standard methods." To assure adequate monitoring of chlorine residual, the department may require the use of continuous chlorine residual analyzers and recorders.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-480 Recordkeeping and reporting. (1) Records. The purveyor shall keep the following records of operation and water quality analyses:

(a) Bacteriological and turbidity analysis results shall be kept for five years. Chemical analysis results shall be kept for as long as the system is in operation. Records of daily source meter readings shall be kept for ten years. Other records of operation and analyses required by the department shall be

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kept for three years. All records shall bear the signature of the operator in responsible charge of the water system or his or her representative. Systems shall keep these records available for inspection by the department and shall send the records to the department if requested. Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(i) The date, place, and time of sampling, and the name of the person collecting the sample;

(ii) Identification of the sample type (routine distribution system sample, repeat sample, source or finished water sample, or other special purpose sample);

(iii) Date of analysis;

(iv) Laboratory and person responsible for performing analysis;

(v) The analytical method used; and

(vi) The results of the analysis.

(b) Records of action taken by the system to correct violations of primary drinking water standards. For each violation, records of actions taken to correct the violation, and copies of public notifications shall be kept for no less than three years after the last corrective action taken.

(c) Copies of any written reports, summaries, or communications relating to sanitary surveys or SPIs of the system conducted by system personnel, by a consultant or by any local, state, or federal agency, shall be kept for ten years after completion of the sanitary survey or SPI involved.

(d) Copies of project reports, construction documents and related drawings, inspection reports and approvals shall be kept for the life of the facility.

(e) Where applicable, daily records of the following shall be kept for a minimum of three years:

(i) Chlorine residual;

(ii) Fluoride level;

(iii) Water treatment plant performance including, but not limited to:

(A) Type of chemicals used and quantity;

(B) Amount of water treated; and

(C) Results of analyses.

(iv) Turbidity;

(v) Source meter readings; and

(vi) Other information as specified by the department.

(f) The purveyor shall retain copies of public notices made in accordance with Part 7, Subpart A of this chapter and certifications made to the department under 40 CFR 141.33 (e) for a period of at least three years after issuance.

(g) Purveyors using conventional, direct, or in-line filtration that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within their treatment plant shall, beginning no later than June 8, 2004, collect and retain on file the following information for review and evaluation by the department:

(i) A copy of the recycle notification and information submitted to the department in accordance with WAC 246-290-660 (4)(a)(i).

(ii) A list of all recycle flows and the frequency with which they are returned.

(iii) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(iv) Typical filter run length and a written summary of how filter run length is determined.

(v) The type of treatment provided for the recycle flow.

(vi) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(2) Reporting.

(a) Unless otherwise specified in this chapter, the purveyor shall report to the department within forty-eight hours((:

~~(i) The failure to comply with the primary standards or treatment technique requirements under this chapter;~~

~~(ii) The failure to comply with the monitoring requirements under this chapter; and~~

~~(iii) The violation of a primary MCL~~)) the failure to comply with any national primary drinking water regulation (including failure to comply with any monitoring requirements) as set forth in this chapter. For violations assigned to Tier 1 in WAC 246-290-71001, the department must be notified as soon as possible, but no later than twenty-four hours after the violation is known.

(b) The purveyor shall submit to the department reports required by this chapter, including tests, measurements, and analytic reports. Monthly reports are due before the tenth day of the following month, unless otherwise specified in this chapter.

(c) The purveyor shall submit to the department copies of any written summaries or communications relating to the status of monitoring waivers during each monitoring cycle or as directed by the department.

(d) Source meter readings shall be made available to the department.

(e) Water facilities inventory form (WFI).

(i) Purveyors of **community** and **NTNC** systems shall submit an annual WFI update to the department;

(ii) Purveyors of **TNC** systems shall submit an updated WFI to the department as requested;

(iii) Purveyors shall submit an updated WFI to the department within thirty days of any change in name, category, ownership, or responsibility for management of the water system, or addition of source or storage facilities; and

(iv) At a minimum the completed WFI shall provide the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system.

(v) Purveyors shall provide in the WFI total annual water production and use, including:

(i) Total annual water production for each source;

(ii) Monthly and annual totals for water purchased from or sold to other purveyors; and

(iii) For purveyors with more than one thousand service connections, monthly and annual totals for purveyor consumer classes. Monthly data may be estimated if the water system bills less frequently than monthly.

(f) Bacteriological.

(i) The purveyor shall notify the department of the presence of:

(A) Coliform in a sample, within ten days of notification by the laboratory; and

(B) Fecal coliform or E. coli in a sample, by the end of the business day in which the purveyor is notified by the laboratory. If the purveyor is notified of the results after normal close of business, then the purveyor shall notify the department before the end of the next business day.

~~(((ii) When a coliform MCL violation is determined, the purveyor shall:~~

~~(A) Notify the department within twenty-four hours of determining acute coliform MCL violations; and~~

~~(B) Notify the department before the end of the next business day when a nonacute coliform MCL is determined.~~))

(g) Systems monitoring for unregulated ((~~VOCs~~)) contaminants in accordance with WAC 246-290-300 ((~~(8)(b)~~)) (9), shall send a copy of the results of such monitoring ((~~and any public notice~~)) to the department within thirty days of receipt of analytical results.

(h) Systems monitoring for disinfection by-products in accordance with WAC 246-290-300(7) shall report information to the department as specified in 40 CFR 141.134.

(i) Systems monitoring for disinfectant residuals in accordance with WAC 246-290-300(7) shall report information to the department as specified in subsection (2)(a) of this section, and 40 CFR 141.134(c).

(j) Systems required to monitor for disinfection by-product precursor removal in accordance with WAC 246-290-300(7) shall report information to the department as specified in 40 CFR 141.134(d).

(k) Systems shall submit to the department, in accordance with 40 CFR 141.31(d), a certification that the system has complied with the public notification regulations (Part 7, Subpart A of this chapter) when a public notification is required. Along with the certification, the system shall submit a representative copy of each type of notice.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-490 Cross-connection control. (1) Applicability, purpose, and responsibility.

(a) All community water systems shall comply with the cross-connection control requirements specified in this section.

(b) All noncommunity water systems shall apply the principles and provisions of this section, including subsection (4)(b) of this section, as applicable to protect the public water system from contamination via cross-connections. Noncommunity systems that comply with subsection (4)(b) of this section and the provisions of WAC ((~~51-46-0603~~)) 51-56-0600 of the UPC (which addresses the installation of backflow preventers at points of water use within the potable water system) shall be considered in compliance with the requirements of this section.

(c) The purpose of the purveyor's cross-connection control program shall be to protect the public water system, as defined in WAC 246-290-010, from contamination via cross-connections.

(d) The purveyor's responsibility for cross-connection control shall begin at the water supply source, include all the public water treatment, storage, and distribution facilities, and end at the point of delivery to the consumer's water system, which begins at the downstream end of the service connection or water meter located on the public right-of-way or utility-held easement.

(e) Under the provisions of this section, purveyors are not responsible for eliminating or controlling cross-connections within the consumer's water system. Under chapter 19.27 RCW, the responsibility for cross-connection control within the consumer's water system, i.e., within the property lines of the consumer's premises, falls under the jurisdiction of the local administrative authority.

(2) General program requirements.

(a) The purveyor shall develop and implement a cross-connection control program that meets the requirements of this section, but may establish a more stringent program through local ordinances, resolutions, codes, bylaws, or operating rules.

(b) Purveyors shall ensure that good engineering and public health protection practices are used in the development and implementation of cross-connection control programs. Department publications and the most recently published editions of references, such as, but not limited to, those listed below, may be used as guidance for cross-connection program development and implementation:

(i) *Manual of Cross-Connection Control* published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (USC Manual); or

(ii) *Cross-Connection Control Manual, Accepted Procedure and Practice* published by the Pacific Northwest Section of the American Water Works Association (PNWS-AWWA Manual).

(c) The purveyor may implement the cross-connection control program, or any portion thereof, directly or by means of a contract with another agency or party acceptable to the department.

(d) The purveyor shall coordinate with the local administrative authority in all matters concerning cross-connection control. The purveyor shall document and describe such coordination, including delineation of responsibilities, in the written cross-connection control program required in (e) of this subsection.

(e) The purveyor shall include a written description of the cross-connection control program in the water system plan required under WAC 246-290-100 or the small water system management program required under WAC 246-290-105. The cross-connection control program shall include the minimum program elements described in subsection (3) of this section.

(f) The purveyor shall ensure that cross-connections between the distribution system and a consumer's water system are eliminated or controlled by the installation of an approved backflow preventer commensurate with the degree of hazard. This can be accomplished by implementation of a cross-connection program that relies on:

(i) Premises isolation as defined in WAC 246-290-010; or

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(ii) Premises isolation and in-premises protection as defined in WAC 246-290-010.

(g) Purveyors with cross-connection control programs that rely both on premises isolation and in-premises protection:

(i) Shall comply with the premises isolation requirements specified in subsection (4)(b) of this section; and

(ii) May reduce premises isolation requirements and rely on in-premises protection for premises other than the type not addressed in subsection (4)(b) of this section, if the conditions in (h) of this subsection are met.

(h) Purveyors may rely on in-premises protection only when the following conditions are met:

(i) The in-premises backflow preventers provide a level of protection commensurate with the purveyor's assessed degree of hazard;

(ii) Backflow preventers which provide the in-premises backflow protection meet the definition of approved backflow preventers as described in WAC 246-290-010;

(iii) The approved backflow preventers are installed, inspected, tested (if applicable), maintained, and repaired in accordance with subsections (6) and (7) of this section;

(iv) Records of such backflow preventers are maintained in accordance with subsections (3)(j) and (8) of this section; and

(v) The purveyor has reasonable access to the consumer's premises to conduct an initial hazard evaluation and periodic reevaluations to determine whether the in-premises protection is adequate to protect the purveyor's distribution system.

(i) The purveyor shall take appropriate corrective action within its authority if:

(i) A cross-connection exists that is not controlled commensurate to the degree of hazard assessed by the purveyor; or

(ii) A consumer fails to comply with the purveyor's requirements regarding the installation, inspection, testing, maintenance or repair of approved backflow preventers required by this chapter.

(j) The purveyor's corrective action may include, but is not limited to:

(i) Denying or discontinuing water service to a consumer's premises until the cross-connection hazard is eliminated or controlled to the satisfaction of the purveyor;

(ii) Requiring the consumer to install an approved backflow preventer for premises isolation commensurate with the degree of hazard; or

(iii) The purveyor installing an approved backflow preventer for premises isolation commensurate with the degree of hazard.

(k) Purveyors denying or discontinuing water service to a consumer's premises for one or more of the reasons listed in (i) of this subsection shall notify the local administrative authority prior to taking such action except in the event of an emergency.

(l) The purveyor shall prohibit the intentional return of used water to the purveyor's distribution system. Such water would include, but is not limited to, water used for heating, cooling, or other purposes within the consumer's water system.

(3) Minimum elements of a cross-connection control program.

(a) To be acceptable to the department, the purveyor's cross-connection control program shall include the minimum elements identified in this subsection.

(b) Element 1: The purveyor shall adopt a local ordinance, resolution, code, bylaw, or other written legal instrument that:

(i) Establishes the purveyor's legal authority to implement a cross-connection control program;

(ii) Describes the operating policies and technical provisions of the purveyor's cross-connection control program; and

(iii) Describes the corrective actions used to ensure that consumers comply with the purveyor's cross-connection control requirements.

(c) Element 2: The purveyor shall develop and implement procedures and schedules for evaluating new and existing service connections to assess the degree of hazard posed by the consumer's premises to the purveyor's distribution system and notifying the consumer within a reasonable time frame of the hazard evaluation results. At a minimum, the program shall meet the following:

(i) For new connections made on or after the effective date of these regulations, procedures shall ensure that an initial evaluation is conducted before service is provided;

(ii) For existing connections made prior to the effective date of these regulations, procedures shall ensure that an initial evaluation is conducted in accordance with a schedule acceptable to the department; and

(iii) For all service connections, once an initial evaluation has been conducted, procedures shall ensure that periodic reevaluations are conducted in accordance with a schedule acceptable to the department and whenever there is a change in the use of the premises.

(d) Element 3: The purveyor shall develop and implement procedures and schedules for ensuring that:

(i) Cross-connections are eliminated whenever possible;

(ii) When cross-connections cannot be eliminated, they are controlled by installation of approved backflow preventers commensurate with the degree of hazard; and

(iii) Approved backflow preventers are installed in accordance with the requirements of subsection (6) of this section.

(e) Element 4: The purveyor shall ensure that personnel, including at least one person certified as a CCS, are provided to develop and implement the cross-connection control program.

(f) Element 5: The purveyor shall develop and implement procedures to ensure that approved backflow preventers are inspected and/or tested (as applicable) in accordance with subsection (7) of this section.

(g) Element 6: The purveyor shall develop and implement a backflow prevention assembly testing quality control assurance program, including, but not limited to, documentation of tester certification and test kit calibration, test report contents, and time frames for submitting completed test reports.

(h) Element 7: The purveyor shall develop and implement (when appropriate) procedures for responding to backflow incidents.

(i) Element 8: The purveyor shall include information on cross-connection control in the purveyor's existing program for educating consumers about water system operation. Such a program may include periodic bill inserts, public service announcements, pamphlet distribution, notification of new consumers and consumer confidence reports.

(j) Element 9: The purveyor shall develop and maintain cross-connection control records including, but not limited to, the following:

(i) A master list of service connections and/or consumer's premises where the purveyor relies upon approved backflow preventers to protect the public water system from contamination, the assessed hazard level of each, and the required backflow preventer(s);

(ii) Inventory information on:

(A) Approved air gaps installed in lieu of approved assemblies including exact air gap location, assessed degree of hazard, installation date, history of inspections, inspection results, and person conducting inspections;

(B) Approved backflow assemblies including exact assembly location, assembly description (type, manufacturer, model, size, and serial number), assessed degree of hazard, installation date, history of inspections, tests and repairs, test results, and person performing tests; and

(C) Approved AVBs used for irrigation system applications including location, description (manufacturer, model, and size), installation date, history of inspection(s), and person performing inspection(s).

(iii) Cross-connection program summary reports and backflow incident reports required under subsection (8) of this section.

(k) Element 10: Purveyors who distribute and/or have facilities that receive reclaimed water within their water service area shall meet any additional cross-connection control requirements imposed by the department under a permit issued in accordance with chapter 90.46 RCW.

(4) Approved backflow preventer selection.

(a) The purveyor shall ensure that a CCS:

(i) Assesses the degree of hazard posed by the consumer's water system upon the purveyor's distribution system; and

(ii) Determines the appropriate method of backflow protection for premises isolation in accordance with Table 8.

TABLE 8

APPROPRIATE METHODS OF BACKFLOW PROTECTION FOR PREMISES ISOLATION

Degree of Hazard	Application Condition	Appropriate Approved Backflow Preventer
High health cross-connection hazard	Backsiphonage or backpressure backflow	AG, RPBA, or RPDA
Low health cross-connection hazard	Backsiphonage or backpressure backflow	AG, RPBA, RPDA, DCVA, or DCDA

(b) Premises isolation requirements.

(i) For service connections with remises posing a high health cross-connection hazard including, but not limited to, those premises listed in Table 9, the purveyor shall ensure that an approved air gap or RPBA is installed for premises isolation.

(ii) If the purveyor's CCS determines that no hazard exists for a connection serving premises of the type listed in Table 9, the requirements of (b)(i) of this subsection do not apply.

(iii) The purveyor shall document, on a case-by-case basis, the reasons for not applying the requirements of (b)(i) of this subsection to a connection serving premises of the type listed in Table 9 and include such documentation in the cross-connection control program summary report required in subsection (8) of this section.

TABLE 9

HIGH HEALTH CROSS-CONNECTION HAZARD PREMISES REQUIRING PREMISES ISOLATION BY AG OR RPBA

Agricultural (farms and dairies)

Beverage bottling plants

Car washes

Chemical plants

Commercial laundries and dry cleaners

Premises where both reclaimed water and potable water are provided

Film processing facilities

Food processing plants

Hospitals, medical centers, nursing homes, veterinary, medical and dental clinics, and blood plasma centers

Premises with separate irrigation systems using the purveyor's water supply and with chemical addition+

Laboratories

Metal plating industries

Mortuaries

Petroleum processing or storage plants

Piers and docks

Radioactive material processing plants or nuclear reactors*

Survey access denied or restricted

Wastewater lift stations and pumping stations

Wastewater treatment plants*

Premises with an unapproved auxiliary water supply interconnected with the potable water supply

+ For example, parks, playgrounds, golf courses, cemeteries, estates, etc.

* RPBAs for connections serving these premises are acceptable only when used in combination with an in-plant approved air gap; otherwise, the purveyor shall require an approved air gap at the service connection.

(c) Backflow protection for single-family residences.

(i) For single-family residential service connections, the purveyor shall comply with the requirements of (b) of this subsection when applicable.

(ii) If the requirements of (b) of this subsection do not apply and the requirements specified in subsection (2)(h) of this section are met, the purveyor may rely on backflow pro-

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tection provided at the point of hazard in accordance with WAC ((~~51-46-0603~~)) 51-56-0600 of the UPC for hazards such as, but not limited to:

(A) Irrigation systems;

(B) Swimming pools or spas;

(C) Ponds; and

(D) Boilers.

For example, the purveyor may accept an approved AVB on a residential irrigation system, if the AVB is properly installed in accordance with the UPC.

(d) Backflow protection for fire protection systems.

(i) Backflow protection is not required for residential flow-through or combination fire protection systems constructed of potable water piping and materials.

(ii) For service connections with fire protection systems other than flow-through or combination systems, the purveyor shall ensure that backflow protection consistent with WAC ((~~51-46-0603~~)) 51-56-0600 of the UPC is installed. The UPC requires minimum protection as follows:

(A) An RPBA or RPDA for fire protection systems with chemical addition or using unapproved auxiliary water supply; and

(B) A DCVA or DCDA for all other fire protection systems.

(iii) For new connections made on or after the effective date of these regulations, the purveyor shall ensure that backflow protection is installed before water service is provided.

(iv) For existing fire protection systems:

(A) With chemical addition or using unapproved auxiliary supplies, the purveyor shall ensure that backflow protection is installed within ninety days of the purveyor notifying the consumer of the high health cross-connection hazard or in accordance with an alternate schedule acceptable to the purveyor.

(B) Without chemical addition, without on-site storage, and using only the purveyor's water (i.e., no unapproved auxiliary supplies on or available to the premises), the purveyor shall ensure that backflow protection is installed in accordance with a schedule acceptable to the purveyor or at an earlier date if required by the agency administering the Uniform Building Code as adopted under chapter 19.27 RCW.

(C) When establishing backflow protection retrofitting schedules for fire protection systems that have the characteristics listed in (d)(iv)(B) of this subsection, the purveyor may consider factors such as, but not limited to, impacts of assembly installation on sprinkler performance, costs of retrofitting, and difficulty of assembly installation.

(e) Purveyors may require backflow preventers commensurate with the degree of hazard determined by the purveyor to be installed for premises isolation for connections serving premises that have characteristics such as, but not limited to, the following:

(i) Complex plumbing arrangements or plumbing potentially subject to frequent changes that make it impracticable to assess whether cross-connection hazards exist;

(ii) A repeated history of cross-connections being established or reestablished; or

(iii) Cross-connection hazards are unavoidable or not correctable, such as, but not limited to, tall buildings.

(5) Approved backflow preventers.

(a) The purveyor shall ensure that all backflow prevention assemblies relied upon by the purveyor are models included on the current list of backflow prevention assemblies approved for use in Washington state. The current approved assemblies list is available from the department upon request.

(b) The purveyor may rely on testable backflow prevention assemblies that are not currently approved by the department, if the assemblies:

(i) Were included on the department and/or USC list of approved backflow prevention assemblies at the time of installation;

(ii) Have been properly maintained;

(iii) Are commensurate with the purveyor's assessed degree of hazard; and

(iv) Have been inspected and tested at least annually and have successfully passed the annual tests.

(c) The purveyor shall ensure that an unlisted backflow prevention assembly is replaced by an approved assembly commensurate with the degree of hazard, when the unlisted assembly:

(i) Does not meet the conditions specified in (b)(i) through (iv) of this subsection;

(ii) Is moved; or

(iii) Cannot be repaired using spare parts from the original manufacturer.

(d) The purveyor shall ensure that AVBs meet the definition of approved atmospheric vacuum breakers as described in WAC 246-290-010.

(6) Approved backflow preventer installation.

(a) The purveyor shall ensure that approved backflow preventers are installed in the orientation for which they are approved (if applicable).

(b) The purveyor shall ensure that approved backflow preventers are installed in a manner that:

(i) Facilitates their proper operation, maintenance, inspection, and/or in-line testing (as applicable) using standard installation procedures acceptable to the department such as those in the USC Manual or PNWS-AWWA Manual;

(ii) Ensures that the assembly will not become submerged due to weather-related conditions such as flooding; and

(iii) Ensures compliance with all applicable safety regulations.

(c) The purveyor shall ensure that approved backflow assemblies for premises isolation are installed at a location adjacent to the meter or property line or an alternate location acceptable to the purveyor.

(d) When premises isolation assemblies are installed at an alternate location acceptable to the purveyor, the purveyor shall ensure that there are no connections between the point of delivery from the public water system and the approved backflow assembly, unless the installation of such a connection meets the purveyor's cross-connection control requirements and is specifically approved by the purveyor.

(e) The purveyor shall ensure that approved backflow preventers are installed in accordance with the following time frames:

(i) For new connections made on or after the effective date of these regulations, the following conditions shall be met before service is provided:

(A) The provisions of subsection (3)(d)(ii) of this section; and

(B) Satisfactory completion of a test by a BAT in accordance with subsection (7) of this section.

(ii) For existing connections where the purveyor identifies a high health cross-connection hazard, the provisions of (3)(d)(ii) of this section shall be met:

(A) Within ninety days of the purveyor notifying the consumer of the high health cross-connection hazard; or

(B) In accordance with an alternate schedule acceptable to the purveyor.

(iii) For existing connections where the purveyor identifies a low health cross-connection hazard, the provisions of subsection (3)(d)(ii) of this section shall be met in accordance with a schedule acceptable to the purveyor.

(f) The purveyor shall ensure that bypass piping installed around any approved backflow preventer is equipped with an approved backflow preventer that:

(i) Affords at least the same level of protection as the approved backflow preventer that is being bypassed; and

(ii) Complies with all applicable requirements of this section.

(7) Approved backflow preventer inspection and testing.

(a) The purveyor shall ensure that:

(i) A CCS inspects backflow preventer installations to ensure that protection is provided commensurate with the assessed degree of hazard;

(ii) Either a BAT or CCS inspects:

(A) Air gaps installed in lieu of approved backflow prevention assemblies for compliance with the approved air gap definition; and

(B) Backflow prevention assemblies for correct installation and approval status.

(iii) A BAT tests approved backflow prevention assemblies for proper operation.

(b) The purveyor shall ensure that inspections and/or tests of approved air gaps and approved backflow assemblies are conducted:

(i) At the time of installation;

(ii) Annually after installation, or more frequently, if required by the purveyor for connections serving premises or systems that pose a high health cross-connection hazard or for assemblies that repeatedly fail;

(iii) After a backflow incident; and

(iv) After an assembly is repaired, reinstalled, or relocated or an air gap is replumbed.

(c) The purveyor shall ensure that inspections of AVBs installed on irrigation systems are conducted:

(i) At the time of installation;

(ii) After a backflow incident; and

(iii) After repair, reinstallation, or relocation.

(d) The purveyor shall ensure that approved backflow prevention assemblies are tested using procedures acceptable to the department, such as those specified in the most recently published edition of the USC Manual. When circumstances, such as, but not limited to, configuration or location of the assembly, preclude the use of USC test procedures, the purveyor may allow, on a case-by-case basis, the use of alternate (non-USC) test procedures acceptable to the department.

(e) The purveyor shall ensure that results of backflow prevention assembly inspections and tests are documented and reported in a manner acceptable to the purveyor.

(f) The purveyor shall ensure that an approved backflow prevention assembly or AVB, whenever found to be improperly installed, defective, not commensurate with the degree of hazard, or failing a test (if applicable) is properly reinstalled, repaired, overhauled, or replaced.

(g) The purveyor shall ensure that an approved air gap, whenever found to be altered or improperly installed, is properly replumbed or, if commensurate with the degree of hazard, is replaced by an approved RPBA.

(8) Recordkeeping and reporting.

(a) Purveyors shall keep cross-connection control records for the following time frames:

(i) Records pertaining to the master list of service connections and/or consumer's premises required in subsection (3)(j)(i) of this section shall be kept as long as the premises pose a cross-connection hazard to the purveyor's distribution system;

(ii) Records regarding inventory information required in subsection (3)(j)(ii) of this section shall be kept for five years or for the life of the approved backflow preventer whichever is shorter; and

(iii) Records regarding backflow incidents and annual summary reports required in subsection (3)(j)(iii) of this section shall be kept for five years.

(b) Purveyors may maintain cross-connection control records in original form or transfer data to tabular summaries.

(c) Purveyors may maintain records or data in any media, such as paper, film, or electronic format.

(d) The purveyor shall complete the cross-connection control program summary report annually. Report forms and guidance on completing the report are available from the department.

(e) The purveyor shall make all records and reports required in subsection (3)(j) of this section available to the department or its representative upon request.

(f) The purveyor shall notify the department, local administrative authority, and local health jurisdiction as soon as possible, but no later than the end of the next business day, when a backflow incident is known by the purveyor to have:

(i) Contaminated the public water system; or

(ii) Occurred within the premises of a consumer served by the purveyor.

(g) The purveyor shall:

(i) Document details of backflow incidents on a form acceptable to the department such as the backflow incident report form included in the most recent edition of the PNWS-AWWA Manual; and

(ii) Include all backflow incident report(s) in the annual cross-connection program summary report referenced in (d) of this subsection, unless otherwise requested by the department.

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AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-601 Purpose of surface water treatment. (1) Part 6 of chapter 246-290 WAC establishes filtration and disinfection as treatment technique requirements for water systems using surface or GWI sources. The Part 6 treatment technique requirements are established in lieu of maximum contaminant levels (MCLs) for the following contaminants:

(a) *Giardia lamblia*;

(b) Viruses;

(c) Heterotrophic plate count bacteria;

(d) *Legionella*; ((~~and~~))

(e) *Cryptosporidium* for systems serving at least ten thousand people; and

(f) Turbidity.

(2) For water systems using unfiltered surface sources, in whole or part, and that have been required to install, but have yet to complete the installation and operation of, filtration facilities, the turbidity levels at entry points to distribution and sampling/analytical requirements shall be in accordance with 40 CFR 141.13 and 40 CFR 141.22, respectively.

AMENDATORY SECTION (Amending WSR 99-07-021 and 99-10-076, filed 3/9/99 and 5/4/99, effective 4/9/99 and 6/4/99)

WAC 246-290-630 General requirements. (1) The purveyor shall ensure that treatment is provided for surface and GWI sources consistent with the treatment technique requirements specified in Part 6 of chapter 246-290 WAC.

(2) The purveyor shall install and properly operate water treatment processes to ensure at least:

(a) 99.9 percent (3 log) removal and/or inactivation of *Giardia lamblia* cysts; ((~~and~~))

(b) 99.99 percent (4 log) removal and/or inactivation of viruses; and

(c) 99 percent (2 log) removal of *Cryptosporidium* oocysts if required to filter.

(3) The purveyor shall ensure that the requirements of subsection (2) of this section are met between a point where the source water is not subject to contamination by untreated surface water and a point at or before the first consumer.

(4) The department may require higher levels of removal and/or inactivation of *Giardia lamblia* cysts, *Cryptosporidium* oocysts, and viruses than specified in subsection (2) of this section if deemed necessary to protect the health of consumers served by the system.

(5) The purveyor shall ensure that personnel operating a system subject to Part 6 of chapter 246-290 WAC meet the requirements under chapter 70.119 RCW and chapter 246-292 WAC.

(6) The purveyor of a **Group A community** system serving water from a surface or GWI source to the public before January 1, 1991, shall comply with applicable minimum treatment requirements. The purveyor shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662 respectively;

(b) The criteria to remain unfiltered under WAC 246-290-690 and the disinfection requirements under WAC 246-290-692; or

(c) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(7) The purveyor of a **Group A noncommunity** system serving water from a surface or GWI source, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(8) The purveyor of a **Group A** system first serving water from a surface or GWI source to the public after December 31, 1990, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(9) The purveyor of a system required to install filtration may choose to provide a limited alternative to filtration or abandon the surface or GWI source as a permanent or seasonal source and develop an alternate, department-approved source. Purveyors that develop alternate ground water sources or purchase water from a department-approved public water system using a ground water source shall no longer be subject to Part 6 of chapter 246-290 WAC, once the alternate source is approved by the department and is on line.

(10) A purveyor that chooses to provide a limited alternative to filtration shall submit an application to the department that contains the information necessary to determine whether the source can meet the criteria.

(11) If a limited alternative to filtration is provided, then the purveyor shall install and properly operate treatment processes to ensure greater removal and/or inactivation efficiencies of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern (including *Cryptosporidium* oocysts) than would be achieved by the combination of filtration and chlorine disinfection.

(12) Systems that were required to develop a disinfection profile under 40 CFR 141.172 shall provide that profile and a calculated disinfection benchmark, as described in 40 CFR 141.172 (c)(2) and (3), along with other project information specified in WAC 246-290-110, when proposing any change to the disinfection treatment system. The proposal for change shall include an analysis of how the proposed change will affect the current level of disinfection. The profile must also be available for inspection during routine sanitary surveys conducted under WAC 246-290-416.

(13) A system using conventional, direct, or in-line filtration that must arrange for the conduct of a comprehensive performance evaluation (CPE), in accordance with 40 CFR 141.175 (b)(4), may be required to arrange for comprehensive technical assistance (CTA). The department will determine the need for CTA on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-634 Follow-up to treatment technique violations. When a treatment technique violation occurs, the purveyor:

(1) Shall report to the department in accordance with:

(a) WAC 246-290-666 for purveyors providing filtration or required to filter;

(b) WAC 246-290-674 for purveyors installing filtration; or

(c) WAC 246-290-696 for purveyors meeting the criteria to remain unfiltered or providing a limited alternative to filtration;

(2) Shall notify the public in accordance with ((~~WAC 246-290-495~~)) Part 7, Subpart A of this chapter;

(3) Shall determine the cause of the violation;

(4) Shall take action as directed by the department; and

(5) May be subject to enforcement under WAC 246-290-050.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-638 Analytical requirements. (1) The purveyor shall ensure that only qualified persons conduct measurements for pH, temperature, turbidity, and residual disinfectant concentrations. In this section, qualified shall mean:

(a) A person certified under chapter 246-292 WAC;

(b) An analyst, with experience conducting these measurements, from the state public health laboratory or another laboratory certified by the department; or

(c) A state or local health agency professional experienced in conducting these measurements.

(2) The purveyor shall ensure that measurements for temperature, turbidity, pH, and residual disinfectant concentration are made in accordance with "standard methods((.))," or other EPA approved methods.

(3) The purveyor shall ensure that samples for coliform and HPC analysis are:

(a) Collected and transported in accordance with department-approved methods; and

(b) Submitted to the state public health laboratory or another laboratory certified by the department to conduct ((~~such~~)) the analyses.

(4) Turbidity monitoring.

(a) The purveyor shall equip the system's water treatment facility laboratory with a:

(i) Bench model turbidimeter; and

(ii) Continuous turbidimeter and recorder if required under WAC 246-290-664 or 246-290-694.

(b) The purveyor shall ensure that bench model and continuous turbidimeters are:

(i) Designed to meet the criteria in "standard methods," EPA Method 180.1, or Great Lakes Instruments Method 2; and

(ii) Properly operated, calibrated, and maintained at all times in accordance with the manufacturer's recommendations.

(c) The purveyor shall validate continuous turbidity measurements for accuracy as follows:

(i) Calibrate turbidity equipment based upon a primary standard in the expected range of measurements; and

(ii) Verify continuous turbidimeter performance on a weekly basis, not on consecutive days, with grab sample measurements made using a properly calibrated bench model turbidimeter.

(d) When continuous turbidity monitoring equipment fails, the purveyor shall measure turbidity on grab samples collected at least every four hours from the combined filter effluent and individual filters while the system serves water to the public and the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment on-line within five working days of failure.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-654 Treatment criteria for filtered systems. (1) The purveyor shall operate filters ((~~such~~)) so that maximum flow rates do not exceed those specified in Table 10. The purveyor may operate filters at higher flow rates, if the purveyor demonstrates to the department's satisfaction that filtration at the higher rate consistently achieves at least 99 percent (2 log) removal of *Giardia lamblia* cysts and 99 percent (2 log) removal of *Cryptosporidium* oocysts and meets the turbidity performance requirements of Table 11.

Table 10
FILTRATION OPERATION CRITERIA

FILTRATION TECHNOLOGY/MEDIA	MAXIMUM FILTRATION RATE (gpm/ft((3))^2)
Conventional, Direct and In-Line	
Gravity Filters with Single Media	3
Gravity Filters with Deep Bed, Dual or Mixed Media	6
Pressure Filters with Single Media	2
Pressure Filters with Deep Bed, Dual or Mixed Media	3
Slow Sand	0.1
Diatomaceous Earth	1.0

(2) The purveyor using conventional, direct or in-line filtration shall ensure that effective coagulation is in use at all times the water treatment facility produces water served to the public.

(3) The purveyor using conventional, direct, or in-line filtration shall demonstrate treatment effectiveness for *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal by one of the following methods:

(a) Turbidity reduction method ((~~where source and filtered water turbidity measurements are made in accordance with WAC 246-290-664 (2) and (3) respectively:~~

~~(i) When source turbidity is greater than or equal to 2.5 NTU, the purveyor shall achieve the turbidity performance requirements specified in WAC 246-290-660(1); or~~

~~(ii) When source turbidity is less than 2.5 NTU, the purveyor shall achieve:~~)).

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(i) The purveyor shall make source and filtered water turbidity measurements in accordance with WAC 246-290-664 (2) and (3) respectively.

(ii) The purveyor shall achieve:

(A) The turbidity performance requirements specified in WAC 246-290-660(1) and at least an eighty percent reduction in source turbidity based on an average of the daily turbidity reductions measured in a calendar month; or

(B) An average daily filtered water turbidity less than or equal to 0.1 NTU.

(b) Particle counting method. The purveyor shall:

(i) Use a particle counting protocol acceptable to the department; and

(ii) Demonstrate at a frequency acceptable to the department at least the following log reduction of particles in the size range of five to fifteen microns (*Giardia lamblia* cyst-sized particles) and three to five microns (*Cryptosporidium* oocyst-sized particles), as applicable:

(A) 2.5 log reduction in *Giardia lamblia* cyst-sized particles and a 2 log reduction in *Cryptosporidium* particles for systems using conventional filtration; or

(B) 2.0 log reduction for systems using direct or in-line filtration.

(c) Microscopic particulate analysis method. The purveyor shall:

(i) Use a protocol acceptable to the department; and

(ii) Demonstrate at a frequency acceptable to the department at least the following log reduction of *Giardia lamblia* cysts and((/)) *Cryptosporidium* oocysts or *Giardia lamblia* cyst and *Cryptosporidium* oocyst surrogate indicators as applicable:

(A) 2.5 log reduction in *Giardia lamblia* cysts or surrogates and a 2 log reduction in *Cryptosporidium* oocyst or surrogates for systems using conventional filtration; and

(B) 2.0 log reduction for systems using direct or in-line filtration.

(d) Other methods acceptable to the department.

(4) The purveyor shall ensure continuous disinfection of all water delivered to the public and shall:

(a) Maintain an adequate supply of disinfection chemicals and keep back-up system components and spare parts on hand;

(b) Develop, maintain, and post at the water treatment facility a plan detailing:

(i) How water delivered to the public will be continuously and adequately disinfected; and

(ii) The elements of an emergency notification plan to be implemented whenever the residual disinfectant concentration at entry to distribution falls below 0.2 mg/L for more than one hour.

(c) Implement ((~~such~~)) the plan during an emergency affecting disinfection.

(5) Operations program.

(a) For each water treatment facility treating a surface or GWI source, the purveyor shall develop an operations program and make it available to the department for review upon request.

(b) The program shall be submitted to the department as an addendum to the purveyor's water system plan (WAC 246-290-100) or small water system management program (WAC 246-290-105).

(c) The program shall detail how the purveyor will produce optimal filtered water quality at all times the water treatment facility produces water to be served to the public.

(d) The purveyor shall operate the water treatment facility in accordance with the operations program.

(e) The operations program shall include, but not be limited to, a description of:

(i) For conventional, direct or in-line filtration, procedures used to determine and maintain optimized coagulation as demonstrated by meeting the requirements of WAC 246-290-654(3);

(ii) Procedures used to determine chemical dose rates;

(iii) How and when each unit process is operated;

(iv) Unit process equipment maintenance program;

(v) Treatment plant performance monitoring program;

(vi) Laboratory procedures;

(vii) Records;

(viii) Reliability features; and

(ix) Response plans for water treatment facility emergencies, including disinfection failure and watershed emergencies.

(f) The purveyor shall ensure the operations program is:

(i) Readily available at the water treatment facility for use by operators and for department inspection;

(ii) Consistent with department guidelines for operations procedures such as those described in department guidance on surface water treatment and water system planning; and

(iii) Updated as needed to reflect current water treatment facility operations.

(6) Pressure filters. Purveyors using pressure filters shall:

(a) Inspect and evaluate the filters, at least every six months, for conditions that would reduce their effectiveness in removing *Giardia lamblia* cysts;

(b) Maintain, and make available for department review, a written record of pressure filter inspections; and

(c) Be prepared to conduct filter inspections in the presence of a department representative, if requested.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-660 Filtration. (1) Turbidity performance requirements.

(a) The purveyor shall ensure that the turbidity level of representative filtered water samples:

(i) Complies with the performance standards in Table 11; and

(ii) Never exceeds 5.0 NTU for any system using slow sand, diatomaceous earth, or for any system serving less than ten thousand people and using conventional, direct, or in-line filtration.

(iii) Never exceeds 1.0 NTU for any system serving at least ten thousand people and using conventional, direct, or in-line filtration.

(iv) Never exceeds the maximum allowable turbidity determined by the department on a case-by-case basis for any

system using an alternate filtration technology approved under WAC 246-290-676 (2)(b).

Table 11
TURBIDITY PERFORMANCE REQUIREMENTS

Filtration Technology	Filtered water turbidity (in NTUs) shall be less than or equal to this value in at least 95% of the measurements made each calendar month	
	Systems serving < 10,000 people	Systems serving > 10,000 people
Conventional, Direct and In-line	0.50	0.30
Slow Sand	1.0	1.0
Diatomaceous Earth	1.0	1.0
Alternate Technology	As determined by the department through case-by-case approval of technology, in accordance with WAC 246-290-676 (2)(b).	

(b) The department may allow the turbidity of filtered water from a system using slow sand filtration to exceed 1.0 NTU, but never 5.0 NTU, if the system demonstrates to the department's satisfaction that the higher turbidity level will not endanger the health of consumers served by the system. As a condition of being allowed to produce filtered water with a turbidity exceeding 1.0 NTU, the purveyor may be required to monitor one or more parameters in addition to the parameters specified under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.

(2) *Giardia lamblia*, *Cryptosporidium*, and virus removal credit.

(a) The department shall notify the purveyor of the removal credit granted for the system's filtration process. The department shall specify removal credit for:

(i) Existing filtration facilities based on periodic evaluations of performance and operation; and

(ii) New or modified filtration facilities based on results of pilot plant studies or full scale operation.

(b) Conventional, direct, and in-line filtration.

(i) The removal credit the department may grant to a system using conventional, direct, or in-line filtration and demonstrating effective treatment is as follows:

((~~Percent Removal Credit (log)~~

~~Filtration Technology~~	~~Giardia~~	~~Virus~~
~~Conventional~~	~~99.7 (2.5)~~	~~99 (2.0)~~
~~Direct and in-line~~	~~99 (2.0)~~	~~90 (1.0)~~))

Percent Removal Credit (log)

Filtration Technology	*Giardia*		Virus		*Cryptosporidium*	
	Percent	log	Percent	log	Percent	log
Conventional	99.7	2.5	99	2.0	99	2.0
Direct and in-line	99	2.0	90	1.0	99	2.0

(ii) A system using conventional, direct, or in-line filtration shall be considered to provide effective treatment, if the purveyor demonstrates to the satisfaction of the department that the system meets the:

(A) Turbidity performance requirements under subsection (1) of this section; and

(B) Operations requirements of WAC 246-290-654.

(iii) The department may grant a higher level of *Giardia lamblia*, *Cryptosporidium*, and virus removal credit than listed under (b)(i) of this subsection, if the purveyor demonstrates to the department's satisfaction that the higher level can be consistently achieved.

(iv) As a condition of maintaining the maximum removal credit, purveyors may be required to periodically monitor one or more parameters not routinely monitored under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.

(v) The department shall not grant removal credit to a system using conventional, direct, or in-line filtration that:

(A) Fails to meet the minimum turbidity performance requirements under subsection (1) of this section; or

(B) Fails to meet the operating requirements under WAC 246-290-654.

(c) Slow sand filtration.

The department may grant a system using slow sand filtration 99 percent (2 log) *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal credit and 99 percent (2 log) virus removal credit, if the system meets the department design requirements under WAC 246-290-676 and meets the minimum turbidity performance requirements in subsection (1) of this section.

(d) Diatomaceous earth filtration.

The department may grant a system using diatomaceous earth filtration 99 percent (2 log) *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal credit and 90 percent (1 log) virus removal credit, if the system meets the department design requirements under WAC 246-290-676 and meets the minimum turbidity performance requirements in subsection (1) of this section.

(e) Alternate filtration technology.

The department shall grant, on a case-by-case basis, *Giardia lamblia* cyst, *Cryptosporidium* oocyst, and virus removal credit for systems using alternate filtration technology based on results of product testing acceptable to the department.

(f) The purveyor granted no *Giardia lamblia* cyst removal credit and no *Cryptosporidium* oocyst removal credit shall:

(i) Provide treatment in accordance with WAC 246-290-662 (2) (d); and

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(ii) Within ninety days of department notification regarding removal credit, submit an action plan to the department for review and approval. The plan shall:

(A) Detail how the purveyor plans to comply with the turbidity performance requirements in subsection (1) of this section and operating requirements of WAC 246-290-654; and

(B) Identify the proposed schedule for implementation.

(iii) Be considered in violation of the treatment technique specified in WAC 246-290-632 (2)(a)(i) and shall take follow-up action specified in WAC 246-290-634.

(3) Disinfection by-product precursor removal requirements.

(a) Conventional systems using sedimentation shall meet the treatment technique requirements for control of disinfection by-product precursors specified in 40 CFR 141.135.

(i) Applicability of this requirement shall be determined in accordance with 40 CFR 141.135(a).

(ii) Enhanced coagulation shall be provided in accordance with 40 CFR 141.135(b), if applicable.

(iii) Compliance with the treatment technique requirements for control of disinfection by-product precursors shall be determined in accordance with 40 CFR 141.135(c).

(b) For the purposes of compliance with (a) of this subsection, sedimentation shall be considered applicable when:

(i) Surface overflow rates and other design parameters are in conformance with traditionally accepted industry standards and textbook values, such as those prescribed in nationally accepted standards, including the most recent version of the *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers*; and

(ii) The system has received pathogen removal credit for the sedimentation basin.

(4) Filter backwash recycling requirements.

(a) By no later than December 8, 2003, purveyors using conventional, direct, or in-line filtration must **report** to the department, in writing, whether they recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within the treatment plant.

(i) Purveyors that **do** recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must also report the following information:

(A) A plant schematic showing the origin of all flows that are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance (i.e., pipe, open channel) used to transport them, and the location where they are reintroduced back into the treatment plant.

(B) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and the approved operating capacity for the plant.

(b) By no later than June 8, 2004, purveyors using conventional, direct, or in-line filtration that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within the treatment plant shall:

(i) Return the recycled flow prior to, or concurrent with the location where primary coagulant is introduced into the flow stream.

(ii) By no later than June 8, 2006, complete any capital improvements (physical modifications requiring engineering planning, design, and construction) necessary to meet the requirements of (b)(i) of this subsection.

(iii) On a case-by-case basis, the department may approve an alternate location for the return of recycle flows.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-662 Disinfection for filtered systems. (1) General requirements.

(a) The purveyor shall provide continuous disinfection to ensure that filtration and disinfection together achieve, at all times the system serves water to the public, at least the following:

(i) 99.9 percent (3 log) inactivation and removal of *Giardia lamblia* cysts; and

(ii) 99.99 percent (4 log) inactivation and/or removal of viruses.

(b) Where sources receive sewage discharges and/or agricultural runoff, purveyors may be required to provide greater levels of removal and inactivation of *Giardia lamblia* cysts and viruses to protect the health of consumers served by the system.

(c) Regardless of the removal credit granted for filtration, purveyors shall, at a minimum, provide continuous disinfection to achieve at least 68 percent (0.5 log) inactivation of *Giardia lamblia* cysts and 99 percent (2 log) inactivation of viruses.

(2) Establishing the level of inactivation.

(a) The department shall establish the level of disinfection (log inactivation) to be provided by the purveyor.

(b) The required level of inactivation shall be based on source quality and expected levels of *Giardia lamblia* cyst and virus removal achieved by the system's filtration process.

(c) Based on periodic reviews, the department may adjust, as necessary, the level of disinfection the purveyor shall provide to protect the health of consumers served by the system.

(d) Systems granted no *Giardia lamblia* cyst removal credit((~~,~~)) and no *Cryptosporidium* oocyst removal credit shall:

(i) Unless directed otherwise by the department, ((~~the purveyor of a system granted no Giardia lamblia cyst removal credit shall~~)) provide interim disinfection to:

(A) ((~~To~~)) Ensure compliance with the monthly coliform MCL under WAC 246-290-310;

(B) Achieve at least 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts; and

(C) Maintain a detectable residual disinfectant concentration, or an HPC level less than 500 organisms/ml, within the distribution system in accordance with subsection (6) of this section.

(ii) ((~~The purveyor shall~~)) Comply with the interim disinfection requirements until the system can demonstrate to

the department's satisfaction that it complies with the operating requirements and turbidity performance requirements under WAC 246-290-654 and 246-290-660(1), respectively.

(3) Determining the level of inactivation.

(a) Unless the department has approved a reduced CT monitoring schedule for the system, each day the system serves water to the public, the purveyor, using procedures and CT values acceptable to the department such as those presented in department guidance of surface water treatment, shall determine:

(i) CTcalc values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's disinfection process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts and viruses required by the department.

(b) The department may allow a purveyor to determine the level of inactivation using lower CT values than those specified in (a) of this subsection, provided the purveyor demonstrates to the department's satisfaction that the required levels of inactivation of *Giardia lamblia* cysts and viruses can be achieved.

(4) Determining compliance with the required level of inactivation.

(a) A purveyor shall be considered in compliance with the inactivation requirement when a total inactivation ratio equal to or greater than 1.0 is achieved.

(b) Failure to provide the required level of inactivation on more than one day in any calendar month shall be considered a treatment technique violation.

(5) Residual disinfectant concentration entering the distribution system.

(a) The purveyor shall ensure that all water entering the distribution system contains a residual disinfectant concentration, measured as free or combined chlorine, of at least 0.2 mg/L at all times the system serves water to the public; and

(b) Failure to provide a 0.2 mg/L residual at entry to distribution for more than four hours on any day shall be considered a treatment technique violation.

(6) Residual disinfectant concentration within the distribution system.

(a) The purveyor shall ensure that the residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide, is detectable in at least ninety-five percent of the samples taken each calendar month.

(b) Water in the distribution system with an HPC less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration for the purposes of compliance with WAC 246-290-662 (6)(a).

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-664 Monitoring for filtered systems. (1) Source coliform monitoring.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are:

(i) Collected before the first point of disinfectant application and before coagulant chemical addition; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) At a minimum, the purveyor shall ensure source samples are collected for fecal coliform analysis at a frequency equal to ten percent of the number of routine coliform samples collected within the distribution system each month under WAC 246-290-300, or once per calendar month, whichever is greater up to a maximum of one sample per day.

(2) Source turbidity monitoring.

(a) The purveyor using conventional, direct, or in-line filtration shall measure source turbidity at least once per day on a representative sample collected before disinfection and coagulant addition.

(b) Grab sampling or continuous turbidity monitoring and recording may be used to meet the requirement specified in (a) of this subsection.

(c) Purveyors using continuous turbidity monitoring shall record continuous turbidity measurements at equal intervals, at least every four hours, in accordance with a department-approved sampling schedule.

(d) Purveyors using an approved alternate filtration technology may be required to monitor source water turbidity at least once per day on a representative sample as determined by the department.

(3) Filtered water turbidity monitoring.

(a) The purveyor using direct, conventional, or in-line filtration shall:

(i) Continuously monitor turbidity on representative samples from each individual filter unit and ((~~of~~)) from the system's combined filter effluent, prior to clearwell storage;

(ii) For systems serving at least ten thousand people, record continuous turbidity measurements from each individual filter unit at equal intervals((~~,~~)) of at least every fifteen minutes, and for all systems, from the combined filter effluent at equal intervals of at least every four hours, in accordance with a department-approved sampling schedule; and

(iii) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(b) The purveyor using slow sand or diatomaceous earth filtration shall:

(i) Continuously monitor turbidity on representative samples from each individual filter unit and from the system's combined filter effluent, prior to clearwell storage;

(ii) Record continuous turbidity measurements from the combined filter effluent at equal intervals of at least every four hours in accordance with a department-approved sampling schedule; and

(iii) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(c) Purveyors using an alternate filtration technology approved under WAC 246-290-676 shall provide monitoring in accordance with the technology-specific approval conditions determined by the department.

(d) Purveyors using slow sand filtration or an alternate filtration technology may reduce filtered water turbidity monitoring to one grab sample per day with departmental approval. Reduced turbidity monitoring shall be allowed only where the purveyor demonstrates to the department's satisfaction that a reduction in monitoring will not endanger the health of consumers served by the water system.

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(4) Monitoring the level of inactivation and removal.

(a) Each day the system is in operation, the purveyor shall determine the total level of inactivation and removal of *Giardia lamblia* cysts ((~~and~~)), viruses, and *Cryptosporidium* oocysts achieved.

(b) The purveyor shall determine the total level of inactivation and removal based on:

(i) *Giardia lamblia* cyst, *Cryptosporidium* oocyst, and virus removal credit granted by the department for filtration; and

(ii) Level of inactivation of *Giardia lamblia* cysts and viruses achieved through disinfection.

(c) At least once per day, purveyors shall monitor the following to determine the level of inactivation achieved through disinfection:

(i) Temperature of the disinfected water at each residual disinfectant concentration sampling point used for CT calculations; and

(ii) If using chlorine, pH of the disinfected water at each chlorine residual disinfectant concentration sampling point used for CT calculations.

(d) Each day during peak hourly flow (based on historical information), the purveyor shall:

(i) Determine disinfectant contact time, T, to the point at which C is measured; and

(ii) Measure the residual disinfectant concentration, C, of the water at the point for which T is calculated. The C measurement point shall be located before or at the first consumer.

(e) The department may reduce CT monitoring requirements for purveyors that demonstrate to the department's satisfaction that the required levels of inactivation are consistently exceeded. Reduced CT monitoring shall only be allowed where the purveyor demonstrates to the department's satisfaction that a reduction in monitoring will not endanger the health of consumers.

(5) Monitoring the residual disinfectant concentration entering the distribution system.

(a) Systems serving more than thirty-three hundred people per month.

(i) The purveyor shall continuously monitor and record the residual disinfectant concentration of water entering the distribution system and report the lowest value each day.

(ii) If the continuous monitoring equipment fails, the purveyor shall measure the residual disinfectant concentration on grab samples collected at least every four hours at the entry to the distribution system while the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment back on-line within five working days following failure.

(b) Systems serving thirty-three hundred or less people per month.

(i) The purveyor shall collect grab samples or use continuous monitoring and recording to measure the residual disinfectant concentration entering the distribution system.

(ii) Purveyors of **community** systems choosing to take grab samples shall collect:

(A) Samples at the following minimum frequencies:

Population Served			Number/day
25	-	500	1
501	-	1,000	2
1,001	-	2,500	3
2,501	-	3,300	4

(B) At least one of the grab samples at peak hourly flow; and

(C) The remaining samples evenly spaced over the time the system is disinfecting water that will be delivered to the public.

(iii) Purveyors of **noncommunity** systems choosing to take grab samples shall collect samples for disinfectant residual concentration entering the distribution system as directed by the department.

(iv) When grab samples are collected and the residual disinfectant concentration at the entry to distribution falls below 0.2 mg/L, purveyors shall collect a grab sample every four hours until the residual disinfectant concentration is 0.2 mg/L or more.

(6) Monitoring residual disinfectant concentrations within the distribution system.

(a) The purveyor shall measure the residual disinfectant concentration at representative points within the distribution system on a daily basis or as otherwise approved by the department.

(b) At a minimum, the purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected in accordance with WAC 246-290-300(3) or 246-290-320(2).

(c) The purveyor may measure HPC within the distribution system in lieu of measuring the residual disinfectant concentration in accordance with this subsection.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-666 Reporting for filtered systems. (1) The purveyor shall notify the department, as soon as possible, but no later than ((~~the end of the next business day, when~~)) twenty-four hours after the purveyor learns of the following events:

(a) A waterborne disease outbreak potentially attributable to the water system occurs;

(b) The turbidity of the combined filter effluent exceeds 5.0 NTU at any time for any system using slow sand, diatomaceous earth, or for any system serving less than ten thousand people and using conventional, direct, or in-line filtration;

(c) The turbidity of the combined filter effluent exceeds 1.0 NTU at any time for a system serving at least ten thousand people and using conventional, direct, or in-line filtration;

(d) The turbidity of the combined filter effluent exceeds the maximum specified level for an alternative filtration technology approved by the department;

((~~(c)~~)) (e) The residual disinfection concentration falls below 0.2 mg/L at the entry point to the distribution system.

The purveyor shall also report whether the residual was restored to 0.2 mg/L or more within four hours; or

((~~(d)~~)) (f) An event occurs that may affect the ability of the water treatment facility to produce drinking water that complies with this chapter including, but not limited to:

(i) Spills of hazardous materials in the watershed; and

(ii) Treatment process failures.

(2) The purveyor shall report results of monitoring conducted in accordance with WAC 246-290-664 to the department. Monthly report forms shall be submitted within ten days after the end of each month the system served water to the public.

(3) The purveyor shall report, at a minimum, all the information requested by the department using a department-approved form or format including:

(a) Water treatment facility operations information;

(b) Turbidity monitoring results, including:

(i) Source monitoring, if required under WAC 246-290-664(2);

(ii) Combined filter effluent. Continuous measurements shall be reported at equal intervals, at least every four hours, in accordance with a department-approved schedule;

(iii) Individual filter turbidity monitoring results. Systems serving at least ten thousand people and using conventional, direct, or in-line filtration shall report and take follow-up action as prescribed in 40 CFR 141.175(b). Required follow-up action may include development of a filter profile, a filter self-assessment, as described in 40 CFR 141.175 (b)(4), or the completion of a comprehensive performance evaluation (CPE).

(c) Disinfection monitoring information including:

(i) Level of inactivation achieved;

(ii) Residual disinfectant concentrations entering the distribution system; and

(iii) Residual disinfectant concentrations within the distribution system.

(d) Total level of removal and inactivation; and

(e) A summary of water quality complaints received from consumers served by the water system.

(4) A person certified under chapter 246-292 WAC shall complete and sign the monthly report forms required in this section.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-672 Interim treatment requirements. (1) Purveyors of existing unfiltered systems installing filtration shall provide interim disinfection treatment to:

(a) Ensure compliance with the monthly coliform MCL under WAC 246-290-310;

(b) Achieve inactivation levels of *Giardia lamblia* cysts on a daily basis each month the system serves water to the public as directed by the department; and

(c) Maintain a detectable residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, or combined chlorine in 95 percent or more of the samples taken each calendar month. Water in the distribution system with an HPC level less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration for the purposes of compliance with this subsection.

(2) Failure to provide the required level of inactivation in subsection (1)(b) of this section on more than one day in any calendar month shall be considered a treatment technique violation.

(3) The department may require the purveyor to provide higher levels of treatment than specified in subsection (1)(b) of this section when necessary to protect the health of consumers served by the public water system.

(4) Interim treatment requirements shall be met in accordance with a schedule acceptable to the department.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-674 Interim monitoring and reporting. (1) Monitoring. Unless directed otherwise by the department, the purveyor of an existing unfiltered system installing filtration shall:

(a) Conduct interim monitoring in accordance with 40 CFR 141.22;

(b) Measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat sample is collected in accordance with WAC 246-290-300(3) or 246-290-320(2); and

(c) Measure residual disinfection concentrations at entry to the distribution system on a daily basis, or as directed by the department.

(2) Reporting.

(a) The purveyor installing filtration shall report to the department as soon as possible, but no later than ((~~the end of the next business day, when~~)) twenty-four hours after the purveyor learns of any of the following events:

(i) A waterborne disease outbreak potentially attributable to the water system occurs;

(ii) The turbidity of water delivered to the public exceeds 5.0 NTU; or

(iii) The interim disinfection requirements under WAC 246-290-672 are not met.

(b) The purveyor shall report results of monitoring to the department. Monthly report forms shall be submitted within ten days after the end of each month the system served water to the public.

(c) The purveyor shall report, at a minimum, all the information requested by the department using a department-approved form or format including:

(i) Water quality information, including results of monitoring in accordance with WAC 246-290-300 and 246-290-320;

(ii) Disinfection monitoring information;

(iii) A summary of water quality complaints received from consumers served by the system.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-676 Filtration technology and design criteria. (1) General.

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(a) The purveyor proposing to construct new water treatment facilities or to make additions to existing water treatment facilities for surface and GWI sources shall ensure that the facilities comply with the treatment, design, and reliability requirements of Part 6 of chapter 246-290 WAC.

(b) The purveyor shall submit an engineering report to the department describing how the treatment facilities will be designed to comply with the requirements specified in Subparts A, B, and C of Part 6 of chapter 246-290 WAC.

(2) Filtration technology.

(a) The purveyor shall select a filtration technology acceptable to the department using criteria such as those outlined in department guidance on surface water treatment. The following filtration technologies are considered acceptable:

(i) Conventional;

(ii) Direct;

(iii) Diatomaceous earth; and

(iv) Slow sand.

(b) In addition to the technologies specified in subsection (1) of this section, alternate filtration technologies may be acceptable, if the purveyor demonstrates to the department's satisfaction all of the following:

(i) Through acceptable third party testing, that system components do not leach or otherwise add substances to the finished water that would violate drinking water standards, or otherwise pose a threat to public health;

(ii) The technology's effectiveness in achieving at least 99 percent (2 log) removal of *Giardia lamblia* cysts or cyst surrogate particles, and at least 99 percent (2 log) removal of *Cryptosporidium* oocysts or oocyst surrogate particles. The purveyor shall further demonstrate the technology's removal capability through research conducted:

(A) By a party acceptable to the department; and

(B) In accordance with protocol and standards acceptable to the department.

(iii) Through on-site pilot plant studies or other means, that the filtration technology:

(A) In combination with disinfection treatment consistently achieves 99.9 percent (3 log) removal and inactivation of *Giardia lamblia* cysts and 99.99 percent (4 log) removal and inactivation of viruses; and

(B) Meets the applicable turbidity performance requirements as determined by the department for the specific treatment process being considered, but in no case to exceed 1.0 NTU for the finished water.

(3) Pilot studies.

(a) The purveyor shall ensure pilot studies are conducted for all proposed filtration facilities, except where waived based on engineering justification acceptable to the department.

(b) The purveyor shall obtain department approval for the pilot study plan before the pilot filter is constructed and before the pilot study is undertaken.

(c) The pilot study plan shall identify at a minimum:

(i) Pilot filter design;

(ii) Water quality and operational parameters to be monitored;

(iii) Type of data to be collected, frequency of data collection, and length of pilot study; and

(iv) Pilot plant operator qualifications.

(d) The purveyor shall ensure that the pilot study is:

(i) Conducted to simulate proposed full-scale design conditions;

(ii) Conducted over a time period that will demonstrate the effectiveness and reliability of the proposed treatment system during changes in seasonal and climatic conditions; and

(iii) Designed and operated in accordance with good engineering practices and that ANSI/NSF standards 60 and 61 are considered.

(e) When the pilot study is complete, the purveyor shall submit a project report to the department for approval in accordance with WAC 246-290-110.

(4) Design criteria.

(a) The purveyor shall ensure that water treatment facilities for surface and GWI sources are designed and constructed in accordance with good engineering practices documented in references such as those identified in WAC 246-290-200.

(b) Filtration facilities.

(i) The purveyor shall ensure that all new filtration facilities and improvements to any existing filtration facilities (excluding disinfection) are designed to achieve at least((~~:~~ ~~(A)~~)) 99 percent (2 log) removal of *Giardia lamblia* cysts((~~;~~)), and

(((~~(B) 90 percent (1 log) removal of viruses.~~

~~(ii) The purveyor proposing to use an alternate filtration technology that does not meet the requirements of (b)(i)(B) of this subsection shall demonstrate to the department's satisfaction that the potential for viral contamination of the source is low. The purveyor shall base the demonstration on results of a watershed evaluation acceptable to the department.~~

~~(iii)~~)) 99 percent (2 log) removal of *Cryptosporidium* oocysts; and

(ii) The purveyor shall ensure that all new filtration facilities contain provisions for filtering to waste with appropriate measures for backflow prevention.

(c) The purveyor shall ensure that disinfection systems for new filtration facilities or improvements to existing disinfection facilities are designed to meet the requirements of WAC 246-290-662.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-690 Criteria to remain unfiltered. (1) For a system not using the "limited alternative to filtration" option to remain unfiltered, the purveyor using a surface water or GWI source shall meet the source water quality and site-specific conditions under this section, as demonstrated through monitoring conducted in accordance with WAC 246-290-694.

(2) Source water quality conditions necessary to remain unfiltered.

(a) Coliform limits.

(i) The purveyor shall ensure that representative source water samples taken before the first point of disinfection have a fecal coliform density less than or equal to 20/100 ml in ninety percent or more of all samples taken during the six

previous calendar months the system served water to the public. Samples collected on days when source water turbidity exceeds 1.0 NTU shall be included when determining compliance with this requirement.

(ii) The purveyor shall submit a written report to the department if no source fecal coliform data has been submitted for days when source turbidity exceeded 1.0 NTU. The report shall document why sample results are not available and shall be submitted with the routine monitoring reports for the month in which the sample results are not available.

(b) Turbidity limits.

(i) The purveyor shall ensure that the turbidity level in representative source water samples taken before primary disinfection does not exceed 5.0 NTU.

(ii) A system failing to meet the turbidity requirements in (b)(i) of this subsection may remain unfiltered, if:

(A) The purveyor demonstrates to the department's satisfaction that the most recent turbidity event was caused by unusual and unpredictable circumstances; and

(B) Including the most recent turbidity event, there have not been more than:

(I) Two turbidity events in the twelve previous calendar months the system served water to the public; or

(II) Five turbidity events in the one-hundred-twenty previous calendar months the system served water to the public.

(iii) The purveyor of a system experiencing a turbidity event shall submit a written report to the department documenting why the turbidity event(s) occurred. The purveyor shall submit the report with the routine monitoring reports for the month in which the turbidity event(s) occurred.

(iv) The purveyor of a system with alternate, department-approved sources or sufficient treated water storage may avoid a turbidity event by implementing operational adjustments to prevent water with a turbidity exceeding 5.0 NTU from being delivered to consumers.

(v) When an alternate source or treated water storage is used during periods when the turbidity of the surface or GWI source exceeds 5.0 NTU, the purveyor shall not put the surface or GWI source back on-line, until the source water turbidity is 5.0 NTU or less.

(3) Site-specific conditions to remain unfiltered.

(a) Level of inactivation.

(i) The purveyor shall ensure that the *Giardia lamblia* cyst and virus inactivation levels required under WAC 246-290-692(1) are met in at least eleven of the twelve previous calendar months that the system served water to the public.

(ii) A system failing to meet the inactivation requirements during two of the twelve previous calendar months that the system served water to the public may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that at least one of the failures was caused by unusual and unpredictable circumstances.

(iii) To make such a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(b) Redundant disinfection components or automatic shut-off.

The purveyor shall ensure that the requirement for redundant disinfection system components or automatic shut-off of water to the distribution system under WAC 246-290-692(3) is met at all times the system serves water to the public.

(c) Disinfectant residual entering the distribution system.

(i) The purveyor shall ensure that the requirement for having a residual entering the distribution system under WAC 246-290-692(4) is met at all times the system serves water to the public.

(ii) A system failing to meet the disinfection requirement under (c)(i) of this subsection may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the failure was caused by unusual and unpredictable circumstances.

(iii) To make such a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(d) Disinfectant residuals within the distribution system.

(i) The purveyor shall ensure that the requirement for maintaining a residual within the distribution system under WAC 246-290-692(5) is met on an ongoing basis.

(ii) A system failing to meet the disinfection requirements under (d)(i) of this subsection may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the failure was caused by something other than a deficiency in source water treatment.

(iii) To make such a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(e) Watershed control.

(i) The purveyor shall develop and implement a department-approved watershed control program.

(ii) The purveyor shall monitor, limit, and control all facilities and activities in the watershed affecting source quality to preclude degradation of the physical, chemical, microbiological (including viral contamination and contamination by *Cryptosporidium* oocysts), and radiological quality of the source. The purveyor shall demonstrate, through ownership and/or written agreements acceptable to the department, control of all human activities that may adversely impact source quality.

(iii) At a minimum, the purveyor's watershed control program shall:

(A) Characterize the watershed hydrology and land ownership;

(B) Identify watershed characteristics and activities that may adversely affect source water quality; and

(C) Monitor the occurrence of activities that may adversely affect source water quality.

(iv) If the department determines significant changes have occurred in the watershed, the purveyor shall submit, within ninety days of notification, an updated watershed control program to the department for review and approval.

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(v) The department may require an unfiltered system to conduct additional monitoring to demonstrate the adequacy of the watershed control program.

(vi) A purveyor shall be considered out of compliance when failing to:

(A) Have a department-approved watershed control program;

(B) Implement the watershed control program to the satisfaction of the department; or

(C) Conduct additional monitoring as directed by the department.

(f) On-site inspections.

(i) The department shall conduct on-site inspections to assess watershed control and disinfection treatment.

(ii) The department shall conduct annual inspections unless more frequent inspections are deemed necessary to protect the health of consumers served by the system.

(iii) For a system to remain unfiltered, the on-site inspection shall indicate to the department's satisfaction that the watershed control program and disinfection treatment comply with (e) of this subsection and WAC 246-290-692, respectively.

(iv) The purveyor with unsatisfactory on-site inspection results shall take action as directed by the department in accordance with a department-established schedule.

(g) Waterborne disease outbreak.

(i) To remain unfiltered, a system shall not have been identified by the department as the cause of a waterborne disease outbreak attributable to a failure in treatment of the surface or GWI source.

(ii) The purveyor of a system identified by the department as the cause of a waterborne disease outbreak may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that system facilities and/or operations have been sufficiently modified to prevent another waterborne disease outbreak.

(h) Total coliform MCL.

(i) For a system to remain unfiltered, the purveyor shall ensure that the MCL for total coliform under WAC 246-290-310 is met in at least eleven of the twelve previous calendar months the system served water to the public.

(ii) A system failing to meet the criteria in (i) of this subsection, may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the total coliform MCL violations were not caused by a deficiency in source water treatment.

(iii) The department shall determine the adequacy of source water treatment based on results of total coliform monitoring at the entry to the distribution system in accordance with WAC 246-290-694(3).

(i) ((~~THM MCL and monitoring.~~)) Disinfectant residuals MRDL and disinfection by-products MCLs - Monitoring and compliance.

For a system to remain unfiltered, the purveyor shall comply with the ((~~THM~~)) monitoring and MCL requirements under WAC 246-290-300(7) and 246-290-310 (5) and (6), respectively.

(j) Laboratory services.

(i) For a system to remain unfiltered, the purveyor shall retain the services of the public health laboratory or another laboratory certified by the department to analyze samples for total and fecal coliform. Laboratory services shall be available on an as needed basis, seven days a week, including holidays. The purveyor shall identify in the annual comprehensive report required under WAC 246-290-696 the certified laboratory providing these services.

(ii) The department may waive this requirement, if the purveyor demonstrates to the department's satisfaction that an alternate, department-approved source is used when the turbidity of the surface or GWI source exceeds 1.0 NTU.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-691 Criteria for unfiltered systems with a "limited alternative to filtration" to remain unfiltered. (1) For a system providing a limited alternative to filtration, the purveyor using a surface water or GWI source shall meet the source quality and site-specific conditions under this section.

(2) Source water turbidity requirements.

(a) The purveyor shall ensure that the turbidity level in representative source water samples taken before primary disinfection does not exceed 5.0 NTU.

(b) A system with more than two turbidity events in the twelve previous calendar months the water was served to the public or more than five turbidity events in the one hundred twenty previous calendar months the water was served to the public shall expand the scope of its next annual comprehensive report required under WAC 246-290-696(6) to include:

(i) A description of the events;

(ii) A summary of previous turbidity events;

(iii) A proposed plan of corrective action; and

(iv) A schedule for implementing the action plan.

(3) Site-specific requirements.

(a) Level of inactivation.

(i) The purveyor shall ensure that the removal and/or inactivation levels required under WAC 246-290-630(11) are met in at least eleven of the twelve previous calendar months that the system served water to the public.

(ii) A system failing to meet the inactivation requirements in (a)(i) of this subsection in two or more months of the previous twelve calendar months the system served water to the public shall expand the scope of its annual comprehensive report required under WAC 246-290-696(6) to include:

(A) A description of the failure(s);

(B) A summary of previous inactivation failures;

(C) A proposed plan of corrective action; and

(D) A schedule for implementing the action plan.

(b) Watershed control.

(i) The watershed must not be allowed to be inhabited, except for those designated individuals and for those periods of time each year that would be directly associated with the protection of the watershed.

(ii) The purveyor shall develop and implement a department-approved watershed control program.

(iii) The purveyor shall monitor, limit, and control all facilities and activities in the watershed affecting source quality to preclude degradation of the physical, chemical,

microbiological (including viral and *Cryptosporidium* oocysts contamination), and radiological quality of the source. The purveyor shall demonstrate, through ownership and/or written agreements acceptable to the department, control of all human activities that may adversely impact source quality.

(iv) At a minimum, the purveyor's watershed control program shall:

(A) Characterize the watershed hydrology and land ownership;

(B) Identify watershed characteristics and activities that may adversely affect source water quality; and

(C) Monitor the occurrence of activities that may adversely affect source water quality.

(v) If the department determines significant changes have occurred in the watershed, the purveyor shall submit, within ninety days of notification, an updated watershed control program to the department for review and approval.

(vi) The purveyor may be required to conduct additional monitoring to demonstrate the adequacy of the watershed control program.

(vii) A purveyor shall be considered out of compliance when failing to:

(A) Have a department-approved watershed control program;

(B) Implement the watershed control program to the satisfaction of the department;

(C) Conduct additional monitoring as directed by the department; or

(D) Prevent the human inhabitation of the watershed, except during the periods of time when conducting watershed protection activities as provided in (b)(i) of this subsection.

(c) On-site inspections.

(i) The purveyor shall submit to on-site inspections by the department to assess watershed control and disinfection treatment.

(ii) The purveyor shall submit to annual inspections by the department unless more frequent inspections are deemed necessary to protect the health of consumers served by the system.

(iii) The purveyor with unsatisfactory on-site inspection results shall take action as directed by the department in accordance with a department-established schedule.

(d) Waterborne disease outbreak.

(i) The system shall not be identified by the department as the cause of a waterborne disease outbreak attributable to a failure in treatment of the surface or GWI source.

(ii) A system identified by the department as the cause of a waterborne disease in (d)(i) of this subsection shall expand the scope of its annual comprehensive report required under WAC 246-290-696(6) to include:

(A) A description of the outbreak;

(B) A summary of previous waterborne disease outbreaks attributed to the system;

(C) A proposed plan of corrective action; and

(D) A schedule for implementing the action plan.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-692 Disinfection for unfiltered systems. (1) General requirements.

(a) The purveyor without a limited alternative to filtration shall provide continuous disinfection treatment to ensure at least 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts and 99.99 percent (4 log) inactivation of viruses at all times the system serves water to the public.

(b) The purveyor with a limited alternative to filtration shall meet the treatment requirements in WAC 246-290-630(11) at all times the system serves water to the public.

(c) The purveyor may be required to provide greater levels of inactivation of *Giardia lamblia* cysts, other pathogenic microorganisms of public health concern, and viruses to protect the health of consumers.

(d) Failure to meet the inactivation level requirements of WAC 246-290-690 (3)(a) or 246-290-691 (3)(a) shall be considered a violation.

(2) Determining the level of inactivation.

(a) Each day the system without a limited alternative to filtration serves water to the public, the purveyor, using procedures and $CT_{99.9}$ values specified in 40 CFR 141.74, Vol. 54, No. 124, (published June 29, 1989, and copies of which are available from the department), shall determine:

(i) CT values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's disinfection treatment process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts and viruses required by the department. For purposes of determining compliance with the inactivation requirements specified in subsection (1) of this section, no credit shall be granted for disinfection applied to a source water with a turbidity greater than 5.0 NTU.

(b) Each day the system with a limited alternative to filtration serves water to the public, the purveyor, using appropriate guidance, shall determine:

(i) CT values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's treatment process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of health concern including *Cryptosporidium* oocysts that would be greater than what would be expected from the combination of filtration plus chlorine disinfection.

(c) The purveyor shall be considered in compliance with the daily inactivation requirement when a total inactivation ratio equal to or greater than 1.0 is achieved.

(d) The purveyor of a system using a disinfectant or combination of disinfectants may use CT values lower than those specified in (a) of this subsection, if the purveyor demonstrates to the department's satisfaction that the required levels of inactivation of *Giardia lamblia* cysts, viruses, and, if providing a limited alternative to filtration, any other pathogenic organisms of public health concern including

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Cryptosporidium oocysts, can be achieved using the lower CT values.

(e) The purveyor of a system using preformed chloramines or adding ammonia to the water before chlorine shall demonstrate to the department's satisfaction that the system achieves at least 99.99 percent (4 log) inactivation of viruses.

(3) The purveyor using either unfiltered or "limited alternative to filtration" treated sources shall ensure that disinfection facilities provide either:

(a) Redundant components, including an auxiliary power supply with automatic start-up and alarm, to ensure continuous disinfection. Redundancy shall ensure that both the minimum inactivation requirements and the requirement for a 0.2 mg/L residual disinfectant concentration at entry to the distribution system are met at all times water is delivered to the distribution system; or

(b) Automatic shut-off of delivery of water to the distribution system when the residual disinfectant concentration in the water is less than 0.2 mg/L. Automatic shut-off shall be allowed only in systems where the purveyor demonstrates to the department's satisfaction that automatic shutoff will not endanger health or interfere with fire protection.

(4) Disinfectant residual entering the distribution system.

(a) The purveyor shall ensure that water entering the distribution system contains a residual disinfectant concentration, measured as free or combined chlorine, of at least 0.2 mg/L at all times the system serves water to the public; and

(b) Failure to provide a 0.2 mg/L residual at entry to distribution for more than four hours on any day shall be considered a treatment technique violation.

(5) Disinfectant residuals within the distribution system.

(a) The purveyor shall ensure that the residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide, is detectable in at least ninety-five percent of the samples taken each calendar month.

(b) The purveyor of a system that purchases completely treated surface or GWI water as determined by the department shall comply with the requirements specified in (a) of this subsection.

(c) Water in the distribution system with an HPC level less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-694 Monitoring for unfiltered systems. (1) Source coliform monitoring for systems without a limited alternative to filtration.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are representative and:

(i) Collected before the first point of disinfectant application; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) The purveyor shall ensure source samples are collected for fecal coliform analysis each week the system serves water to the public based on the following schedule:

Population Served	Minimum Number/week*
25 - 500	1
501 - 3,300	2
3,301 - 10,000	3
10,001 - 25,000	4
>25,000	5

* Must be taken on separate days.

(c) Each day the system serves water to the public and the turbidity of the source water exceeds 1.0 NTU, the purveyor shall ensure one representative source water sample is collected before the first point of disinfectant application and analyzed for fecal coliform density. This sample shall count toward the weekly source coliform sampling requirement.

(d) A purveyor shall not be considered in violation of (c) of this subsection, if the purveyor demonstrates to the department's satisfaction that, for valid logistical reasons outside the purveyor's control, the additional fecal coliform sample could not be analyzed within a time frame acceptable to the department.

(2) Source coliform monitoring for systems with a limited alternative to filtration.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are:

(i) Collected before the first point of primary disinfection; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) At a minimum, the purveyor shall ensure source samples are collected for fecal coliform analysis at a frequency equal to ten percent the number of routine coliform samples collected within the distribution system each month under WAC 246-290-300, or once per calendar month, whichever is greater, up to a maximum of one sample per day.

(3) Coliform monitoring at entry to distribution for systems without a limited alternative to filtration.

(a) The purveyor shall collect and have analyzed one coliform sample at the entry point to the distribution system each day that a routine or repeat coliform sample is collected within the distribution system under WAC 246-290-300(3) or 246-290-320(2), respectively.

(b) The purveyor shall use the results of the coliform monitoring at entry to distribution along with inactivation ratio monitoring results to demonstrate the adequacy of source treatment.

(4) Source turbidity monitoring for systems without a limited alternative to filtration.

(a) The purveyor shall continuously monitor and record turbidity:

(i) On representative source water samples before the first point of primary disinfectant application; and

(ii) In accordance with the analytical techniques under WAC 246-290-638.

(b) If source water turbidity is not the same as the turbidity of water delivered to consumers, the purveyor shall continuously monitor and record turbidity of water delivered.

(5) Source turbidity monitoring for systems with a limited alternative to filtration. The purveyor shall:

(a) Continuously monitor turbidity on representative source samples before the first point of primary disinfection application;

(b) Record continuous turbidity measurements at equal intervals, of at least four hours, in accordance with a department-approved sampling schedule; and

(c) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(6) Monitoring the level of inactivation.

(a) Each day the system is in operation, the purveyor shall determine the total level of inactivation of *Giardia lamblia* cysts, viruses, and, if providing a limited alternative to filtration, any other pathogenic organisms of health concern including *Cryptosporidium* oocysts, achieved through disinfection.

(b) At least once per day, the purveyor shall monitor the following parameters to determine the total inactivation ratio achieved through disinfection:

(i) Temperature of the disinfected water at each residual disinfectant concentration sampling point used for CT calculations; and

(ii) If using chlorine, pH of the disinfected water at each chlorine residual disinfectant concentration sampling point used for CT calculations.

(c) Each day during peak hourly flow, the purveyor shall:

(i) Determine disinfectant contact time, T, to the point at which C is measured; and

(ii) Measure the residual disinfectant concentration, C, of the water at the point for which T is calculated. The C measurement point must be before or at the first consumer.

(7) Monitoring the residual disinfectant concentration entering the distribution system for either unfiltered systems, or systems using a limited alternative to filtration.

(a) Systems serving more than thirty-three hundred people.

(i) The purveyor shall continuously monitor and record the residual disinfectant concentration of water entering the distribution system and report the lowest value each day.

(ii) If the continuous monitoring equipment fails, the purveyor shall measure the residual disinfectant concentration on grab samples collected at least every four hours at the entry to the distribution system while the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment back on-line within five working days following failure.

(b) Systems serving thirty-three hundred or less people.

(i) The purveyor shall collect grab samples or use continuous monitoring and recording to measure the residual disinfectant concentration entering the distribution system.

(ii) A purveyor choosing to take grab samples shall collect:

(A) Samples at the following minimum frequencies:

Population Served	Number/day
25 - 500	1
501 - 1,000	2
1,001 - 2,500	3
2,501 - 3,300	4

(B) At least one of the grab samples at peak hourly flow based on historical flows for the system; and

(C) The remaining sample or samples at intervals evenly spaced over the time the system is disinfecting water that will be delivered to the public.

(iii) When grab samples are collected and the residual disinfectant concentration at the entry to distribution falls below 0.2 mg/L, the purveyor shall collect a grab sample every four hours until the residual disinfectant concentration is 0.2 mg/L or more.

(8) Monitoring residual disinfectant concentration within the distribution system for either unfiltration systems, or systems using a limited alternative to filtration.

(a) The purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected in accordance with WAC 246-290-300(3) or 246-290-320(2) or once per day, whichever is greater.

(b) The purveyor of a system that purchases completely treated surface or GWI water as determined by the department shall comply with the requirements of (a) of this subsection or as otherwise directed by the department under WAC 246-290-300 (2)(c). At a minimum, the purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected in accordance with WAC 246-290-300(3) or 246-290-320(2).

(c) The purveyor may measure HPC within the distribution system in lieu of measuring the residual disinfectant concentration in accordance with this subsection.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-696 Reporting for unfiltered systems. (1) The purveyor shall report to the department as soon as possible, but no later than ((~~the end of the next business day, when~~)) twenty-four hours after the purveyor learns of any of the following events:

(a) A waterborne disease outbreak potentially attributable to the water system occurs;

(b) The turbidity of water delivered to the public exceeds 5.0 NTU;

(c) The minimum level of inactivation required by the department is not met;

(d) The residual disinfectant concentration falls below 0.2 mg/L at the entry point to the distribution system. The purveyor shall also report whether the residual was restored to 0.2 mg/L or more within four hours; or

(e) The surface or GWI source is taken off-line due to an emergency.

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(2) The purveyor shall report results of monitoring conducted in accordance with WAC 246-290-694 to the department. Monthly report forms shall be submitted within ten days after the end of each month the system served water to the public.

(3) The purveyor shall report, at a minimum, all the information requested by the department using a department-approved form or format including:

(a) Water quality information, including the results of both:

(i) Source coliform monitoring; and

(ii) Source turbidity monitoring.

(b) Disinfection monitoring information, including:

(i) Level of inactivation achieved;

(ii) Residual disinfectant concentrations entering the distribution system; and

(iii) Residual disinfectant concentrations within the distribution system.

(c) A summary of water quality complaints received from consumers served by the water system.

(4) The purveyor of a system that purchases completely treated water shall:

(a) Report results of distribution system residual disinfectant concentration monitoring to the department using department-approved forms or format; and

(b) Submit forms to the department in accordance with subsection (2) of this section or as otherwise directed by the department.

(5) A person certified under chapter 246-292 WAC shall complete and sign the monthly report forms required in this section.

(6) Beginning in 1992, by October 10th of each year, the purveyor shall submit to the department an annual comprehensive report that summarizes the:

(a) Effectiveness of the watershed control program and identifies, at a minimum, the following:

(i) Activities in the watershed that are adversely affecting source water quality;

(ii) Changes in the watershed that have occurred within the previous year that could adversely affect source water quality;

(iii) Activities expected to occur in the watershed in the future and how the activities will be monitored and controlled;

(iv) The monitoring program the purveyor uses to assess the adequacy of watershed protection including an evaluation of sampling results; and

(v) Special concerns about the watershed and how the concerns are being addressed;

(b) System's compliance with the criteria to remain unfiltered under WAC 246-290-690, or, when applicable, the criteria required if the system provides a limited alternative to filtration under WAC 246-290-691; and

(c) Significant changes in system design and/or operation that have occurred within the previous year that impact the ability of the system to comply with the criteria to remain unfiltered, or, if applicable, the ability of the system to provide a limited alternative to filtration in accordance with WAC 246-290-692.

(7) The purveyor of a system attempting to remain unfiltered or to remain with a limited alternative to filtration shall submit a *Filtration Decision Report* at the request of the department. The report shall:

(a) Provide the information by which the department may determine whether a system continues to meet the criteria to remain unfiltered or, if applicable, the criteria allowing the provision of a limited alternative to filtration; and

(b) Be submitted on a schedule as specified by the department.

SUBPART A - PUBLIC NOTIFICATION AND CONSUMER INFORMATION

NEW SECTION

WAC 246-290-71001 Public notification. (1) The purveyor shall notify the water system users and the owner or operator of any consecutive water system served in accordance with 40 CFR 141.201 through 208. Notice is to be provided when the system violates a National Primary Drinking Water Regulation and when any of the situations listed in Table 1 of 40 CFR 141.201 occur, except for (3)(ii). Violations and other situations are categorized into Tiers in accordance with the following:

(a) Tier 1 as described in Table 1 of 40 CFR 141.202(a);

(b) Tier 2 as described in Table 1 of 40 CFR 141.203(a); or

(c) Tier 3 as described in Table 1 of 40 CFR 141.204(a).

(2) The purveyor shall initiate consultation with the department as soon as possible, but no later than twenty-four hours after they learn their system has a Tier 1 violation or situation in order to determine if additional public notice is required. The purveyor shall comply with any additional public notification requirements established as a result of the consultation.

(3) The purveyor shall notify the water system users when the system:

(a) Is issued a departmental order;

(b) Fails to comply with a departmental order; or

(c) Is issued a category red operating permit.

NEW SECTION

WAC 246-290-71002 Public notice content. (1) Public notices required under WAC 246-290-71001(1) shall contain the elements and standard language required under 40 CFR 141.205 (a), (b), and (d) and be presented in accordance with 40 CFR 141.205 (c), except that notification of the availability of unregulated contaminant results and notification of an exceedance of the secondary MCL for fluoride shall be in accordance with WAC 246-290-71005.

(2) Public notices required under WAC 246-290-71001 (3)(a) and (c) for the issuance of a departmental order or category red operating permit shall include:

(a) A clear, concise, and simple explanation of the violation;

(b) Discussion of potential adverse health effects and any segments of the population that may be at higher risk;

(c) Mandatory health effects information in accordance with WAC 246-290-71004(2);

(d) A list of steps the purveyor has taken or is planning to take to remedy the situation;

(e) A list of steps the consumer should take, including advice on seeking an alternative water supply if necessary;

(f) The purveyor's name and telephone number; and

(g) When appropriate, notices shall be bilingual or multilingual.

Note: The purveyor may provide additional information to further explain the situation.

NEW SECTION

WAC 246-290-71003 Public notification distribution. (1) Purveyors must provide public notice as required under WAC 246-290-71001(1) according to Tier designation generally described in 40 CFR 141.201. The form, manner, timing and frequency for each Tier of public notice, as defined in Table 2 of 40 CFR 141.201 shall be in accordance with:

(a) 40 CFR 141.202 for Tier 1 public notice.

(b) 40 CFR 141.203 for Tier 2 public notice.

(c) 40 CFR 141.204 for Tier 3 public notice.

(2) In addition, notice to new billing units and consumers must be given in accordance with 40 CFR 141.206.

(3) Purveyors of community, NTNC and TNC systems shall provide notice as described in this subsection, or as described in a departmental order within three months of receipt of a departmental order, or a category red operating permit. The purveyor shall provide the department with a copy of the notice at the time the purveyor notifies the public.

(a) Purveyors of community and NTNC systems shall provide newspaper notice to water system users.

(i) "Newspaper notice," as used above, means publication in a daily newspaper of general circulation or in a weekly newspaper of general circulation if a daily newspaper does not serve the area. The purveyor may substitute a community or homeowner's association newsletter or similar periodical publication if the newspaper reaches all affected consumers within the specified time.

(ii) The purveyor shall substitute a posted notice in the absence of a newspaper of general circulation or homeowner's association newsletter or similar periodical publication. The purveyor shall post the notice within the time frame specified in this subsection.

(b) Purveyors of TNC systems shall post a notice or notify consumers by other methods authorized by the department for receipt of a red operating permit.

(c) The purveyor shall place posted notices in conspicuous locations and present the notices in a manner making them easy to read. Notices shall remain posted until the violation is corrected.

(d) The purveyor of a community or NTNC water system shall give a copy of the most recent public notice for all outstanding violations to all new billing units or new hookups before or at the time water service begins.

NEW SECTION

WAC 246-290-71004 Public notification mandatory language. (1) Public notice required under WAC 246-290-71001(1) shall contain any specific health effects language set forth in WAC 246-290-72012 in accordance with 40 CFR 141.205 (d)(1) and other standard language in accordance with 40 CFR 141.205 (d)(2) and (3), except that notification of the availability of unregulated contaminant results and notification of the exceedance of the secondary MCL for fluoride shall be in accordance with WAC 246-290-71005.

(2) The purveyor shall provide specific mandatory language, contained in department guidance, in its notification when the purveyor is issued a category red operating permit.

NEW SECTION

WAC 246-290-71005 Special public notification requirements. (1) The purveyor of community or NTNC water systems required to monitor under WAC 246-290-300(8) shall notify the water system users of the availability of the results of monitoring for unregulated contaminants no later than twelve months after the monitoring results are known.

(b) The form and manner of the public notice to the water system users shall be in accordance with 40 CFR 141.204(c), (d)(1), and (d)(3). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

(2) The purveyor of a community water system that experiences a secondary MCL violation for fluoride shall provide notice, in accordance with the form, manner, timing and content requirements of 40 CFR 141.208.

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 246-290-71006 Consumer information. The purveyor shall provide consumer information to the water system users within twenty-one days of receipt of confirmation sample results when the department determines that a substance not included in this chapter is confirmed at a level greater than a SAL.

(1) Consumer information shall include:

(a) Name and level of chemical detected;

(b) Location where the chemical was detected;

(c) Any health effects that the chemical could cause at its present concentration;

(d) Plans for follow-up activities; and

(e) The purveyor's name and telephone number.

(2) Consumer information shall be distributed by any of the following methods:

(a) Notice placed in a daily newspaper of general circulation or in a weekly newspaper of general circulation if a daily newspaper does not serve the affected area;

(b) Direct mail to consumers;

(c) Posting for at least one week if a NTNC system; or

(d) Any other method approved by the department.

PROPOSED

PROPOSED

NEW SECTION

WAC 246-290-71007 Public notification special provisions. (1) When circumstances dictate, the purveyor shall give a broader or more immediate notice to protect public health. The department may require the purveyor's notification by whatever means necessary.

(2) When the state board of health grants a public water system a waiver, the purveyor shall notify consumers and new billing units or new customers before water service begins. The purveyor shall provide a notice annually and send a copy to the department.

(3) The department may give notice to the water system users and the owner or operator of any consecutive water system served as required by this section on behalf of the water purveyor. However, the purveyor remains responsible for ensuring Part 7, Subpart A requirements are met.

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

WAC 246-290-72001 Purpose and applicability of the consumer confidence report requirements. WAC 246-290-72001 through 246-290-72012 establishes minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(1) Notwithstanding the provisions of WAC 246-290-020, this section applies only to community water systems.

(2) For the purpose of WAC 246-290-72001 through 246-290-72012:

(a) "Customers" means billing units or service connections to which water is delivered by a community water system.

(b) "Detected" means at or above the levels prescribed by WAC 246-290-300(4) for inorganic contaminants, at or above the levels prescribed by WAC 246-290-300((~~(7)~~)) (8) for organic contaminants, and at or above the levels prescribed by 40 CFR 141.25(c) for radioactive contaminants.

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

WAC 246-290-72005 Report contents—Information on detected contaminants. (1) This section specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring. It applies to:

(a) Contaminants subject to an MCL, action level, maximum residual disinfectant level or treatment technique (regulated contaminants);

(b) Contaminants for which monitoring is required by WAC 246-290-300((~~(8)~~)) (9); and

(c) Disinfection by-products for which monitoring is required by WAC 246-290-300((~~(6)~~)) (7) and 40 CFR 141.142 or microbial contaminants for which monitoring is required by WAC 246-290-300(3) and 40 CFR 141.143, except as provided under WAC 246-290-72006(1), and which are detected in the finished water.

(2) The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

(3) The data must be derived from data collected to comply with the Environmental Protection Agency and state monitoring and analytical requirements during the previous calendar year except that:

(a) Where a system is allowed to monitor for regulated contaminants less than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included.

(b) Results of monitoring in compliance with 40 CFR 141.142 and 40 CFR 141.143 need only be included for five years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(4) For detected regulated contaminants listed in WAC 246-290-72012, the table(s) must contain:

(a) The MCL for that contaminant expressed as a number equal to or greater than 1.0 (as provided in WAC 246-290-72012);

(b) The MCLG for that contaminant expressed in the same units as the MCL;

(c) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in WAC 246-290-72004;

(d) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with a National Primary Drinking Water Regulation and the range of detected levels, as follows:

(i) When compliance with the MCL is determined annually or less frequently: The highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: The highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points: The average and range of detection expressed in the same units as the MCL.

(iv) Note to WAC 246-290-72005 (4)(d): When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in WAC 246-290-72012;

(e) For turbidity.

(i) When it is reported ((~~pursuant to~~)) under chapter 246-290 WAC Part 6, Subpart C: The highest average monthly value.

(ii) When it is reported ((~~pursuant to~~)) under the requirements of chapter 246-290 WAC Part 6, Subpart D: The highest monthly value. The report should include an explanation of the reasons for measuring turbidity.

(iii) When it is reported ((~~pursuant to~~)) under chapter 246-290 WAC Part 6, Subpart B: The highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in chapter 246-290 WAC Part 6, Subpart B for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity;

(f) For lead and copper: The 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;

(g) For total coliform:

(i) The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or

(ii) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month;

(h) For fecal coliform: The total number of positive samples; and

(i) The likely source(s) of detected contaminants to the best of the purveyor's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the purveyor. If the purveyor lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in WAC 246-290-72012 which are most applicable to the system.

(5) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce separate reports tailored to include data for each service area.

(6) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques and the report must contain a clear and readily understandable explanation of the violation including: The length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language of WAC 246-290-72012.

(7) For detected unregulated contaminants for which monitoring is required, the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

WAC 246-290-72007 Report contents—Compliance with National Primary Drinking Water Regulations. In addition to the requirements of WAC 246-290-72005(6), the report must note any violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation.

(1) Monitoring and reporting of compliance data;

(2) Filtration and disinfection prescribed by chapter 246-290 WAC, Part 6. For systems which have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of ((~~such~~)) the equipment or processes which constitutes a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(3) Lead and copper control requirements prescribed by WAC 246-290-025, specifically CFR 141.80 through 141.91: For systems which fail to take one or more actions prescribed by WAC 246-290-025, specifically CFR 141.80 through 141.84, the report must include the applicable language of WAC 246-290-72012 for lead, copper, or both.

(4) Treatment techniques for Acrylamide and Epichlorohydrin prescribed by 40 CFR, Subpart K. For systems which violate the requirements of 40 CFR, Subpart K, the report must include the relevant language from WAC 246-290-72012.

(5) Recordkeeping of compliance data.

(6) Special monitoring requirements prescribed by WAC 246-290-300((~~(8)~~)) (9) (unregulated contaminants) and 246-290-310(3) (sodium); and

(7) Violation of the terms of a variance, an exemption, or an administrative or judicial order.

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

WAC 246-290-72010 Report contents—Required additional health information. All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. Environmental Protection Agency/Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(1) Beginning in the report due by July 1, 2002, a system which detects arsenic ((~~at~~)) levels above ((~~25 micrograms per liter, but below the MCL~~)) 0.005 mg/L and up to and including 0.01 mg/L:

(a) Must include in its report a short informational statement about arsenic, using language such as: ((~~EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a nat-~~

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~~urally occurring mineral known to cause cancer in humans at high concentrations.~~)) While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

(b) May write its own educational statement, but only in consultation with the department.

(2) A system which detects nitrate at levels above 5 mg/l, but below the MCL:

(a) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue-baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should ask for advice from your health care provider.

(b) May write its own educational statement, but only in consultation with the department.

(3) Systems which detect lead above the action level in more than five percent, and up to and including ten percent, of homes sampled:

(a) Must include a short informational statement about the special impact of lead on children using language such as: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for thirty seconds to two minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

(b) May write its own educational statement, but only in consultation with the department.

(4) Community water systems that detect TTHM above 0.080 mg/l, but below the MCL in WAC 246-290-310(4), as an annual average, monitored and calculated under the provisions of WAC 246-290-300(6), must include health effects language prescribed by WAC 246-290-72012.

(5) Beginning in the report due by July 1, 2002, and ending January 22, 2006, a community water system that detects arsenic above 0.01 mg/L and up to and including 0.05 mg/L must include the arsenic health effects language prescribed in WAC 246-290-72012.

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

WAC 246-290-72012 Regulated contaminants.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Microbiological Contaminants						
Total Coliform Bacteria	MCL: (systems that collect ≥ 40 samples/ month) 5% of monthly samples are positive; (systems that collect < 40 samples/ month) 1 positive monthly sample		MCL: (systems that collect ≥ 40 samples/ month) 5% of monthly samples are positive; (systems that collect < 40 samples/ month) 1 positive monthly sample	0	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform and *E. coli*	0		0	0	Human and animal fecal waste	Fecal coliforms and *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely-compromised immune systems.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Total organic carbon (ppm)	TT	-	TT	n/a	Naturally present in the environment	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by-products. These by-products include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Turbidity (NTU)	TT.	-	TT	n/a	Soil runoff	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
Radioactive Contaminants						
Beta/photon emitters (mrem/yr) *Effective 12/08/03	4 mrem/yr	-	4	n/a 0	Decay of natural and man-made deposits	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters (pCi/l) *Effective 12/08/03	15 pCi/l	-	15	n/a 0	Erosion of natural deposits	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/l) *Effective 12/08/03	5 pCi/l	-	5	n/a 0	Erosion of natural deposits	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

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Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Uranium (pCi/l) *Effective 12/08/03	30 micro g/l	-	30	0	Erosion of natural deposits	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Inorganic Contaminants						
Antimony (ppb)	.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb) *Effective 1/23/06	.05 0.01	1000 1000	50 10	n/a 0	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (MFL)	7 MFL	-	7	7	Decay of asbestos cement water mains; Erosion of natural deposits	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2	-	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium (ppb)	.004	1000	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium (ppb)	.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chromium (ppb)	.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Copper (ppm)	AL = 1.3	-	AL = 1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4	-	4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or ((~~greater~~)) more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead (ppb)	AL = .015	1000	AL = 15	0	Corrosion of household plumbing systems; Erosion of natural deposits	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Mercury [inorganic] (ppb)	.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

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Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Nitrate (ppm)	10	-	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite (ppm)	1	-	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb)	.05	1000	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb)	.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Contaminants including Pesticides and Herbicides						
2,4-D (ppb)	.07	1000	70	70	Runoff from herbicide used on row crops	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP [Silvex](ppb)	.05	1000	50	50	Residue of banned herbicide	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Acrylamide	TT	-	TT	0	Added to water during sewage/ wastewater treatment	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Alachlor (ppb)	.002	1000	2	0	Runoff from herbicide used on row crops	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine (ppb)	.003	1000	3	3	Runoff from herbicide used on row crops	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene [PAH] (nanograms/l)	.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	.002	1000	2	0	Residue of banned termiticide	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	.2	1000	200	200	Runoff from herbicide used on rights of way	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl) adipate (ppb)	.4	1000	400	400	Discharge from chemical factories	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.

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Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Di(2-ethylhexyl) phthalate (ppb)	.006	1000	6	0	Discharge from rubber and chemical factories	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloropropane (ppt)	.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb)	.02	1000	20	20	Runoff from herbicide use	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Dioxin [2,3,7,8-TCDD] (ppq)	.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; Discharge from chemical factories	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Endothall (ppb)	.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT	-	TT	0	Discharge from industrial chemical factories; An impurity of some water treatment chemicals	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Ethylene dibromide (ppt)	.00005	1,000,000	50	0	Discharge from petroleum refineries	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	.7	1000	700	700	Runoff from herbicide use	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor (ppt)	.0004	1,000,000	400	0	Residue of banned pesticide	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide (ppt)	.0002	1,000,000	200	0	Breakdown of heptachlor	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachlorocyclo-pentadiene (ppb)	.05	1000	50	50	Discharge from chemical factories	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

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Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Oxamyl [Vydate] (ppb)	.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
PCBs [Polychlorinated biphenyls] (ppt)	.0005	1,000,000	500	0	Runoff from landfills; Discharge of waste chemicals	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachlorophenol (ppb)	.001	1000	1	0	Discharge from wood preserving factories	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	.5	1000	500	500	Herbicide runoff	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	.004	1000	4	4	Herbicide runoff	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Contaminants						
Benzene (ppb)	.005	1000	5	0	Discharge from factories; Leaching from gas storage tanks and landfills	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Bromate (ppb)	.010	1000	10	0	By-product of drinking water chlorination	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Carbon tetrachloride (ppb)	.005	1000	5	0	Discharge from chemical plants and other industrial activities	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chloramines (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who ((~~contact~~)) use drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who ((~~contact~~)) use drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorite (ppm)	1	-	1	0.8	By-product of drinking water chlorination	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine dioxide (ppb)	MRDL = .8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

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Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Chlorobenzene (ppb)	.1	1000	100	100	Discharge from chemical and agricultural chemical factories	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	.6	1000	600	600	Discharge from industrial chemical factories	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene (ppb)	.075	1000	75	75	Discharge from industrial chemical factories	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene (ppb)	.007	1000	7	7	Discharge from industrial chemical factories	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	.07	1000	70	70	Discharge from industrial chemical factories	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene (ppb)	.1	1000	100	100	Discharge from industrial chemical factories	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	.005	1000	5	0	Discharge from pharmaceutical and chemical factories	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Ethylbenzene (ppb)	.7	1000	700	700	Discharge from petroleum refineries	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Haloacetic Acids (HAA) (ppb)	.060	1000	60	n/a	By-product of drinking water disinfection	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Styrene (ppb)	.1	1000	100	100	Discharge from rubber and plastic factories; Leaching from landfills	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene (ppb)	.005	1000	5	0	Discharge from factories and dry cleaners	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichlorobenzene (ppb)	.07	1000	70	70	Discharge from textile-finishing factories	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	.2	1000	200	200	Discharge from metal degreasing sites and other factories	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	.005	1000	5	3	Discharge from industrial chemical factories	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloroethylene (ppb)	.005	1000	5	0	Discharge from metal degreasing sites and other factories	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

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Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
TTHMs [Total trihalomethanes] (ppb)	0.10/.080	1000	100/80	n/a	By-product of drinking water chlorination	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
Toluene (ppm)	1	-	1	1	Discharge from petroleum factories	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl Chloride (ppb)	.002	1000	2	0	Leaching from PVC piping; Discharge from plastics factories	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10	-	10	10	Discharge from petroleum factories; Discharge from chemical factories	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Key

AL = Action Level

MCL = Maximum Contaminant Level

MCLG = Maximum Contaminant Level Goal

MFL = million fibers per liter

MRDL = Maximum Residual Disinfectant Level

MRDLG = Maximum Residual Disinfectant Level Goal

mrem/year = millirems per year (a measure of radiation ((~~absored~~)) absorbed by the body)

N/A = Not Applicable

NTU = Nephelometric Turbidity Units (a measure of water clarity)

pCi/l = picocuries per liter (a measure of radioactivity)

ppm = parts per million, or milligrams per liter (mg/l)

ppb = parts per billion, or micrograms per liter (Φg/l)

ppt = parts per trillion, or nanograms per liter

ppq = parts per quadrillion, or picograms per liter

TT = Treatment Technique

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-290-495 Public notification.

WSR 03-03-082
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 02-12—Filed January 15, 2003, 1:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-20-080.

Title of Rule: SEPA rules, chapter 197-11 WAC.

Purpose: The proposed amendments are necessary to make ecology's SEPA rules consistent with legislation set

forth in chapter 43.21C RCW statutorily exempting specific proposed actions from SEPA review.

Other Identifying Information: Amendments are proposed to the following SEPA rules: WAC 197-11-070, 197-11-250, 197-11-310, 197-11-800, 197-11-820, 197-11-835, 197-11-850, 197-11-855, 197-11-902, 197-11-904, and 197-11-908.

Statutory Authority for Adoption: RCW 43.21A.090, chapter 43.21C RCW, RCW 43.21C.035, 43.21C.037, 43.21C.038, 43.21C.0381, 43.21C.0382, 43.21C.0383, 43.21C.110, 43.21C.222.

Statute Being Implemented: Chapter 43.21C RCW, RCW 43.21C.035, 43.21C.037, 43.21C.038, 43.21C.0381, 43.21C.0382, 43.21C.0383, 43.21C.110, 43.21C.222.

Summary: The proposed amendments clarify ecology's "categorical rule exemptions" by removing the "statutory exemptions" codified in chapter 43.21C RCW (except RCW 43.21C.0384 dealing with personal wireless services facilities) from the list of "categorical rule exemptions" in Part Nine of the rules, renumber and reletter sections within the rules as necessary, and clarify that threshold determinations are not required for those actions statutorily exempt as provided in chapter 43.21C RCW.

Reasons Supporting Proposal: The legislature has statutorily exempted certain actions from SEPA review in chapter 43.21C RCW. However, when ecology adopted the SEPA rules in 1984, these "statutory exemptions" were included within the list of "categorical rule exemptions" contained in Part Nine of the SEPA rules. This has resulted in the "statutory exemptions" being subject to SEPA review in certain prescribed circumstances. This is inconsistent with legislation contained in chapter 43.21C RCW.

Name of Agency Personnel Responsible for Drafting and Implementation: Barbara Ritchie, 300 Desmond Drive, Lacey, WA, (360) 407-6922.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed amendments remove the "statutory exemptions" codified in RCW 43.21C.035, 43.21C.037, 43.21C.038, 43.21C.0381, 43.21C.0382, 43.21C.0383, and 43.21C.222 from the list of "categorical rule exemptions" in Part Nine of ecology's SEPA rules; renumber and reletter the rules as necessary to reflect the removal of the referenced "statutory exemptions" from the rules; and clarify that threshold determinations are not required for those actions statutorily exempt provided in chapter 43.21C RCW. The purpose and effect of the proposed amendments is to make ecology's SEPA rules consistent with legislation set forth in chapter 43.21C RCW and to clarify that these statutory exemptions are not subject to the provisions of WAC 197-11-305.

Proposal Changes the Following Existing Rules: Deletion of the referenced "statutory exemptions" from the list of "categorical rule exemptions" in Part Nine of ecology's SEPA rules, clarifies that the referenced "statutory exemptions" are not subject to the provisions of WAC 197-11-305. The proposed amendment to WAC 197-11-310 clarifies that a threshold determination is not required for any proposal statutorily exempt as provided in chapter 43.21C RCW. No changes result to the "statutory exemptions" which remain in effect as codified in chapter 43.21C RCW.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 requires an agency to prepare a small business economic impact statement (SBEIS) "if the proposed rule will impose more than minor costs on businesses in any industry." The proposed amendments to ecology's SEPA rules don't impose any costs on businesses. Therefore, an SBEIS is not required for the proposed rule amendments.

RCW 34.05.328 does not apply to this rule adoption. Ecology has made a determination that the proposed amendments are not significant legislative rules. However, the agency intends to voluntarily comply with the requirements of RCW 34.05.328.

Hearing Location: Department of Ecology, 300 Desmond Drive, Auditorium, Room 36, Lacey, on February 26, 2003, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Barbara Ritchie by February 14, 2003, (360) 407-6922 or 711 (TTY), or 1-800-833-8973 (TTY).

Submit Written Comments to: Barbara Ritchie, P.O. Box 47703, Olympia, WA 98504-7703, e-mail sepaunit @ecy.wa.gov, phone (360) 407-6922, fax (360) 407-6904, by 5:00 p.m. March 5, 2003.

Date of Intended Adoption: April 15, 2003.

January 15, 2003

Linda Hoffman

Deputy Director

AMENDATORY SECTION (Amending Order 95-16, filed 10/10/97, effective 11/10/97)

WAC 197-11-070 Limitations on actions during SEPA process. (1) Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:

(a) Have an adverse environmental impact; or

(b) Limit the choice of reasonable alternatives.

(2) In addition, certain DNSs require a fourteen-day period prior to agency action (WAC 197-11-340(2)), and FEISs require a seven-day period prior to agency action (WAC 197-11-460(4)).

(3) In preparing environmental documents, there may be a need to conduct studies that may cause nonsignificant environmental impacts. If such activity is not exempt under WAC 197-11-800((~~(18)~~)) (17), the activity may nonetheless proceed if a checklist is prepared and appropriate mitigation measures taken.

(4) This section does not preclude developing plans or designs, issuing requests for proposals (RFPs), securing options, or performing other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection (1).

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AMENDATORY SECTION (Amending Order 94-22, filed 3/31/95, effective 5/1/95)

WAC 197-11-250 SEPA/Model Toxics Control Act integration. (1) WAC 197-11-253 through 197-11-268 integrate the procedural requirements and documents of this chapter with those required under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, and chapter 173-340 WAC.

(2) Both MTCA and SEPA provide opportunities for early public review of a proposal. The following sections contain procedures to combine the MTCA and SEPA processes to reduce duplication and improve public participation. These sections supplement the other requirements of this chapter. To the extent there is a conflict, these sections supersede any conflicting provisions of this chapter.

(3) WAC 197-11-253 through 197-11-268 apply to remedial actions as defined in RCW 70.105D.020(12) and conducted by ecology or by a potentially liable person (PLP) under an order, agreed order, or consent decree under MTCA. These sections do not apply to independent remedial actions; rather, the remainder of this chapter applies to independent remedial actions that are subject to SEPA.

(4) When the remedial action is part of a development proposal, the procedures in WAC 197-11-256 through 197-11-268 shall be used to combine the procedural requirements of SEPA and MTCA, to the extent practicable.

(5) To effectively integrate the procedural requirements of SEPA and MTCA, the SEPA elements of the environment that could be impacted need to be identified as early in the MTCA process as possible. Early consideration of SEPA facilitates identification of study areas prior to conducting the remedial investigation/ feasibility study (RI/FS) and effective, timely integration of SEPA and MTCA documents. The threshold determination may be delayed until later in the MTCA process.

(6) WAC 197-11-256 through 197-11-268 do not change the categorical exemption for information collection in WAC 197-11-800((~~(18)~~)) (17) or the emergency exemption in WAC 197-11-880.

(7) Interim actions (WAC 173-340-430) conducted as part of a remedial action conducted by ecology, or by a potentially liable person under an order, agreed order, or consent decree under MTCA are governed by WAC 197-11-268.

AMENDATORY SECTION (Amending Order 95-16, filed 10/10/97, effective 11/10/97)

WAC 197-11-310 Threshold determination required. (1) A threshold determination is required for any proposal which meets the definition of action and is not categorically exempt, subject to the limitations in WAC 197-11-600(3) concerning proposals for which a threshold determination has already been issued, or statutorily exempt as provided in chapter 43.21C RCW. A threshold determination is not required for a planned action (refer to WAC 197-11-164 through 197-11-172).

(2) The responsible official of the lead agency shall make the threshold determination, which shall be made as close as possible to the time an agency has developed or is presented with a proposal (WAC 197-11-784). If the lead agency is a GMA county/city, that agency must meet the timing requirements in subsection (6) of this section.

(3) The responsible official shall make a threshold determination no later than ninety days after the application and supporting documentation are determined to be complete. The applicant may request an additional thirty days for the threshold determination (RCW 43.21C.033).

(4) The time limit in subsection (3) of this section shall not apply to a county/city that:

(a) By ordinance adopted prior to April 1, 1992, has adopted procedures to integrate permit and land use decisions with SEPA requirements; or

(b) Is planning under RCW 36.70A.040 (GMA) and is subject to the requirements of subsection (6) of this section.

(5) All threshold determinations shall be documented in:

(a) A determination of nonsignificance (DNS) (WAC 197-11-340); or

(b) A determination of significance (DS) (WAC 197-11-360).

(6) When a GMA county/city with an integrated project review process under RCW 36.70B.060 is lead agency for a project, the following timing requirements apply:

(a) If a DS is made concurrent with the notice of application, the DS and scoping notice shall be combined with the notice of application (RCW 36.70B.110). Nothing in this subsection prevents the DS/scoping notice from being issued before the notice of application. If sufficient information is not available to make a threshold determination when the notice of application is issued, the DS may be issued later in the review process.

(b) Nothing in this section prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under SEPA or from allowing appeals of procedural determinations prior to submitting a project permit application.

(c) If an open record predecision hearing is required, the threshold determination shall be issued at least fifteen days before the open record predecision hearing (RCW 36.70B.-110 (6)(b)).

(d) The optional DNS process in WAC 197-11-355 may be used to indicate on the notice of application that the lead agency is likely to issue a DNS. If this optional process is used, a separate comment period on the DNS may not be required (refer to WAC 197-11-355(4)).

AMENDATORY SECTION (Amending Order 95-16, filed 10/10/97, effective 11/10/97)

WAC 197-11-800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

Note: The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

(1) **Minor new construction—Flexible thresholds.**

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any license governing emissions to the air or discharges to water is required. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency.

(b) The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

(i) The construction or location of any residential structures of four dwelling units.

(ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iii) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles.

(iv) The construction of a parking lot designed for twenty automobiles.

(v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

(c) Cities, towns or counties may raise the exempt levels to the maximum specified below by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904) and sent to the department of ecology. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:

(i) 20 dwelling units.

(ii) 30,000 square feet.

(iii) 12,000 square feet; 40 automobiles.

(iv) 40 automobiles.

(v) 500 cubic yards.

(2) **Other minor new construction.** The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:

(a) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.

(b) The construction and/or installation of commercial on-premise signs, and public signs and signals.

(c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

(d) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(e) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

(f) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance.

(g) The installation of impervious underground tanks, having a capacity of 10,000 gallons or less.

(h) The vacation of streets or roads.

(i) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(j) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(3) **Repair, remodeling and maintenance activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration,

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or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging;

(b) Reconstruction/maintenance of groins and similar shoreline protection structures; or

(c) Replacement of utility cables that must be buried under the surface of the bedlands. Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) **Water rights.** ((~~The following appropriations of water shall be exempt:~~)) Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of ground water, for any purpose. The exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation((~~:~~

~~(a) Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.~~

~~(b) Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of ground water, for any purpose~~)).

(5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to an authorized public use.

(c) The lease of real property when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.

(6) **Minor land use decisions.** The following land use decisions shall be exempt:

(a) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, but not including further short subdivisions or short platting within a plat or subdivision previously exempted under this subsection.

(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(c) Classifications of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(((~~(d) Annexation of territory by a city or town.~~)))

(7) ((~~School closures. The adoption and implementation of a plan, program, or decision for the closure of a school or schools shall be exempt. Demolition, physical modification or change of a facility from a school use shall not be exempt under this subsection.~~

~~(8)~~)) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(((~~(9)~~))) (8) **Clean Air Act.** ((~~The following actions under the Clean Air Act shall be exempt:~~

~~(a)~~)) The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(((~~(b) The issuance, renewal, reopening, or revision of an air operating permit under RCW 70.94.161.~~

~~(10)~~))) (9) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

(((~~(11)~~))) (10) **Activities of the state legislature.** All actions of the state legislature are exempted. This subsection does not exempt the proposing of legislation by an agency (WAC 197-11-704).

(((~~(12)~~))) (11) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(((~~(13)~~))) (12) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(((~~(14)~~))) (13) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities, including but not limited to cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities, including but not limited to peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services, including but not limited to detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities, including but not limited to taxicabs, ambulances, and tow trucks: Provided, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution, including but not limited to restaurants, liquor, and meat.

(h) All animal control licenses, including but not limited to pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

((~~(15)~~)) (14) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: Provided, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection ((~~(see also WAC 197-11-800(7))~~)).

((~~(16)~~)) (15) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

((~~(17)~~)) (16) **Local improvement districts.** The formation of local improvement districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880.

((~~(18)~~)) (17) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

((~~(19)~~)) (18) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

((~~(20)~~)) (19) **Procedural actions.** The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt. Agency SEPA procedures shall be exempt.

((~~(21)~~)) (20) **Building codes.** The adoption by ordinance of all codes as required by the state Building Code Act (chapter 19.27 RCW).

((~~(22)~~)) (21) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (and thus requires approval of the department of ecology under RCW 70.107.060(4)), SEPA compliance may be limited to those items which differ from state regulations.

((~~(23)~~)) (22) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

((~~(24)~~)) (23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption

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includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (more than 55,000 volts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station or well: Provided, That additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

((~~(25)~~)) (24) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) ((~~All Class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder.~~

~~(b)~~)) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

((~~(c)~~)) (b) Licenses or approvals to remove firewood.

((~~(d)~~)) (c) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

((~~(e)~~)) (d) Issuance of leases for Christmas tree harvesting or brush picking.

((~~(f)~~)) (e) Issuance of leases for school sites.

((~~(g)~~)) (f) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

((~~(h)~~)) (g) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

((~~(i)~~)) (h) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

((~~(j)~~)) (i) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

((~~(k)~~)) (j) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

((~~(26) Watershed restoration projects. Actions pertaining to watershed restoration projects as defined in RCW 89.08.460(2) are exempt, provided, they implement a watershed restoration plan which has been reviewed under SEPA (RCW 89.08.460(1)).~~

~~(27)~~)) (25) **Personal wireless service facilities.**

(a) The siting of personal wireless service facilities are exempt if the facility:

(i) Is a microcell and is to be attached to an existing structure that is not a residence or school and does not contain a residence or a school;

(ii) Includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence or school and does not contain a residence or school, and the existing structure to which it is to be attached is located in a commercial, industrial, manufacturing, forest, or agriculture zone; or

(iii) Involves constructing a personal wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "Personal wireless service facilities" means facilities for the provision of personal wireless services.

(iii) "Microcell" means a wireless communication facility consisting of an antenna that is either:

(A) Four feet in height and with an area of not more than five hundred eighty square inches; or

(B) If a tubular antenna, no more than four inches in diameter and no more than six feet in length.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-820 Department of licensing. All licenses required under programs administered by the department of licensing as of December 12, 1975 are exempted, except the following:

(1) Camping club promotional permits under chapter 19.105 RCW.

(2) Motor vehicle wrecker licenses under chapter 46.80 RCW; WAC 197-11-800 ((~~(14)~~))(13)(i) shall apply to allow possible exemption of renewals of camping club promotional permits and motor vehicle wrecker licenses.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-835 Department of fisheries. The following activities of the department of fisheries are exempted:

(1) The establishment of seasons, catch limits or geographical areas for fishing or shellfish removal.

(2) All hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice as defined in RCW 76.09.050 or regulations thereunder.

(3) Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of game) requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels which have been naturally abandoned within the twelve months previous to the hydraulic permit application.

(4) All clam farm licenses and oyster farm licenses, except where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands.

(5) All other licenses (other than those excepted in (2) and (3) above) authorized to be issued by the department as of December 12, 1975 except the following:

(a) Fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;

(b) Licenses for the mechanical and/or hydraulic removal of clams, including geoducks; and,

(c) Any license authorizing the discharge of explosives in water. WAC 197-11-800 (((~~14~~)))(13)(i) shall apply to allow possible exemption of renewals of the above licenses.

(6) The routine release of hatchery fish or the reintroduction of endemic or native species into their historical habitat where only minor documented effects on other species will occur.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-850 Department of agriculture. All actions under programs administered by the department of agriculture as of December 12, 1975 are exempted, except for the following:

(1) The approval of any application for a commercial registered feedlot, quarantined registered feedlot under chapter 16.36 RCW, or chapters 16-28 and 16-30 WAC.

(2) The issuance or amendment of any regulation respecting restricted-use pesticides under chapter 15.58 RCW that would have the effect of allowing the use of a pesticide previously prohibited by Washington state.

(3) The removal of any pesticide from the list of restricted-use pesticides established in WAC 16-228-155 so as to permit sale of such pesticides to home and garden users, unless the pesticide is no longer manufactured and is not available.

(4) The removal of any pesticide from the list of highly toxic and restricted-use pesticides established under WAC 16-228-165 so as to authorize sale of such pesticides to persons not holding an annual user permit, an applicator certificate, or an applicator operator license, unless the pesticide is no longer manufactured and is not available.

(5) The removal of any pesticide from the category of highly toxic pesticide formulations established in WAC 16-228-165 so as to permit the sale of such pesticides by persons not possessing a pesticide dealer's license, unless the pesticide is no longer manufactured and is not available.

(6) The approval of any use of the pesticide DDT or DDD except for those uses approved by the centers for disease control of the United States Department of Health and Human Services (such as control of rabid bats).

(7) The issuance of a license to operate a public livestock market under RCW 16.65.030.

(8) The provisions of WAC 197-11-800 (((~~14~~)))(13)(i) shall apply to allow possible exemption of renewals of the licenses in (1) through (7) above.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-855 Department of ecology. The following activities of the department of ecology shall be exempt:

(1) ((~~The issuance, reissuance or modification of any waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules and regulations. This exemption shall apply to existing discharges only and shall not apply to any new source discharges.~~

~~(2)~~))) Review of comprehensive solid waste management plans under RCW 70.95.100 and 70.95.110.

(((~~(3)~~))) (2) Granting or denial of certification of consistency pursuant to the Federal Coastal Zone Management Act (16 U.S.C. 1451).

(((~~(4)~~))) (3) Issuance of short-term water quality standards modification, pursuant to chapter 173-201 WAC, for minor projects when the water violations would:

(a) Result in turbidity violations only;

(b) Be less than fourteen days duration;

(c) Be mitigated by a current hydraulic project approval conditioned to protect the fishery resource; and

(d) Not significantly impair beneficial uses of the affected water body.

(((~~(5)~~))) (4) Approval of engineering reports when such approval allows preparation of plans and specifications, but not when it would commit the department to approving the final proposal.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-902 Agency SEPA policies. (1) The act and these rules allow agencies to condition or deny proposals if such action is based upon policies identified by the appropriate governmental authority. These policies must be incorporated into regulations, plans, or codes formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of substantive authority under SEPA. (RCW 43.21C.060; WAC 197-11-660.) State and local policies so designated are called "agency SEPA policies" in these rules.

(2) Agencies are required to designate their SEPA policies not later than one hundred eighty days after the effective date of these rules (or the creation of the agency). In order to condition or deny a proposal, an agency must comply with the provisions of RCW 43.21C.060 and WAC 197-11-660. If an agency has already formally designated agency SEPA policies that meet the requirements of the act and these rules, the agency is not required to adopt them again. Agencies may revise or add to their SEPA policies at any time. Although agency SEPA procedures cannot change the provisions of these rules concerning substantive authority and mitigation (WAC 197-11-906(2)), agency SEPA policies are encouraged to identify specific mitigation measures or techniques.

(3) An agency's document that includes or references by citation their agency SEPA policies (WAC 197-11-660(3)) may be included in agency SEPA procedures (WAC 197-11-904). Public notice and opportunity for public comment shall be provided as part of the agency process for formally designating its SEPA policies.

(4) Depending on their content, the formal designation of agency SEPA policies will not necessarily require any environmental review and will normally be categorically exempt as a procedural action under WAC 197-11-800(~~((20))~~) (19). For example, the policies may merely compile, reorganize, or reference laws or policies currently on the books, or may otherwise be procedural in nature, such as requiring decision makers to consider certain factors.

AMENDATORY SECTION (Amending Order 94-22, filed 3/6/95, effective 4/6/95)

WAC 197-11-904 Agency SEPA procedures. (1) Each agency is required by the act and this section to adopt its own rules and procedures for implementing SEPA. (RCW 43.21C.120.) Agencies may revise or add to their SEPA procedures at any time. Agencies may adopt these rules (chapter 197-11 WAC) by reference, and shall meet the requirements of WAC 197-11-906 concerning the content of their procedures. State and local rules for carrying out SEPA procedures are called "agency SEPA procedures."

(2) State agencies shall adopt or amend their procedures within one hundred eighty days of the effective date of this chapter or subsequent revisions, or within one hundred eighty days of the establishment of an agency, whichever shall occur later. State agencies shall adopt their procedures by rule making under the state Administrative Procedure Act, chapter 34.05 RCW. If a state agency does not have rule making authority under chapter 34.05 RCW, the agency shall adopt procedures under whatever authority it has, and public notice and opportunity for public comment shall be provided. Adoption shall be deemed to have taken place at the time the transmittal of adopted rules is filed with the code reviser.

(3) Local agencies shall adopt or amend their procedures within one hundred eighty days of the effective date of this chapter or subsequent revisions, or within one hundred eighty days of the establishment of the local governmental entity, whichever shall occur later. Local agencies shall adopt their procedures by rule, ordinance, or resolution, whichever is appropriate, to ensure that the procedures have the full force and effect of law. Public notice and opportunity for public comment shall be provided as part of the agency's process for adopting its SEPA procedures.

(4) Any agency determining that all actions it is authorized to take are exempt under Part Nine of these rules may adopt a statement to the effect that it has reviewed its authorized activities and found them all to be exempt under this chapter. Adoption of such a statement under the procedures in subsections (2) and (3) shall be deemed to be in compliance with the requirement that the agency adopt procedures under this chapter.

(5) The adoption of agency procedures is procedural and shall be categorically exempt under this chapter (WAC 197-11-800(~~((20))~~)(19)).

AMENDATORY SECTION (Amending Order 94-22, filed 3/6/95, effective 4/6/95)

WAC 197-11-908 Critical areas. (1) Each county/city may select certain categorical exemptions that do not apply in one or more critical areas designated in a critical areas ordinance adopted under GMA (RCW 36.70A.060). The selection of exemptions that will not apply may be made from the following subsections of WAC 197-11-800: (1), (2)(a) through (h), (3), (5), (6)(a), (~~((14))~~)(13)(c), (~~((24))~~)(23)(a) through (g), and (~~((25)(d), (f), (h), (i))~~)(24)(c), (e), (g), (h).

The scope of environmental review of actions within these areas shall be limited to:

(a) Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and

(b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

All other categorical exemptions apply whether or not the proposal will be located within a critical area. Exemptions selected by an agency under this section shall be listed in the agency's SEPA procedures (WAC 197-11-906).

(2) Proposals that will be located within critical areas are to be treated no differently than other proposals under this chapter, except as stated in the prior subsection. A threshold determination shall be made for all such actions, and an EIS shall not be automatically required for a proposal merely because it is proposed for location in a critical area.

WSR 03-03-091
PROPOSED RULES
CRIMINAL JUSTICE TRAINING COMMISSION
[Filed January 16, 2003, 2:14 p.m.]

Continuance of WSR 02-12-027.

Preproposal statement of inquiry was filed as WSR 02-08-015.

Title of Rule: WAC 139-05-915 Requirements of training for police dog handler.

Purpose: To update the WAC to the current training standards being offered to canine handlers and to set standards of minimum performance of canine teams prior to the team being used for law enforcement or corrections work.

Statutory Authority for Adoption: RCW 43.101.080.

Summary: Stakeholders were contacted by letter to advise of the intended rule amendments. Proposal also listed on the agency website.

Reasons Supporting Proposal: Concerns about statewide consistency of training requirements.

Name of Agency Personnel Responsible for Drafting and Enforcement: Doug Blair, Burien, (206) 835-7311; and Implementation: Michael D. Parsons, Burien, (206) 835-7347.

Name of Proponent: Staff in conjunction with the Board on Law Enforcement Training Standards and Education (BLETSE) and canine subject matter experts, private and governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WAC will not be approved without requisite funding.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Training requirements have not been updated for some time.

Performance standards and recordkeeping needed to provide statewide consistency and credibility.

Proposal Changes the Following Existing Rules: The rule proposed will provide clearer guidelines for requirements of training for police dog handlers and certification of canine teams.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2); therefore, a small business economic impact statement is not required.

RCW 19.85.025(2), this chapter does not apply to a rule proposed for expedited adoption under RCW 34.05.230 (1) through (8), unless a written objection is timely filed with the agency and the objection is not withdrawn.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Criminal Justice Training Commission, 19010 1st Avenue South, Burien, WA 98148-2055, on March 12, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Sonja Hirsch by March 10, 2002 [2003], TDD (206) 835-7300.

Submit Written Comments to: Sharon M. Tolton, Criminal Justice Training Commission, 19010 1st Avenue South, Burien, WA 98148-2055, fax (206) 439-3860, by June [March] 11, 2002 [2003].

Date of Intended Adoption: March 12, 2003.

January 16, 2003
Sharon M. Tolton
Deputy Director

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-05-915 Requirements of training for ((~~police~~)) law enforcement and corrections dog handlers and certification of canine teams. (1) Title and scope: These rules are intended to set minimum standards of performance for the certification of canine teams that are used for law enforcement or corrections purposes. This process is not related to nor does it have any effect upon the requirements for peace officer certification. Nothing in these rules is intended to limit the use of canine teams employed by other state or federal agencies for law enforcement purposes, or the use of volunteer canine teams where the handler is not a Washington peace officer or corrections officer.

(2) For purposes ((~~herein~~)) of this section, the following definitions shall apply:

(a) "Dog handler" means any fully commissioned law enforcement officer or corrections officer of a state, county, city, municipality, or combination thereof, agency who is responsible for the routine care, control, and utilization of a police dog within a law enforcement ((~~patrol~~)) or ((~~investigative~~)) corrections assignment; and

(b) "Canine team" means a specific officer and a specific canine controlled by that officer in the capacity of handler, formally assigned by the employing agency to work together in the performance of law enforcement, or corrections duties.

(c) "Training" means any structured classroom or practical learning exercise conducted, evaluated, and documented by an experienced dog handler or trainer, ((~~for the purpose of developing~~)) certified as an instructor with recognized expertise on canine subjects associated with the development of the trainee's competency in the care, control, and utilization of a police dog.

(d) "Evaluator" means a certified peace officer or corrections officer, who has a minimum of three years experience as a canine handler and is recognized as a trainer of canines by a professional organization of police and/or corrections canine handlers/trainers or by the handler's employing agency. The trainer must have trained a canine team in accordance with the training requirements of WAC 139-05-915, or be recognized by the commission as a certified instructor with expertise in canine training of a specific police canine subject for the purpose of testing and certifying canine handlers and dogs to work as a canine team.

(((~~2~~))) (3) A dog handler shall, as a precondition of such assignment, successfully complete the basic law enforcement academy program, or basic correction officer academy or otherwise comply with the basic training requirement prescribed by WAC 139-05-200 and 139-05-210 of the training commission.

(((~~3~~))) (4) Prior to, or within the first six months of such assignment, a dog handler shall successfully complete training according to the nature and purpose of utilization of the police dog for which such handler is responsible. ((~~Categories of utilization and concomitant training standards are prescribed as follows:~~))

(a) ((~~Generalist.~~)) A dog handler who is responsible for the routine and regular utilization of a police dog within general patrol or investigative activities, shall successfully com-

plete ((~~at least three hundred ninety~~)) a minimum of four hundred hours of training which shall include, but not be limited to:

(i) Philosophies/theories of police ((~~K-9~~)) canine;

(ii) Legal and liability aspects, including applicable department policies;

(iii) Public relations;

(iv) Care and maintenance;

(v) Obedience and control;

(vi) Tracking;

(vii) Trailing;

(viii) Area searching;

(ix) Building searching;

(x) Evidence searching;

(xi) Pursuit/holding; and

(xii) Master protection.

(b) ((~~General detection.~~)) A dog handler who is responsible for the primary and specialized utilization of a police dog in the search for and detection of specific substances, excluding explosives, shall successfully complete ((~~at least one hundred eighty~~)) a minimum of two hundred hours of training which shall include, but not be limited to:

(i) Philosophies/theories of police ((~~K-9~~)) canine;

(ii) Legal and liability aspects, including applicable department policies;

(iii) Public relations;

(iv) Care and maintenance;

(v) Obedience and control;

(vi) Area searching;

(vii) Building searching;

(viii) Evidence searching; and

(ix) Detection of specific substances.

(c) ((~~Explosives detection.~~)) A dog handler who is responsible for the primary and specialized utilization of a police dog in the search for and detection of explosive substances and devices, shall successfully complete ((~~at least three hundred ninety~~)) a minimum of two hundred hours of training which shall include, but not be limited to:

(i) Philosophies/theories of police ((~~K-9~~)) canine;

(ii) Legal and liability aspects, including applicable department policies;

(iii) Public relations;

(iv) Care and maintenance;

(v) Obedience and control;

(vi) Area searching;

(vii) Building searching;

(viii) Evidence searching; and

(iv) Detection of explosives.

(d) ((~~Master protection.~~)) A dog handler who is responsible for the routine and regular utilization of a police dog solely for self-protection and assistance in hostile or potentially hostile situations, shall successfully complete at least one hundred eighty hours of training which shall include, but not be limited to:

(i) Philosophies/theories of police ((~~K-9~~)) canine;

(ii) Legal and liability aspects, including applicable department policies;

(iii) Public relations;

(iv) Care and maintenance;

(v) Obedience and control;

(vi) Pursuit/holding; and

(vii) Master protection.

(5) The commission shall develop and adopt a minimum performance standard for canine teams performing specific law enforcement or corrections functions. It shall be the handler's responsibility to keep their canines under control at all times. Each handler must be able to make his/her canine perform to a level that is deemed acceptable by the commission in the category for the team's intended use as a condition of certification.

(6) Certification of canine teams:

(a) The handler and the canine will be considered as a team and it is the team who will be certified. If the canine changes handlers, a new team exists and the team will need to be certified.

(b) A dog handler may not use a canine for police purposes unless the handler is certified to handle a specific canine for a specific purpose.

(c) In evaluating the proficiency of the canine team, the evaluators shall use the standards approved by the commission for that particular skill category. Performance shall be rated on a pass/fail basis. The evaluator shall have the discretion to discontinue the testing if excessive time has been spent without results, or if there is a concern about safety issues involving the canine, handler, or equipment.

(d) The commission shall certify a canine team who can successfully show proficiency, under scrutiny of a canine evaluator, in one or more of the following areas of patrol and investigation/or detection.

(i) Patrol and investigation:

(A) Obedience;

(B) Protection and control;

(C) Area search;

(D) Building search; and

(E) Tracking.

(ii) Detection:

(A) Buildings;

(B) Vehicles;

(C) Exterior search;

(D) Obedience; and

(E) Building search.

(iii) Expiration of certification: Each certification issued pursuant to these rules shall remain valid as long as the canine team does not change. A canine team's certification shall lapse if the specific handler and canine originally paired at the time of certification, cease to perform canine team functions together. It is recommended that teams recertify on an annual basis.

(iv) Failure to pass certification: If the canine team fails any phase of an evaluation, he/she must be reevaluated in that particular phase.

(v) Appeal: Any handler who believes there have been improper procedures applied in the testing process, may file an appeal with the commission in writing. This appeal must be filed within thirty days of the testing date pursuant to WAC 139-03-020.

(7) Agency required to keep records:

(a) Each agency shall keep training and performance records on canines. The records must stay with the agency responsible for the canine team. The records shall be made

available for review in the event that the canine is sold or transferred to another agency. The records shall include, at a minimum, but not be limited to:

(i) Microchip number;

(ii) Canine's name;

(iii) Breed;

(iv) Training received;

(v) Certification date;

(vi) Date acquired or purchased;

(vii) Source from which the canine was acquired;

(viii) Purpose, use, or assignment of canine;

(ix) Handler's name;

(x) The date and reason canine was released from service; and

(xi) Copies of all incident reports in which use of the canine resulted in use of force.

(b) These records shall be retained for a period of one year from the date the canine is removed from active service unless a longer retention is required by statute or local ordinance.

(c) It shall be the responsibility of the handler to advise his/her employing agency of the fact that he/she has met the standards for canine certification. The proof of certification with the evaluator's signature along with a request for canine certification shall be submitted to the commission by the employing agency. This shall be considered as a request for certification. Upon verification that the minimum requirements have been met, the commission shall issue a certificate of certification to the canine team.

(8) Canine recommended to be microchipped:

(a) It is recommended that a canine intended to be used by a law enforcement or corrections agency, be positively identified by having a microchip inserted in the canine. Any canine that is sold by a vendor to a Washington state governmental agency for use as a law enforcement or corrections canine should be able to be identified by microchip placed in the canine at the vendor's expense prior to the canine being sold to the law enforcement or corrections agency.

(b) Once the microchip has been inserted, it is recommended that it not be removed except for medical necessity. If it becomes necessary to remove the microchip, the reason for the removal must be documented and entered into the dog's training records, and a new microchip inserted if medically appropriate.

WSR 03-03-095
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed January 17, 2003, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-05-016.

Title of Rule: Chapter 308-56A WAC, Certificates of title—Motor vehicles, etc.

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.

Summary: Amending WAC 308-56A-250 Signature of registered owner on application—Exceptions, 308-56A-265 Releasing interest, 308-56A-270 Forms of signature, and 308-56A-275 Certification of signature.

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

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

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on business 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 February 26, 2003, at 11:00 a.m.

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

Submit Written Comments to: Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by February 25, 2003.

Date of Intended Adoption: March 25, 2003.

January 16, 2003
D. McCurley, Administrator
Title and Registration Services
by Katherine Vasquez

AMENDATORY SECTION (Amending WSR 99-08-065, filed 4/5/99, effective 5/6/99)

WAC 308-56A-250 Signature of registered owner on application—Exceptions. (1) **When is the signature of a registered owner(s) required?** Each registered owner is required to sign the application for certificate of ownership **except when**:

(a) The application is for the sole purpose of removing a secured party of record from the certificate of ownership;

(b) Authorized supportive documentation is used in lieu of the signature or signatures;

(c) The legal owner applies for a duplicate ((~~title~~)) certificate of ownership;

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(d) There is a statutorily authorized lien filed by a government agency against the vehicle;

(e) An existing legal owner's perfected security interest is transferred to another party and the new secured party is perfecting its security interest.

(2) ((~~If there are multiple registered owners on an application for certificate of ownership, when is only one registered owner's signature required?~~)) **When is one signature acceptable on an application for certificate of ownership with multiple registered owners?** Only one registered owner's signature is required when:

(a) The last certificate of ownership was issued in another jurisdiction; and

(b) The last certificate of ownership shows multiple registered owners; and

(c) Ownership is not changing.

AMENDATORY SECTION (Amending WSR 99-08-065, filed 4/5/99, effective 5/6/99)

WAC 308-56A-265 Releasing interest. (1) How does ((~~an~~)) a registered or legal owner release interest in a vehicle? ((~~A vehicle owner(s) or secured party who intends~~)) To release interest in a vehicle ((~~shall~~)) a registered or legal owner must:

(a) Sign the release of interest section provided on the certificate of ownership; or

(b) ((~~Sign~~)) Provide a release of interest document or form approved by the department.

(2) ((~~What forms may secured parties use in lieu of subsection (1)(a) and (b) of this section when their intent is to release interest? Secured parties who intend to release their interest in a vehicle may provide one of the following if accompanied by the most recently issued certificate of ownership:~~

~~(a) Their properly completed official lien release form; or~~

~~(b) A release of interest on its official letterhead, if the secured party is a business entity.~~

~~(3) How is the release of interest submitted on an electronically generated Washington certificate of ownership? If the Washington certificate of ownership is a paperless title, the secured party may release its interest electronically or by signing an affidavit in lieu of title.~~

~~(4) When~~)) **Do signatures releasing interest need to be notarized or certified?** ((~~An owner's release of interest on department approved documents other than the certificate of ownership~~)) If the signatures releasing interest are not provided on the certificate of ownership, all signatures must be notarized or certified in accordance with WAC 308-56A-275.

(((~~5) Are there situations when signatures would not need to be notarized or certified in order to release interest? Yes, the following are situations where notarized or certified is not required:~~

~~(a) A signature releasing interest on the certificate of ownership issued by the department or another jurisdiction;~~

~~(b) A signature releasing interest on an affidavit in lieu of title printed at a Washington paperless title institution's location;~~

~~(c) When there is a secured party and:~~

~~(i) The secured party is a business; and~~

~~(ii) Release of interest in a vehicle is in accordance with subsection (2)(a) or (b) of this section; and~~

~~(iii) The current certificate of ownership is submitted with the separate release of interest and an application for a new certificate of ownership;~~

~~(d) A release of interest or bill of sale from the registered owner when the vehicle is from a jurisdiction which does not title this type of vehicle;~~

~~(e) A release of interest or a bill of sale from a wrecker or insurance company.~~

~~(6)~~)) (3) **When are notarized or certified signatures not required on a release of interest?** Signatures releasing interest do not need to be notarized or certified when:

(a) A signature releasing interest is provided on the certificate of ownership issued by the department or another jurisdiction;

(b) An approved affidavit in lieu of title printed by a lending institution that is authorized by the department to participate in the electronic title program is provided;

(c) A secured party is releasing interest; and

(i) The secured party is a business; and

(ii) The release of interest is in accordance with subsection (1)(b) of this section; and

(iii) Is submitted with the current certificate of ownership;

(d) A release of interest or bill of sale from the registered owner when the vehicle is from a jurisdiction which does not title this type of vehicle;

(e) A release of interest or bill of sale from a wrecker or insurance company.

(4) **When is a release of interest not required from a registered owner((~~'s release of interest not required~~))?** A release of interest from the registered owner is not required when ((~~a~~)):

(a) The registered owner is identified as a lessee or sublessee on an ownership document.

(((~~7~~))) (b) The vehicle is awarded to a different owner by legal action.

(5) **What other documentation may be used ((~~in lieu of~~)) as a release of interest?** Documents that may be used ((~~in lieu of~~)) as a release of interest include, but are not limited to((~~, a certified or notarized~~)):

(a) Bill of sale;

(b) Affidavit in lieu of title with the release of interest portion properly completed;

(c) ((~~Release of interest form;~~

~~(d) Letter of release;~~

~~(e)~~)) Letter of release;

(d) Affidavit of repossession;

(e) Affidavit of sale on an abandoned vehicle report;

(f) ((~~Abandoned vehicle report;~~

~~(g)~~)) Chattel or landlord lien form;

(((~~(h)~~))) (g) Certificate of junk vehicle form; or

(((~~(i)~~))) (h) Other documentation approved by the department.

These items may not be subject to notary requirements.

AMENDATORY SECTION (Amending WSR 02-01-123, filed 12/19/01, effective 1/19/02)

WAC 308-56A-270 Forms of signature. (1) **What forms of signature** ((~~format is~~)) **are acceptable to the department?** The department will accept:

(a) The signature of an individual in the same form as the name appears on the application or on the certificate of ownership.

(b) The signature containing initials corresponding to the first letter of the given name(s).

(c) The signature containing a given name(s) corresponding to the initials.

(d) Common nicknames such as Bob for Robert, Jim for James, Betty for Elizabeth, etc.

(e) The signature, any memorandum, ((~~name~~)) signature stamp, mark or sign made with the intent to authenticate ((~~and~~)) an application for certificate of ownership or registration of any person provided in RCW 9A.04.110(23).

(2) **What form of signature is required for business owned vehicles?** Signatures for business owned vehicles must include:

(a) The name of the business or a commonly accepted abbreviation for the business;

(b) The signature of the person designated to sign on behalf of the business as stated in subsection (1) of this section; and

(c) The title or position of that person.

AMENDATORY SECTION (Amending WSR 99-08-065, filed 4/5/99, effective 5/6/99)

WAC 308-56A-275 Certification of signature. Who may certify signatures?

(1) Signatures ((~~shall~~)) must be notarized by a notary public or certified by agents and subagents appointed by the director to conduct vehicle title and registration activities on behalf of the department. The certification must include the signature and the county, office, and operator numbers of the person certifying the signature. Signatures may also be certified by one of the following:

(a) Employees authorized by the director to certify signatures. These employees are:

(i) Deputy director; and

(ii) Assistant director for vehicle services; and

(iii) Administrator and managers of the division primarily responsible for vehicle title and registration; and

(iv) Persons assigned to liaison duties between the department and its agents and subagents; and

(v) Persons assigned the responsibility of accepting title and registration applications at the department's offices; and

(vi) Persons assigned the responsibility for investigating vehicle dealer activities; and

(b) Persons authorized by a Washington licensed vehicle dealer, if the vehicle is sold by that dealer. The certification must include the dealer number, signature, and title((;)) of the person certifying the signature.

(2) The person certifying the signatures shall require proof of identification. Approved identification is:

(a) Drivers license; or

(b) Any government issued photo identification card; or

(c) Any two of the following:

(i) A nationally or regionally recognized credit card (signed);

(ii) A signed photo ID card issued by a ((~~city, county, state or federal~~)) government agency;

(iii) Any certificate or other document issued by a government agency for the purpose of establishing identity; or

(d) Other documentation satisfactory to the person certifying the signature.

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WSR 03-03-097
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed January 17, 2003, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-14-047.

Title of Rule: Certificate of need (CON) methodology for in-home services agencies licensed to provide hospice or hospice care center services.

Purpose: (1) To update and place in rule the certificate of need methodology for hospice agencies to reflect significant changes that have occurred since the development of the current method; and (2) to develop a methodology implementing revisions to chapter 70.127 RCW in 2000 establishing a new category of in-home services, hospice care centers and requiring a certificate of need for those centers.

Statutory Authority for Adoption: Chapters 70.127 and 70.38 RCW.

Statute Being Implemented: Chapter 70.127 RCW.

Summary: Revises the current need methodology for hospice agencies (in-home services agencies licensed to provide hospice services) and places this methodology in rule.

Establishes a need methodology for the new category of in-home services, hospice care centers.

Reasons Supporting Proposal: The draft rules were developed in consultation with the Hospice Methodology Advisory Committee. The committee determined the current hospice methodology no longer accurately reflects the need for hospice services in Washington. The rules are also necessary to implement revisions to chapter 70.127 RCW requiring a CON for hospice care centers.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bart Eggen, 2725 Harrison Avenue N.W., Suite 500, Olympia, WA 98504, (360) 705-6658.

Name of Proponent: Washington State Hospice Organization.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The existing certificate of need forecasting methodology for in-home services agencies licensed to provide hospice service was developed in the 1987 state health plan. The health care environment has changed significantly since the development of this method. This rule revises the current

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methodology and places it in rule. The revised methodology will more accurately predict the need for hospice services in the current health care environment and is also "self-adjusting" and will be able to reflect any future changes in hospice utilization.

Additionally, legislation revising chapter 70.127 RCW was enacted in 2000 defining a new category of in-home services, hospice care centers, and requiring that these centers receive a certificate of need prior to licensure. The proposed rules were also needed to implement this new requirement. This methodology has also been developed to reflect the current trends in hospice use and also to be sensitive to future changes in hospice utilization. WAC 246-310-990 is amended to reflect the new certificate of need review fee.

Proposal Changes the Following Existing Rules: Currently, the need methodology for hospice agencies is not in rule. The department uses the general certificate of need criteria in combination with the 1987 state health plan methodology to review applications. This proposal revises the methodology from the 1987 state health plan and places that methodology in rule. This proposal also adds a new section establishing a methodology for hospice care centers. The proposal adds two new sections to chapter 246-310 WAC, as well as adding a new license fee category to WAC 246-310-990.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not result in significant costs to providers.

RCW 34.05.328 applies to this rule adoption. The rules set standards that must be followed to obtain a certificate of need. Therefore, the rules are legislatively significant.

Hearing Location: Department of Health, 1101 Eastside Street, Room 6, Olympia, WA 98504-7890, on March 4, 2003, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Yvette Harrison by February 28, 2003, TDD (800) 833-6388 or (360) 705-6661.

Submit Written Comments to: Yvette Harrison, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail Yvette.Harrison@doh.wa.gov, COMMENTS DUE BY MARCH 4, 2003.

Date of Intended Adoption: March 18, 2003.

January 17, 2003
M. C. Selecky
Secretary

NEW SECTION

WAC 246-310-290 Hospice services—Standards and need forecasting method. The following rules apply to any in-home services agency licensed to provide hospice services which has declared an intent to become Medicare certified as a provider of hospice services in a designated service area.

(1) Definitions.

(a) "ADC" means average daily census and is calculated by:

(i) Multiplying projected annual agency admissions by the most recent average length of stay in Washington (based on Center for Medicare and Medicaid Services (CMS) data) to derive the total annual days of care; and

(ii) Dividing this total by three hundred sixty-five (days per year) to determine the ADC.

(b) "Current supply of hospice providers" means:

(i) Services of all providers that are licensed and Medicare certified as a provider of hospice services or that have a valid (unexpired) certificate of need but have not yet obtained a license; and

(ii) Hospice services provided directly by health maintenance organizations who are exempt from the certificate of need program. Health maintenance organization services provided by an existing provider will be counted under (b)(i) of this subsection.

(c) "Current hospice capacity" means:

(i) For hospice agencies that have operated (or been approved to operate) in the planning area for three years or more, the average number of admissions for the last three years of operation; and

(ii) For hospice agencies that have operated (or been approved to operate) in the planning area for less than three years, an ADC of thirty-five and the most recent Washington average length of stay data will be used to calculate assumed annual admissions for the agency as a whole for the first three years.

(d) "Hospice agency" or "in-home services agency licensed to provide hospice services" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer and, for the purposes of certificate of need, is or has declared an intent to become Medicaid eligible or certified as a provider of services in the Medicare program.

(e) "Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual and bereavement support for the individual and family in a place of temporary or permanent residence and may include the provision of home health and home care services for the terminally ill individual.

(f) "Planning area" means each individual county designated by the department as the smallest geographic area for which hospice services are projected. For the purposes of certificate of need, a planning or combination of planning areas may serve as the service area.

(g) "Service area" means, for the purposes of certificate of need, the geographic area for which a hospice agency is approved to provide Medicare certified or Medicaid eligible services and which consist of one or more planning areas.

(2) The department shall review hospice applications using the concurrent review cycle in this section, except when the sole hospice provider in the service area ceases operation. Applications to meet this need may be accepted and reviewed in accordance with the regular review process.

(3) Applications must be submitted and reviewed according to the following schedule and procedures:

(a) Letters of intent must be submitted between the first working day and last working day of September of each year.

(b) Initial applications must be submitted between the first working day and last working day of October of each year.

(c) The department shall screen initial applications for completeness by the last working day of November of each year.

(d) Responses to screening questions must be submitted by the last working day of December of each year.

(e) The public review and comment for applications shall begin on January 16 of each year. If January 16 is not a working day in any year, then the public review and comment period must begin on the first working day after January 16.

(f) The public comment period is limited to ninety days, unless extended according to the provisions of WAC 246-310-120 (2)(d). The first sixty days of the public comment period must be reserved for receiving public comments and conducting a public hearing, if requested. The remaining thirty days must be for the applicant or applicants to provide rebuttal statements to written or oral statements submitted during the first sixty-day period. Also, any interested person that:

(i) Is located or resides within the applicant's health service area;

(ii) Testified or submitted evidence at a public hearing; and

(iii) Requested in writing to be informed of the department's decision, shall also be provided the opportunity to provide rebuttal statements to written or oral statements submitted during the first sixty-day period.

(g) The final review period shall be limited to sixty days, unless extended according to the provisions of WAC 246-310-120 (2)(d).

(4) Any letter of intent or certificate of need application submitted for review in advance of this schedule, or certificate of need application under review as of the effective date of this section, shall be held by the department for review according to the schedule in this section.

(5) When an application initially submitted under the concurrent review cycle is deemed not to be competing, the department may convert the review to a regular review process.

(6) Hospice agencies applying for a certificate of need must demonstrate that they can meet a minimum average daily census (ADC) of thirty-five patients by the third year of operation. An application projecting an ADC of under thirty-five patients may be approved if the applicant:

(a) Commits to maintain Medicare certification;

(b) Commits to serve one or more counties that do not have any Medicare certified providers; and

(c) Can document overall financial feasibility.

(7) Need projection. The following steps will be used to project the need for hospice services.

(a) Step 1. Calculate the following four statewide predicted hospice use rates using CMS and department of health data.

(i) The predicted percentage of cancer patients sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients the age of sixty-five or over with cancer by the average number of past three years statewide total deaths sixty-five and over from cancer.

(ii) The predicted percentage of cancer patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients under the age of sixty-five with cancer by the current statewide total of deaths under sixty-five with cancer.

(iii) The predicted percentage of noncancer patients over sixty-five who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients over the age of sixty-five with diagnoses other than cancer by the current statewide total of deaths over sixty-five with diagnoses other than cancer.

(iv) The predicted percentage of noncancer patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients under the age of sixty-five with diagnoses other than cancer by the current statewide total of deaths under sixty-five with diagnoses other than cancer.

(b) Step 2. Calculate the average number of total resident deaths over the last three years for each planning area.

(c) Step 3. Multiply each hospice use rate determined in Step 1 by the planning areas average total resident deaths determined in Step 2.

(d) Step 4. Add the four subtotals derived in Step 3 to project the potential volume of hospice services in each planning area.

(e) Step 5. Inflate the potential volume of hospice service by the one-year estimated population growth (using OFM data).

(f) Step 6. Subtract the current hospice capacity in each planning area from the above projected volume of hospice services to determine unmet need.

(g) Determine the number of hospice agencies in the proposed planning area which could support the unmet need with an ADC of thirty-five.

(8) In addition to demonstrating need under subsection (7) of this section, hospice agencies must meet the other certificate of need requirements including WAC 246-310-210 - Determination of need, WAC 246-310-220 - Determination of financial feasibility, WAC 246-310-230 - Criteria for structure and process of care, and WAC 246-310-240 - Determination of cost containment.

(9) If two or more hospice agencies are competing to meet the same forecasted net need, the department shall consider at least the following factors when determining which proposal best meets forecasted need:

(a) Improved service in geographic areas and to special populations;

(b) Most cost efficient and financially feasible service;

(c) Minimum impact on existing programs;

(d) Greatest breadth and depth of hospice services;

(e) Historical provision of services; and

(f) Plans to employ an experienced and credentialed clinical staff with expertise in pain and symptom management.

(10) Failure to operate the hospice agency in accordance with the certificate of need standards may be grounds for

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revocation or suspension of an agency's certificate of need, or other appropriate action.

NEW SECTION

WAC 246-310-295 Hospice care center—Standards. The following rules apply to any in-home services agency licensed to provide hospice services, that is or has declared an intent to become additionally licensed to provide hospice care center services.

(1) Definitions.

(a) "Applicant" means an in-home services agency licensed to provide hospice services under chapter 246-335 WAC.

(b) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meet the requirements for operation under RCW 70.127.280 and chapter 246-335 WAC.

(2) The department shall review hospice care center applications using the concurrent review cycle in this section.

(3) Applications must be submitted and reviewed according to the following schedule and procedures.

(a) Letters of intent must be submitted between the first working day and last working day of October of each year.

(b) Initial applications must be submitted between the first working day and last working day of November of each year.

(c) The department shall screen initial applications for completeness by the last working day of December of each year.

(d) Responses to screening questions must be submitted by the last working day of January of each year.

(e) The public review and comment for applications begins on February 16 of each year. If February 16 is not a working day in any year, then the public review and comment period must begin on the first working day after February 16.

(f) The public comment period is limited to ninety days, unless extended under WAC 246-310-120 (2)(d). The first sixty days of the public comment period must be reserved for receiving public comments and conducting a public hearing, if requested. The remaining thirty days must be for the applicant or applicants to provide rebuttal statements to written or oral statements submitted during the first sixty-day period. Any interested person that:

(i) Is located or resides within the applying hospice agency's health service area;

(ii) Testified or submitted evidence at a public hearing; and

(iii) Requested in writing to be informed of the department's decision, shall also be provided the opportunity to provide rebuttal statements to written or oral statements submitted during the first sixty-day period.

(g) The final review period is limited to sixty days, unless extended under WAC 246-310-120 (2)(d).

(4) Any letter of intent or certificate of need application submitted for review in advance of this schedule, or certificate of need application under review as of the effective date of this section, shall be held by the department for review according to the schedule in this section.

(5) If an application initially submitted under the concurrent review cycle is deemed not to be competing, the department may convert the review to a regular review process.

(6) An applicant must provide the following documentation to demonstrate that the applicant's existing patient base is sufficient to support the creation of the hospice care center.

(a) Step 1. Determine the average total days of care provided in the applicant's preceding three years of operation. If the applicant has been in operation for less than three years, assume an ADC of thirty-five to calculate potential days of care;

(b) Step 2. Multiply the above average days of care by the applicant's annual percentage of patients requiring care in settings other than their private home to estimate the number of potential patient days. If the applicant has been in operation for less than three years, multiply the potential days of care by the statewide percentage of hospice patients requiring care in settings other than their private home;

(c) Step 3. Divide the estimated number of patient days by three hundred sixty-five (days per year) to estimate the average daily census for the applicant;

(d) Step 4. Assume a minimum occupancy of sixty-five percent to determine the number of beds the applicant could request in their application.

(7) If applying for more beds than provided for in subsection (6) of this section, the applicant must provide documentation, methodology and assumptions that support the applicant's ability to sustain the additional beds.

(8) The following occupancy requirements apply to all applicants:

(a) The average occupancy rate of the beds in the center must be projected to be at least fifty percent for the first three years following completion of the project;

(b) A minimum occupancy rate of sixty-five percent should be maintained after the first three years of operation; and

(c) If applying to add beds to an existing hospice care center the applicant must document that the average occupancy of the beds in the hospice care center was at least eighty percent for the nine months immediately preceding the submittal of the proposal.

(9) The applicant must document that they can maintain the minimum occupancy rate and still meet the following requirements:

(a) No more than forty-nine percent of the hospice agency's patient care days, in the aggregate on a biennial basis, can be provided in the hospice care center, under RCW 70.127.280; and

(b) The maximum number of beds in a hospice care center is twenty, under chapter 70.127 RCW.

(10) Failure to operate the hospice care center in accordance with the application relied upon by the department in making its decision may be grounds for revocation or suspension of a center's certificate of need, or other appropriate action.

AMENDATORY SECTION (Amending WSR 02-14-051, filed 6/27/02, effective 7/28/02)

WAC 246-310-990 Certificate of need review fees. (1) An application for a certificate of need under chapter 246-310 WAC ((~~shall~~)) must include payment of a fee consisting of the following:

(a) A review fee based on the facility/project type;

(b) ((~~When~~)) If more than one facility/project type applies to an application, the review fee for each type of facility/project must be included.

Facility/Project Type	Review Fee
Ambulatory Surgical Centers/Facilities	$12,964
Amendments to Issued Certificates of Need	$8,171
Emergency Review	$5,259
Exemption Requests	
•	$5,259
• Bed Banking/Conversions	$856
• Determinations of Nonreviewability	$1,222
• Hospice Care Center	$1,101
• Nursing Home Replacement/Renovation Authorizations	$1,101
• Nursing Home Capital Threshold under RCW 70.38.105 (4)(e) (Excluding Replacement/Renovation Authorizations)	$1,101
• Rural Hospital/Rural Health Care Facility	$1,101
Extensions	
• Bed Banking	$489
• Certificate of Need/Replacement Renovation Authorization Validity Period	$489
Home Health Agency	$15,654
Hospice Agency	$13,942
Hospice Care Centers	$8,171
Hospital (Excluding Transitional Care Units-TCUs, Ambulatory Surgical Center/Facilities, Home Health, Hospice, and Kidney Disease Treatment Centers)	$25,684
Kidney Disease Treatment Centers	$15,900
Nursing Homes (Including CCRCs and TCUs)	$29,354

(2) The fee for amending a pending certificate of need application ((~~shall be~~)) is determined as follows:

(a) ((~~When~~)) If an amendment to a pending certificate of need application results in the addition of one or more facility/project types, the review fee for each additional facility/project type must accompany the amendment application;

(b) ((~~When~~)) If an amendment to a pending certificate of need application results in the removal of one or more facility/project types, the department shall refund to the applicant the difference between the review fee previously paid and the review fee applicable to the new facility/project type; or

(c) ((~~When~~)) If an amendment to a pending certificate of need application results in any other change as identified in WAC 246-310-100, a fee of one thousand three hundred nine dollars must accompany the amendment application.

(3) ((~~When~~)) If a certificate of need application is returned by the department ((~~in accordance with the provisions of~~)) under WAC 246-310-090 (2)(b) or (e), the department shall refund seventy-five percent of the review fees paid.

(4) ((~~When~~)) If an applicant submits a written request to withdraw a certificate of need application before the beginning of review, the department shall refund seventy-five percent of the review fees paid by the applicant.

(5) ((~~When~~)) If an applicant submits a written request to withdraw a certificate of need application after the beginning of review, but before the beginning of the ex parte period, the department shall refund one-half of all review fees paid.

(6) ((~~When~~)) If an applicant submits a written request to withdraw a certificate of need application after the beginning of the ex parte period the department shall not refund any of the review fees paid.

(7) Review fees for exemptions and extensions ((~~shall be~~)) are nonrefundable.

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.

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WSR 03-03-099
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed January 17, 2003, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-23-097.

Title of Rule: **NEW SECTIONS:** WAC 458-16A-100 Senior citizen and disabled person exemption—Definitions, 458-16A-110 Senior citizen and disabled person exemption—Gross income, 458-16A-115 Senior citizen and disabled person exemption—Adjusted gross income, 458-16A-120 Senior citizen and disabled person exemption—Determining combined disposable income, 458-16A-130 Senior citizen and disabled person exemption—Qualifications for exemption, 458-16A-135 Senior citizen and disabled person exemption—Application procedures, 458-16A-140 Senior citizen and disabled person exemption—Exemption described—Exemption granted—Freezing property values, and 458-16A-150 Senior citizen and disabled person exemption—Requirements for keeping the exemption.

REPEALED SECTIONS: WAC 458-16-010 Senior citizen and disabled persons exemption—Definitions, 458-16-011 Senior citizen and disabled persons exemption—Gross income, 458-16-012 Senior citizen and disabled persons exemption—Adjusted gross income, 458-16-013 Senior citizen and disabled persons exemption—Disposable income, 458-16-020 Senior citizen and disabled persons exemption—Qualifications for exemption, 458-16-022 Senior citizen and

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disabled persons exemption—Qualifications for cooperative housing, 458-16-030 Senior citizen and disabled persons exemption—Claims, 458-16-040 Senior citizen and disabled persons exemption—Denial—Appeal—Penalty—Perjury, 458-16-060 Senior citizen and disabled persons exemption—Transfer of exemption, 458-16-070 Senior citizen and disabled persons exemption—Cancellations, and 458-16-079 Senior citizen and disabled persons exemption—Refunds—Late filings.

Purpose: These rules provide taxpayers and counties with administrative procedures for and interpretations of the property tax exemption for senior citizens and disabled persons.

Statutory Authority for Adoption: RCW 84.36.383, 84.36.389, and 84.36.865.

Statute Being Implemented: RCW 84.36.379, 81.36.-381, 84.36.383, 84.36.385, 84.36.387, and 84.36.389.

Summary: The department proposes to update and consolidate information currently provided in eleven rules in chapter 458-16 WAC into eight new rules in chapter 458-16A WAC. The current rules discussing property tax exemptions available for senior citizens and disabled persons provide both interpretive and procedural aid for applicants and the counties. The proposed rules provide updated information to incorporate legislative changes, identify what documents an applicant for an exemption must present, and to explain how a county may process documents to maintain confidentiality and audit integrity.

Reasons Supporting Proposal: To incorporate provisions of chapter 333, Laws of 1998, and chapter 358, Laws of 1999.

Name of Agency Personnel Responsible for Drafting: Ed Ratcliffe, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6126; Implementation and Enforcement: Gary O'Neil, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed eight new rules for chapter 458-16A WAC update information currently provided in eleven existing rules in chapter 458-16 WAC. Placing the updated information in chapter 458-16A WAC will consolidate rules addressing senior citizen/disabled person exemptions and deferrals in a single WAC chapter.

The proposed rules inform taxpayers, county assessors, and county treasurers about the property tax exemption granted by RCW 84.36.381 to senior citizens and disabled persons. These rules provide definitions, qualifications, and explain the procedures for the exemption. The department anticipates that this updated information will provide additional guidance resulting in uniform procedures and fewer disputes regarding statutory requirements for the exemption, documents an applicant for exemption must present, and the required timing for a claim for exemption. The updated information also identifies how a county should process documents to maintain confidentiality and audit integrity.

Specific changes to existing information, identified on the basis of the existing rules in chapter 458-16 WAC, include:

WAC 458-16-010 Senior citizen and disabled persons exemption—Definitions, WAC 458-16A-100 incorporates most of the definitions found in WAC 458-16-010. The rule adds an introduction to the definitions and presents them in alphabetical order.

Specific changes in subsection order: (1) The proposed rule breaks up the definition of "residence" into two parts - "residence" and "principal residence." The revised definition of "principal residence" includes qualifications outlined for the exemption now found in WAC 458-16-020(5). The most significant change to the definition is added in clause (iv) that allows the residence to be rented out to pay for nursing home or hospital costs. Clause (iv) is the result of a statutory amendment to RCW 84.36.381 (1)(c) in 1993. The current definition's discussion of those documents that may be used to prove residency is moved into the discussion of supporting documents found in WAC 458-16A-135.

(2) The definition of "real property" discussing the treatment of land with a mobile home was deleted. It is incorporated into the definition of "residence."

(3) The definition of "preceding calendar year" is replaced by "assessment year."

(5) The definition of "combined disposable income" has been revised to match the statutory definition.

(7) The discussion of trusts has been moved out of the definition of "owned." It is moved to a new definition of "life estate." This discussion requires that a trust document provide the senior with the equivalent of a life estate in its grants of the beneficial interest of a principal residence regardless of whether or not the trust is revocable.

(9) The definition of "family" has been changed to "family dwelling unit" so that the exclusion of a boarding or rooming house makes sense in the context of the definition.

(10) The definition of "replacement residence" has been revised to merely describe what is meant by the term without requiring the reader to flip to other rule sections.

(11) The discussion of documentation needed to meet the definition of "physical disability" has been moved to the discussion of supporting documents in WAC 458-16A-135.

(12) and (13) The definitions of "remainderman" and "remainder" have been deleted as these terms are not used in the rules.

(17) The definition of "excess levies" was revised to be consistent with definition of excess levies in WAC 458-19-005 Definitions (the levy rules).

(18) The definition of "claimant" has been revised to define a person claiming the exemption, not a person necessarily already approved for the program. This change is consistent with the use of the term claimant in RCW 84.36.381.

(19) The definition of "annuity" was revised with more descriptive language.

Additions: The proposed WAC 458-16A-100 provides definitions of "capital gain" subsection (4) and "depreciation" subsection (9) to help explain these federal income tax terms in relation to determining disposable income and the proposed rules discussing "gross income" and "adjusted gross

income" under the Internal Revenue Code. A brief explanation "capital gains" in regards to the sale of real property was previously found in WAC 458-16-013. The added definition provides a more complete explanation of the term.

The proposed rule includes the definition of "disposable income" from WAC 458-16-013 subsection (10). The amended definition updates adjusted gross income (AGI) to the year of adoption and allows AGI to track amendments made in the federal income tax code without amending the rules for each change. Thus, allowing everyone to rely upon current federal income tax publications and forms to determine a claimant's AGI.

The proposed rule adds definition for "excluded military pay or benefits" subsection (12), "home health care" subsection (14), "legally prescribed drugs" subsection (16), "pension" subsection (20), and "veterans benefits" subsection (26) to aid in determining a persons disposable income. A good portion of these definitions have been pulled from the discussion of disposable income in WAC 458-16-013.

WAC 458-16-011 Senior citizen and disabled persons exemption—Gross income, the proposed rule WAC 458-16A-110 describes gross income within the context of the program. It adds an introduction and provides an explanation to the assessor about how to determine gross income. The rule updates the definition of gross income with current federal income tax law. The discussion of the exclusion for the rental value of parsonages is deleted under WAC 458-16-011(6) because a leased residence would not qualify for the program. The exclusion for income tax paid by a lessee corporation in WAC 458-16-011(9) and for sports programs conducted by the Red Cross were deleted because these exclusions in the Internal Revenue Code sections 110 and 114 were repealed by federal law in 1990. The exclusion for contributions to the capital of a corporation was deleted because it has no relevance to the program (a corporation cannot be a claimant or cotenant). The exclusion outlined in WAC 458-16-011(17) was deleted from the rule because the federal exclusion for qualified group legal services plans terminated in June of 1992.

WAC 458-16-012 Senior citizens and disabled persons exemption—Adjusted gross income, the proposed rule WAC 458-16A-115 describes adjusted gross income within the context of the program. It adds an introduction and provides an explanation to the assessor about how to determine adjusted gross income. The rule updates the definition of adjusted gross income with current federal income tax law. In particular, the rule deletes the previous exclusion for military moving expenses in WAC 458-16-012(5) as federal law has changed. This moving expense deduction has become an exclusion from gross income under Internal Revenue Code section 217(g).

WAC 458-16-013 Senior citizens and disabled persons exemption—Disposable income, most of the discussion in this current rule was moved into the definition section (see changes made to WAC 458-16-010 above). Proposed WAC 458-16A-120 provides a more complete discussion about how an assessor may determine a claimant's combined disposable income by discussing each of the items (capital gains, depreciation, pension and annuity amounts) in terms of the type of income tax return filed and/or the supporting documents for these amounts.

WAC 458-16-020 Senior citizen and disabled persons exemption—Qualifications for exemption, qualifications for the program have been moved to WAC 458-16A-130. It provides a summary of the requirements followed by a breakdown of each requirement. The proposed rule clarifies what the term "retired" means in regards to a disabled individual who has not ever been employed. Income requirements have been added with a citation to the statutory amounts set by RCW 84.36.381. The principal residence requirements are updated to reflect that because of a change in RCW 84.36.381 a claimant must reside in the residence at the time of filing and no longer is required to occupy the residence on January 1st of that year.

WAC 458-16-022 Senior citizen and disabled persons exemption—Qualifications for cooperative housing, the information contained in this rule is found primarily in WAC 458-16A-135 Application procedures, (4)(b) (signatures) and (d) (cooperative agreement to reduce rent). The requirement that the claimant owns a share representing his or her unit in the cooperative was repetitive as this information was found (and will continue to be found) in the definition of residence.

WAC 458-16-030 Senior citizen and disabled persons exemption—Claims, this section was mostly incorporated with an introduction and much more detailed explanations of how to apply for the program in WAC 458-16A-135. The discussion in the second sentence of this rule, WAC 458-16-030, requiring a status report when income changes to reflect a different exemption level, has been moved to WAC 458-16A-150.

Additions: Claimant's are now required by RCW 84.36.385 to reapply every four years. A discussion of how to reapply for the exemption is added in WAC 458-16A-150(4). Under a statutory change made in 1994, 1994 Washington Laws sp.s. ch. 8 (revised in 1995, 1995 Washington Laws 1st sp.s. ch.8), the value of the senior's residence is frozen. A discussion of freezing the property values is added in WAC 458-16-150(6).

WAC 458-16-040 Senior citizen and disabled persons exemption—Denial—Appeal—Penalty—Perjury, the penalty and perjury statements contained in this are found in WAC 458-16A-135 Application procedures. The explanation of denials and appeal rights have been moved to WAC 458-16A-140(5) Exemption granted—Exemption denied—Freezing property values and to WAC 458-16A-150.

WAC 458-16-060 Senior citizen and disabled persons exemption—Transfer of exemption, the discussion of transferring the exemption to a new residence is found in subsection (5) of WAC 458-16A-150 Requirements for keeping the exemption. The timing of the transfer of the exemption has been changed to a prorata split based upon the period the senior owns the home and no longer upon whether or not property taxes have been paid. This change is consistent with other property tax exemptions and the statutory direction of RCW 84.40.360.

WAC 458-16-070 Senior citizen and disabled persons exemption—Cancellation, the discussion of the cancella-

tion of the exemption has been moved to subsection (3) of WAC 458-16A-150 Requirements for keeping the exemption. The timing of the period the exemption applies has been changed to a prorata split based upon the period the senior qualifies for the program and no longer upon whether or not the taxes have been paid. This change is consistent with other property tax exemptions and the statutory direction of RCW 84.40.360.

WAC 458-16-079 Senior citizen and disabled persons exemption—Refunds—Late filings, the explanation that a claimant may apply for an exemption after he or she has qualified is provided in WAC 458-16A-135. The processing directions for these late filings and refund requests is provided in WAC 458-16A-140. Although the rule provides for refunds, it no longer provides the assessor with a description of the procedure for obtaining the refund. This discussion was deleted because it was based on RCW 84.56.400 and this statute was repealed in 1988.

Proposal Changes the Following Existing Rules: This proposal repeals eleven existing rules, as explained above.

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

RCW 34.05.328 does not apply to this rule adoption. The proposed rules are not significant legislative rules as defined in RCW 34.05.328.

Hearing Location: Department of Revenue, Capital Plaza Building, 4th Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on February 26, 2003, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 570-6175.

Submit Written Comments to: Ed Ratcliffe, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail edr@dor.wa.gov, by February 26, 2003.

Date of Intended Adoption: March 5, 2003.

January 17, 2003
Alan R. Lynn
Rules Coordinator
Legislation and Policy Division

Chapter 458-16A WAC

((~~NONPROFIT~~)) PROPERTY TAX—EXEMPTIONS—HOMES FOR THE AGING, SENIOR CITIZENS AND DISABLED PERSONS

NEW SECTION

WAC 458-16A-100 Senior citizen and disabled person exemption—Definitions. (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen and disabled person exemption from property taxes. The definitions apply to the senior citizen and disabled person exemption contained in sections RCW 84.36.381 through 84.36.389 unless the context clearly requires otherwise.

(2) **Annuity.** "Annuity" means a series of payments under a contract. Annuity contracts pay a fixed sum of money at regular intervals for more than one full year. An annuity may be paid as the proceeds of a life insurance contract (other than as a lump sum payment), unemployment compensation, disability payments, or even welfare receipts. It does not include payments for the care of dependent children.

(3) **Assessment year.** "Assessment year" means the year when the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes become due and payable. It is always the year before the claimant receives a reduction in his or her property taxes because of the senior citizen and disabled person exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property (other than inventory) over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller adjusts (increases and decreases) the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen and disabled person exemption by filing an application with the county assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse, and any cotenant reduced by amounts paid by the claimant or the claimant's spouse for their:

(a) Legally prescribed drugs;

(b) Home health care; and

(c) Nursing home expenses.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., Medicare or Medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **Department.** "Department" means the state department of revenue.

(9) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be

taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(10) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383)

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Losses. Amounts deducted for loss;

(c) Depreciation. Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

(11) **Excess levies.** "Excess levies" means voter-approved levies by taxing districts, other than port or public utility districts, of additional taxes in excess of the statutory aggregate dollar rate limit, the statutory dollar rate limit, or the constitutional one percent levy limit. It does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.

(12) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for the federal income tax while others are excluded from their gross income. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse, or the cotenant.

(13) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

(14) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

(a) Medical treatment or care received in the home;

(b) Physical therapy received in the home;

(c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include improvements or repair of the home itself.

(15) **Lease for life.** "Lease for life" means a lease that terminates upon the demise of the lessee.

(16) **Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

(17) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to himself or herself the beneficial interest directly in his or her principal residence, or the part of the trust containing his or her personal residence, for at least the period of his or her life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

(18) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or owned by cotenants is deemed to be owned by each spouse or cotenant.

(19) **Ownership by a marital community.** "Ownership by a marital community" means property owned in common by both spouses. Property held in separate ownership by one

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spouse is not owned by the marital community. The person claiming the exemption must own the property for which the exemption is claimed. Example: A person qualifying for the exemption by virtue of age or disability cannot claim exemption on a residence owned by the person's spouse as a separate estate outside the marital community unless the claimant has a life estate therein.

(20) **Pension.** "Pension" means an agreement to provide for payments, not wages, to a person (or to that person's family) who has fulfilled certain conditions of service or reached a certain age. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

(21) **Physical disability.** "Physical disability" means the condition of being disabled, resulting in the inability to pursue an occupation because of physical or mental impairment.

(22) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as his or her principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each year.

(b) Confinement of the claimant to a hospital or nursing home does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home or hospital costs.

(23) **Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

(24) **Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen and disabled person exemption and replaces the prior residence of the senior citizen or disabled person receiving the exemption.

(25) **Residence.** "Residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides.

(b) A single-family dwelling situated upon leased lands and upon lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which a mobile home is located if both the land and mobile home are owned by the same qualified claimant.

(26) **Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

NEW SECTION

WAC 458-16A-110 Senior citizen and disabled person exemption—Gross income. (1) **Introduction.** This rule explains the definition of gross income used for federal income tax. In order to meet the income requirements for the senior citizen and disabled person exemption program, the claimant must provide supporting documents verifying combined disposable income. The gross income for federal income tax purposes of the claimant, the claimant's spouse, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate both gross income and adjusted gross income amount(s) for the claimant, the claimant's spouse, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and the other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax returns, the assessor must determine what constitutes gross income for the nonfiler and obtain copies of income documents to determine that person's gross income. This rule provides the assessor with some guidance in determining the gross income for a nonfiler.

(c) **Verifying the gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the gross income for the claimant, the claimant's spouse, or any of the cotenants.

(2) **Gross income determined.** Internal Revenue Code section 61 defines "gross income," generally, as all income from whatever source derived. WAC 458-16A-135 lists the documentation used to determine the income of the claimant.

(3) **Exclusions from the federal definition of gross income.** A claimant may provide documentation or information about amounts received during the year that are excluded from gross income. These amounts should not be taken into account when determining gross income. The federal definition of gross income, generally, does not include:

(a) Gifts, inheritance amounts, or life insurance proceeds;

(b) Up to two hundred fifty thousand dollars (five hundred thousand dollars for a married couple) gain from the sale of a principal residence that meets the requirements of Internal Revenue Code section 121, see also WAC 458-16A-100 (definition of disposable income);

(c) Amounts received for illness or injury when received from workmen's compensation, a legal settlement, a legal judgment, a Medicare+Choice MSA, a federal employer

under the federal Employees Compensation Act, accident insurance, or health insurance. If the amount received is from an employer directly for illness or injury or from employer-provided accident or health insurance, the amount is excluded only if it is paid to reimburse medical expenses, for the loss of limb, or for permanent disfigurement to the employee, the employee's spouse, or the employee's dependents;

(d) Contributions or payments made by an employer to accident and health plans, the employer's qualified transportation plan, a cafeteria plan, a dependent care assistance program, educational assistance programs, or for certain fringe benefits for employees described by Internal Revenue Code section 132. If the claimant earns wages as an employee, he or she should receive a W-2 form from the employer reporting those wages. This W-2 form should have already excluded the described contributions or payments provided for the employee's benefit in the above list. If a question arises about whether or not an employer adjusted the employee's gross income for these exclusions, the claimant should contact their employer and have the employer provide the county with a correct or corrected copy of the W-2 form to verify the correct wages paid to the employee;

(e) Income from discharge of indebtedness under certain limited circumstances, such as insolvency. These circumstances are outlined in Internal Revenue Code section 108;

(f) Improvements by a lessee left upon the lessor's property at the termination of a lease;

(g) Recovery of an amount deducted in a prior tax year that did not reduce federal income taxes paid in that prior year. For example, a person that itemized deductions may get a refund of property taxes or a stolen uninsured item will be returned. This refund or recovery is included in income unless the deduction did not result in a reduction of tax. It may not result in a reduction of tax because the person had to pay alternative minimum tax or taking away that deduction drops that person below the standard deduction amount. When the deduction did not reduce taxes, the recovery amount that did not reduce taxes is excluded. The assessor may request the claimant excluding such a recovery to present prior returns and worksheets such as the worksheets provided in Publication 525, *Taxable and Nontaxable Income*, to demonstrate how the exclusion was calculated;

(h) Qualified scholarships and fellowship grants provided for certain educational expenses (e.g., tuition and books). Internal Revenue Code section 117 provides a complete description of qualified scholarship and fellowship grant amounts excluded from gross income;

(i) Meals or lodging furnished to an employee for the convenience of the employer;

(j) Excluded military pay and benefits. These exclusions are defined in WAC 458-16A-100. A discussion of how to determine and calculate these benefits is found in WAC 458-16A-120;

(k) Amounts received under insurance contracts for certain living expenses: As a general rule, when an individual's principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or the threat of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence;

(l) Certain cost-sharing payments made for conservation purposes on land owned by the claimant: Payments received from federal or state funds primarily to conserve soil, protect or restore the environment, improve forests, or provide a habitat for wildlife are excluded from gross income. In addition, the claimant may exclude energy conservation subsidies provided by public utilities from gross income. If the claimant indicates that he or she has received payments from the government or had improvements made to his or her residence or land by the government for conservation purposes, the assessor may ask for verification of the amount excluded (if any) from gross income and the information received by the claimant supporting this exclusion. See Internal Revenue Code sections 126 and 136;

(m) Child support payments;

(n) Qualified foster care payments made from the government or a qualified nonprofit to a foster parent or guardian. See Internal Revenue Code section 131;

(o) Income from United States savings bonds used to pay higher education tuition and fees. See Internal Revenue Code section 135;

(p) Distributions from a qualified state tuition program or a Coverdell Education Savings Account used to pay for higher education expenses. Distributions from a Coverdell Education Savings Account used to pay for elementary or secondary education expenses. See Internal Revenue Code sections 529 and 530.

NEW SECTION

WAC 458-16A-115 Senior citizen and disabled person exemption—Adjusted gross income. (1) **Introduction.** This rule explains how an assessor determines the adjusted gross income for the claimant, the claimant's spouse, and any cotenants. In order to meet the income requirements for the senior citizen and disabled person exemption program, the claimant must provide supporting documents verifying combined disposable income. The adjusted gross income for federal income tax purposes of the claimant, the claimant's spouse, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate adjusted gross income amount(s) for the claimant, the claimant's spouse, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax return(s), the assessor must determine what constitutes the gross income and the adjusted gross income of the nonfiler and obtain copies of income documents to determine that person's income amounts. This rule

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provides the assessor with some guidance in determining the adjusted gross income for a nonfiler.

(c) **Verifying the adjusted gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the adjusted gross income for the claimant, the claimant's spouse, or any of the cotenants.

(2) **Adjusted gross income.** Internal Revenue Code section 62 defines "adjusted gross income" as gross income minus the following deductions:

(a) **Trade and business deductions.** Business owners may deduct from gross income trade or business expenses. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions will be taken on the Schedule C, the Schedule C-EZ, or, for a farm, the Schedule F. If the business owned is a partnership, limited partnership, S Corporation, or Limited Liability Company (LLC), the deduction is taken on the return submitted by the partnership, limited partnership, S Corporation, or LLC (Tax Return Forms 1065 and 1120S) and passed through to the individual on a Schedule K-1. A claimant or cotenant that does not file a federal income tax return, but claims to have trade or business deductions should provide documentation of income and expenses from the business to allow the assessor to determine the amount of trade or business expenses to be deducted.

(b) **Unreimbursed expenses paid or incurred by an elementary or secondary school teacher for educational materials and equipment, an employee who is a qualified performing artist, or a state or local government official paid on a fee basis.** From 2002 until 2010, an elementary or secondary school teacher may deduct from gross income up to two hundred fifty dollars of unreimbursed amounts that the teacher pays for educational materials and equipment used in the teacher's classroom. A teacher may take this deduction on a Form 1040 or a 1040A. A qualified performing artist, defined by Internal Revenue Code section 62(b), or a state or local government official paid on a fee basis may deduct from gross income any unreimbursed trade or business expenses incurred for that employer as an employee. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction will be taken on the dotted line before the final line for determining adjusted gross income with a designation of "QPA" or "FBO." A claimant or cotenant that does not file a tax return, but claims to have unreimbursed expenses for this deduction, should provide documentation to demonstrate his or her status as an elementary or secondary school teacher, a qualified performing artist, or a government employee paid on a fee basis and documentation of the unreimbursed educational materials and equipment or trade or business amounts spent as an employee for his or her employer.

(c) **Losses from sale or exchange of property.** A property owner may deduct from gross income losses from the sale or exchange of property for federal income tax purposes. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction is generally determined on a Schedule D. For purposes of this program, losses cannot be deducted from income. Any losses taken must be added onto adjusted gross income. An assessor may refuse documentation of losses from a claimant or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(d) **Deductions attributable to rents and royalties.** A property owner may deduct from gross income expenses attributable to property held for the production of rents and royalties. If the claimant submits a copy of a Form 1040 federal income tax return, the deductions are determined on a Schedule E. A claimant or cotenant that does not file a tax return, but claims to have expenses from rental property or licensed property, should provide documentation of these expenses.

(e) **Certain deductions of life tenants and income beneficiaries of property.** A life tenant or income beneficiary of a trust or estate may deduct from gross income for federal income tax purposes depreciation or depletion expenses related to the business or rental property in which he or she has a life estate or when the property is owned by a trust or estate, if he or she has a beneficial interest in the property. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions are shown on Schedule E. A claimant or cotenant with a beneficial interest in business property owned by a trust or estate would show the depreciation or depletion deduction on the Schedule K-1 from that trust or estate. An assessor may refuse documentation of depreciation or depletion on property from a claimant or cotenant that does not file a tax return as these expenses do not result in any change to the claimant's final combined disposable income.

(f) **Pension, profit-sharing, annuity, and annuity plans of self-employed individuals.** A self-employed person may deduct from gross income contributions to a SEP, SIMPLE, or other qualified plan. These deductions are claimed on the Form 1040 federal income tax return. A self-employed claimant or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the contributions made to a qualified plan by his or her business.

(g) **Self-employed health insurance deduction.** As part of his or her trade and business expenses, a self-employed person may deduct from gross income part (and after 2002, all) of the business's payments for his or her health insurance. This deduction is claimed on the Form 1040 federal income tax return. A self-employed claimant or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the payments made for his or her health insurance by his or her business. The assessor may request the claimant to submit a copy of the deduction worksheet provided in the instructions for Form 1040 to calculate this deduction whether or not the self-employed person filed a tax return.

(h) **One-half of self-employment tax.** As part of his or her trade or business expenses, a self-employed person may deduct from gross income one-half of the self-employment tax paid to the federal government determined on a Schedule SE. This deduction is claimed on the Form 1040 federal income tax return. A self-employed person that has not filed a return, may not claim this deduction as the self-employment tax is reported and paid with that return.

(i) **Retirement savings.** A person may deduct from gross income qualifying contributions (up to three thousand five hundred dollars) made to an individual retirement account (IRA). This deduction may be claimed on either the Form 1040 or Form 1040A federal income tax return. A claimant or cotenant that does not file a tax return, but claims to have made qualifying contributions to an IRA, should provide documentation of these contributions. The assessor may request the claimant to submit a copy of the IRA deduction worksheet provided in the instructions for Form 1040 and Form 1040A to calculate this deduction whether or not the person filed a tax return.

(j) **Penalties on early withdrawal of savings.** A person may deduct from gross income for purposes of federal income tax penalties paid because of an early withdrawal of savings. This deduction is claimed on the Form 1040 federal income tax return. The IRS classifies these penalties as losses. For purposes of this program, losses may not be deducted from income. Any deduction taken on this line must be added to adjusted gross income. An assessor may refuse documentation about these penalties from a claimant or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(k) **Alimony.** A person may deduct from gross income alimony paid in cash to a previous spouse. This deduction is claimed on the Form 1040 federal income tax return. A person that does not file a tax return, but made alimony payments, should provide copies of documentation showing alimony payments were made in cash to a prior spouse. The documents should include a copy of the divorce or separation instrument providing for the alimony payments and the amount of the alimony payments made during the year.

(l) **Reforestation costs.** A landowner may deduct from gross income for purposes of federal income tax the amortized reforestation costs for qualified timber property over a period of eighty-four months. If the property is held as business property, the deduction will appear with the trade and business expenses. If the property is not held as business property and the claimant submits a copy of a Form 1040 federal income tax return, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identified as "RFST." An assessor may refuse documentation of the amortization of reforestation costs from a claimant or cotenant that does not file a tax return as these amortized costs are depreciation expenses. These expenses would be added onto adjusted gross income for purposes of this program and do not result in any change to the claimant's final combined disposable income.

(m) **Required repayment of supplemental unemployment compensation.** A person may deduct from gross income required repayments of supplemental unemployment compensation benefits. If the claimant submits a Form 1040 federal income tax return, the deduction may show on the return in one of two ways. If the repayment is made in the same year the benefits are received, the taxpayer reduces the total unemployment compensation reported on the return by the amount of repayment. If the repayment is made in a later year, the taxpayer deducts the repayment on the dotted line before the final line for determining adjusted gross income on the return and identifies it as "Sub-Pay TRA." A person that does not file a tax return, but claims to have repaid supplemental unemployment compensation, should provide documentation of these repayments.

(n) **Jury duty pay given to employer.** An employee may deduct from gross income jury duty pay given to his or her employer. An employee deducts the jury pay given to the employer on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identifies it as "Jury Pay." A person that does not file a tax return, but claims to have given jury pay received during the year to their employer, should provide documentation of the amount of jury pay given over to the employer.

(o) **Clean-fuel vehicles and certain refueling property.** A person may deduct from gross income a portion of the cost for a qualified clean-fuel vehicle and certain refueling property until the end of calendar year 2004. This deduction may show on the Form 1040 federal income tax return in one of two ways. If the property is held as business property, the deduction will appear with the trade and business expenses. If a clean-fuel vehicle is not held as business property, or is claimed by an employee who used it in whole or part for business, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the return and identified as "Clean Fuel." A purchaser that does not file a tax return, but purchased clean-fuel property, should provide documentation about the qualifying clean-fuel vehicle or the refueling property, the amount paid for the clean-fuel property, and a calculation of the deduction amount allowed.

(p) **Unreimbursed moving expenses.** If the claimant or cotenant had to move a significant distance for a job or business, he or she may deduct from gross income the unreimbursed moving costs. This deduction is claimed on the Form 1040 federal income tax return. If the claimant or cotenant does not file a tax return, the claimant should provide documentation of the distance moved, the reason for the move, and the moving expenses. The assessor may ask the claimant to submit a copy of Form 3903, Moving Expenses, and the distance test worksheet on that form to prove the amount of his or her adjusted gross income whether or not the claimant or cotenant filed a federal income tax return.

(q) **Archer MSAs (medical savings accounts).** A person may deduct from gross income a qualifying contribution to an Archer MSA. An MSA is an account set up exclusively for paying the qualified medical expenses of the account holder or the account holder's spouse or dependent(s) in conjunction with a high deductible health plan (HDHP). To be eligible for an MSA, the person must work as an employee for a small employer or be self-employed. The person must also have an HDHP, and have no other health insurance coverage except permitted coverage. The calculation of the deduction is performed on a Form 8853. This deduction is claimed on the Form 1040 federal income tax return. If the person does not file a tax return, but claims to have made a qualifying contribution to an Archer MSA, the claimant

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should provide copies of documentation as to that person's qualifications for the deduction and how the deduction was calculated. If this deduction is claimed, the assessor may ask the claimant to submit a copy of Form 8853, Archer MSAs and Long Term Care Insurance Contracts, whether or not the claimant or cotenant filed a federal income tax return.

(r) **Interest on student loans.** A person may deduct from gross income some or all student loan interest paid on his or her student loan(s) during the first sixty months of the loan repayment period. The deduction may not be claimed by a taxpayer claimed as a dependent, a taxpayer filing as married filing separately, or when the taxpayer has an adjusted gross income amount over fifty-five thousand dollars (seventy-five thousand dollars if married filing jointly). This deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid student loan interest, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. For 2002 and after, a person may deduct some or all of this student loan interest (not over two thousand five hundred dollars) repaid for any repayment period (the sixty-month limit is gone), provided the taxpayer does not have adjusted gross income above sixty-five thousand dollars (one hundred thirty thousand dollars if married filing jointly). The two thousand five hundred dollar limit on the interest gets reduced for taxpayers with adjusted gross income over fifty thousand dollars (one hundred thousand dollars if married filing jointly). See Internal Revenue Code section 221.

(s) **Higher education expenses.** From 2002 to 2005, an individual with adjusted gross income below a set amount (generally sixty-five thousand dollars) may take a deduction for qualified tuition and related expenses paid by that person for that person, that person's spouse, or a dependent of that person. Depending on the individual's gross income, the deduction cannot exceed three thousand dollars (four thousand dollars in 2004 and 2005). The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid higher education expenses, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. This deduction may only be taken if the income was not excluded from gross income. See WAC 458-16A-110 (savings bonds, qualified state tuition programs, and Coverdell Education Savings Accounts).

NEW SECTION

WAC 458-16A-120 Senior citizen and disabled person exemption—Determining combined disposable income. (1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's, and any cotenant's federal income tax return. If the claimant, the claimant's spouse, or a cotenant does not provide a federal income tax return, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). The assessor may want to review the definitions of gross income, WAC 458-16A-110, and adjusted gross income, WAC 458-16A-115, to help calculate the combined disposable income for a claimant. These rules provide some guidance on how to determine adjusted gross income without copies of a federal income tax return. On the federal income tax return, the adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even when a return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse.** When a spouse has been absent for over a year and the claimant has no knowledge of his/her spouse's whereabouts or whether the spouse has any income or not, and the claimant has not received anything of value from the spouse or anyone acting upon the spouse's behalf, the spouse's disposable income is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed by the applicant under the penalty of perjury. This statement must state that more than one year prior to filing this application:

(i) The claimant's spouse has been absent;

(ii) The claimant has not and does not know the whereabouts of the claimant's spouse;

(iii) The claimant has not had any communication with the claimant's spouse;

(iv) The claimant has not received anything of value from the claimant's spouse or anyone acting upon the claimant's spouse's behalf.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime in the next four years.

(b) **Form 1040EZ.** Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, that person's or couple's adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts that are excluded from their adjusted gross income.

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since there is no federal form used for reporting the exclusion of capital gains from the sale of a principal residence, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the

seller's disposable income. The assessor may accept the excluded capital gain amount claimed upon the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned upon the sale.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax exempt interest is marked "TEI" and reported on the Form 1040EZ. The tax-exempt interest is added onto the bond owner's federal adjusted gross income to determine the bond owner's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse, or any cotenant's own state or local government bonds. If the return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have this form, the bond issuer should be able to tell the owner whether the interest is taxable. The issuer should also give the owner a periodic (or year-end) statement showing the tax treatment of the bond. If the income recipient invested in the bond through a trust, a fund, or other organization, that organization should give the recipient this information.

(iii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail below in paragraph (c)(vii).

(iv) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added onto the veteran's adjusted gross income to determine the veteran's disposable income. Veterans benefits are discussed in more detail below in paragraph (c)(viii).

(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding onto the adjusted gross income reported the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The amount is reported on the exemption application. Refer to paragraph (a)(i) above for a more complete discussion of excluded capital gain upon a sold residence.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest reported on Form 1040A is added back onto the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to paragraph (a)(ii) above for a more complete discussion of tax-exempt interest on state and municipal bonds.

(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account; and

(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on Form 1040A is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form SSA-1099 to determine the Social Security benefits or Form RRB-1099 to determine the railroad retirement benefits received.

(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed below in paragraph (c)(vii).

(vi) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added back onto the veteran's adjusted gross income to determine the veteran's disposable income. Veterans benefits are discussed below in paragraph (c)(viii).

(d) **Form 1040.** If a claimant provides a copy of a Form 1040, the assessor calculates the disposable income for the person or couple filing the return by adding onto the reported adjusted gross income all the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The excluded capital gain amount is reported on the exemption application.

(ii) **Capital gains.** If the return shows capital gains or losses, the assessor examines a copy of the following schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casu-

alty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds onto the adjusted gross income any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added onto that adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for loss are added onto the adjusted gross income to determine the disposable income. Most losses are reported on the return in parentheses to reflect that these loss amounts are to be deducted. The net losses are reported on Form 1040 as business losses, as capital losses, as other losses, as rental or partnership-type losses, and as farm losses. Add these amounts in parentheses onto the adjusted gross income. In addition, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The taxpayer only reports the net amount of losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the return to calculate adjusted gross income. The assessor adds onto the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. If the assessor has already added capital gains reduced by losses, the assessor does not add this amount onto adjusted gross income as it has already been accounted for. The amount of losses that were used to reduce adjusted gross income must be added onto that adjusted gross income to determine disposable income. For example, the claimant reports on the front page of the 1040 a capital loss of (five thousand dollars). The assessor examines the Schedule D. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already reduced the claimant's adjusted gross income by five thousand dollars from the capital loss reported on the front page of the return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from this Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income (as this would result in it being added back twice);

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amount reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form SSA-1099 to determine the Social Security benefits or Form RRB-1099 to determine the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than pay or benefits for attendant care or medical aid, are added onto the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported in box 12 of the Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added onto the veteran's adjusted gross income to determine the veteran's disposable income. Federal law excludes from gross income any veterans benefits payments, paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA). Except for payments by the

VA made for attendant care or medical aid, allowances or payments made from the VA must be added onto the veteran's adjusted gross income. VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA. Disability compensation or pensions paid by the VA are not attendant-care or medical-aid payments;

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added onto the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling him or her the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if he or she has to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax-exempt interest is reported on the Form 1040 and added onto the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** When the assessor has calculated the disposable income for the claimant, the claimant's spouse, and any cotenants, the assessor combines the disposable income of these people together. The assessor reduces this combined income by the amount paid by the claimant or the claimant's spouse during that calendar year for their legally prescribed drugs, home health care, and nursing home care to calculate the claimant's combined disposable income.

NEW SECTION

WAC 458-16A-130 Senior citizen and disabled person exemption—Qualifications for exemption. (1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen or disabled person property tax exemption. In order to qualify for the exemption, the claimant:

(a) Must meet age or disability requirements;

(b) Must have a combined disposable income of thirty thousand dollars or less; and

(c) Must own the property and occupy it as his or her principal residence.

(2) **Age, retirement, and disability requirements.** In order to qualify for the exemption:

(a) The senior citizen claiming the exemption must be age sixty-one or older on December 31st of the year in which the claim is filed. No proof is required concerning a senior citizen's employment status to claim the exemption.

(b) The disabled person claiming the exemption must be at the time of filing retired from regular gainful employment because of his or her physical disability (i.e., unable to work because of a physical or mental impairment). A disabled person is considered retired, although he or she was not working at a job, if he or she is unable to enter into regular gainful employment because of his or her physical disability and does not have a guardian or other person legally required to financially support and care for him or her; or

(c) The surviving spouse of a claimant, who applies to continue their spouse's exemption, must be age fifty-seven or older in the calendar year the claimant dies.

(3) **Income requirements.** In order to qualify for the exemption, the claimant's combined disposable income, as defined in RCW 84.36.383 and WAC 458-16A-120, must be below the statutory limit amount provided in RCW 84.36.381.

(4) **Principal residence requirements.** In order to qualify for the exemption, the claimant must own the property and occupy it as his or her principal residence. The claimant must occupy the principal residence at the time of filing for each year the exemption is claimed. See WAC 458-16A-100 (definitions of principal residence and residence), and WAC 458-16A-135 (supporting documents required to demonstrate the property is owned and occupied as a claimant's principal residence).

NEW SECTION

WAC 458-16A-135 Senior citizen and disabled person exemption—Application procedures. (1) **Introduction.** This rule explains when and how a senior citizen or disabled person may apply for a property tax exemption on that person's principal residence. RCW 84.36.381 through 84.36.389.

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that he or she meets the age or disability requirements for exemption of taxes due in the following year. If the claimant does not apply when he or she meets the age or disability requirements, then he or she may apply for the exemption in any subsequent year. The exemption may be claimed on his or her principal residence for previous years by applying with separate applications for each year. However, refunds based upon an exemption made in previous years may be refunded only for up to three years after the taxes were paid as provided in chapter 84.69 RCW.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. If the claimant applies for more than one year when the application is first made, an application must be made for each year the claimant seeks the exemption.

(4) **Where to obtain the application form.** A claimant may obtain the application form and the list of required supporting documents from the county assessor's office where his or her principal residence is located.

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person or by mail at the county assessor's office where the principal residence is located.

(a) **The application form.** The county assessor designs the application form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed and used. The claimant must use an application form from the county where the principal residence is located and provide true and accurate information in the application.

(b) **Signatures.** The signature must certify that under penalty of perjury under the laws of Washington the application is true and correct. The application must be signed, dated, and state the place (city, county, or address) where it was signed. The application must be signed by:

(i) The claimant;

(ii) The claimant's designated agent;

(iii) The legal guardian for the claimant (if applicable); or

(iv) If the property is subject to a deed of trust, mortgage, or purchase contract requiring an accumulation of reserves to pay property taxes, the lien holder; and

(v) If the claimant resides in a cooperative housing unit or portion of a cooperative structure representing the claimant's ownership share in that cooperative, the authorized agent of the cooperative must also sign the application.

(c) **Perjury statement.** The perjury statement certifying under the penalty of perjury that the application is true and correct must be placed upon the application immediately above a line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax commits perjury. If a person receives an exemption based on erroneous information, the assessor assesses any unpaid taxes with interest for up to three years. If a person receives an exemption based on erroneous information, and the person either provided that information with the intent to defraud or intentionally failed to correct that information, the assessor assesses any unpaid taxes with interest, for up to three years, with the one hundred percent penalty provided in RCW 84.40.130. RCW 84.36.385(5).

(d) **Cooperative agreement to reduce rent.** A cooperative must also agree, in a statement attached to the application, to reduce amounts owed by the claimant to the cooperative by the amount of the tax exemption. The agreement must also state that when the exemption exceeds the amount owed to the cooperative, the cooperative must pay to the claimant any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(5).

(e) **Supporting documents.** Unless the assessor determines that all or some of the supporting documents are not necessary, a claimant must present the documents listed below with his or her application. Except for affidavits, the assessor's office should not accept original documents from the claimant. If the assessor's office is presented with original documents (other than affidavits), they must make copies or note the information provided in the documents on a separate sheet and return these original documents to the claimant. The claimant submits the following documents with the application:

(i) If the county records do not reflect the claimant as the property owner, copies of any legal instruments demonstrating the claimant's interest held in the property;

(ii) Documents demonstrating that the property is the claimant's principal residence (i.e., copy of a driver's license and voter's registration card);

(iii) Copies of legal identification showing the claimant's age (i.e., copy of a driver's license or birth certificate);

(iv) If the claim is based upon a physical disability, either:

(A) An affidavit from a licensed physician (medical or osteopath doctor), a licensed or certified psychologist for disabling mental impairments, or a licensed podiatrist for disabling impairments of the foot, that states the claimant is unable to enter into regular gainful employment because of his or her physical disability and the expected term of the disability; or

(B) Copies of a written acknowledgment or decision by the Social Security Administration or Veterans Administration that the claimant is permanently physically disabled;

(v) Copies of documents showing income earned or reported by the claimant, the claimant's spouse and any cotenants, even when the income is estimated (income information should be provided to the degree possible and then confirmed with supporting documents in the follow-up period), such proof shall include to the extent it is relevant:

(A) If the claimant, the claimant's spouse, or any cotenants receive Social Security payments, a federal statement showing Social Security paid (generally, Form SSA-1099);

(B) If the claimant, the claimant's spouse, or any cotenants receive railroad retirement benefits, a federal statement showing railroad retirement benefits paid (generally, Forms RRC-1099 and RRC 1099-R);

(C) If the claimant, the claimant's spouse, or any cotenants file federal income tax returns, those returns with supporting forms, schedules, and, if specifically requested, worksheets for the deductions taken from gross income (generally, Form 1040 with its supporting forms and schedules);

(D) If the claimant or the claimant's spouse has been in a nursing home or receiving in-home care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed nursing home and in-home care;

(E) If the claimant indicates that the claimant's and the claimant's spouse's nonreimbursed prescription drugs for the period under review exceeds five hundred dollars, copies of checks or other payment statements (i.e., pharmacy printout of payments for purchases) showing amounts paid for nonreimbursed prescription drug expenses;

(F) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate his or her income and the income of his or her spouse and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT (interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment), or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income to maintain themselves and their residences. In these

situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

(vi) Any other copies of documents the assessor requires in his or her discretion for the claimant to produce in order to demonstrate the claimant qualifies for the exemption.

(f) Public disclosure of the application. The application form may not be disclosed. A copy of the application may be disclosed only if all income information on the form is obliterated so that it cannot be read. Except as required by law, no public disclosure may be made of the checklist of supporting documents or any supporting documents retained that concern the claimant's, the claimant's spouse's, or any cotenant's income.

NEW SECTION

WAC 458-16A-140 Senior citizen and disabled person exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values. (1) **Introduction.** This rule explains how county assessors process a claimant's application form for the senior citizen or disabled person property tax exemption. The rule describes the exemption and what happens when the exemption is granted or denied by the assessor.

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's or disabled person's principal residence. Except for benefit charges made by a fire protection district, this exemption does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exception related to this program is for benefit charges made by a fire protection district. Fire protection district benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090.

(a) **Excess levies.** A qualifying claimant receives an exemption from excess levies on his or her principal residence.

(b) **Regular levies.** Depending upon the claimant's combined disposable income, the exemption may also apply to all or a portion of the regular levies on the claimant's principal residence. Both the level of the claimant's combined disposable income and the assessed value of the home determine the amount of the regular levy exempted from property taxes. The exemption applies to all the regular and excess levies when the assessed value of the claimant's principal residence falls below the amount of exempt assessed value identified in RCW 84.36.381 (5)(b) and the claimant's combined disposable income is also below the levels set in that section.

(c) **Property taxes due.** Generally the owner pays the property taxes on the principal residence and obtains directly the benefit of this exemption. If the claimant is not the property's owner, or is not otherwise obligated to pay the property taxes on the principal residence, but "owned" the principal residence for purposes of this exemption, the property owner that owes the tax must reduce any amounts owed to them by the claimant up to the amount of the tax exemption. If the amounts owed by the claimant to this property owner are less than the tax exemption, the owner must pay to the claimant in cash any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(6).

(3) **Processing exemption applications.** County assessors process applications for the senior citizen or disabled person exemption. The assessors grant or deny the exemption based upon these completed applications.

(a) **Application review.** The county assessor reviews a completed application and its supporting documents.

The assessor:

(i) Notes on a checklist for the claimant's file the supporting documents received;

(ii) Reviews the supporting documents;

(iii) Records relevant information from the supporting documents into the claimant's file. In particular, the assessor records into the file the claimant's age and a summary of the income information received; and

(iv) After reviewing the supporting documents, must either destroy or return the supporting documents used to verify the claimant's age and income.

(b) **Incomplete applications.** A county assessor may return an incomplete application or a duplicate application. An incomplete application may be missing:

(i) Signatures;

(ii) Information upon the form; or

(iii) Supporting documents.

Upon returning an incomplete application, the assessor should provide the claimant with a dated denial form listing the signatures, information, or documents needed to complete the application. The denial of an incomplete application may be appealed in the same manner as a denial of the exemption.

(c) The assessor may accept any late filings for the exemption even after the taxes have been levied, paid, or become delinquent. An application filed for the exemption in previous years constitutes a claim for a refund under WAC 458-18-210.

(4) **Exemption timing if approved.** Property taxes are reduced or eliminated on the claimant's principal residence for the year following the year the claimant became eligible for the program. When a late application is filed, the exemption may only result in:

(a) A property tax refund for taxes paid within three years of the payment date; and

(b) Relief from unpaid property taxes for previous years.

(5) **Exemption procedure when claim granted.** When the exemption is granted, the county assessor:

(a) Freezes the assessed value of the principal residence upon the assessment roll;

(b) Determines the level of exemption the claimant qualifies for;

(c) Notifies the claimant that the exemption has been granted;

(d) Notifies the claimant of his or her duty to file timely renewal applications;

(e) Notifies the claimant of his or her duty to file change of status forms when necessary;

(f) Notifies the claimant of the need to reapply for the exemption if the claimant moves to a replacement residence;

(g) Notifies the claimant that has supplied estimated income information whether or not follow-up income information is needed;

(h) Places the claimant on a notification list for renewal of the exemption;

(i) Places the claimant on a notification list if supporting documents are needed to confirm estimated income information prior to May 31st of the following year;

(j) Exempts the residence from all or part of its property taxes; and

(k) Provides the department with a recomputation of the assessed values for the immediately preceding year as a part of the annual recomputation process.

(6) **Exemption procedure when claim denied.** The assessor denies the exemption when the claimant does not qualify. The assessor provides a dated denial form listing his or her reasons for this denial. A claimant may appeal the exemption's denial to the county board of equalization as provided for in WAC 458-14-056.

(7) **Freezing the property value.** The assessor freezes the assessed value of the principal residence either on the latter of January 1, 1995, or January 1st of the year when a claimant first qualifies for the exemption. The assessor then tracks both the market value of the principal residence and its frozen value. The assessor provides both the principal residence's market value and its frozen value in the valuation notices sent to the owner.

(a) **Frozen values in counties using a cyclical revaluation plan.** In counties using a cyclical revaluation plan, the assessor:

(i) Revalues the principal residence, for property revalued in that assessment year, before the assessed value is frozen; or

(ii) Freezes the principal residence's value at the most recent assessed value for property that is not revalued in that assessment year.

The assessor continues to revalue the principal residence during the regular revaluation cycles to track the market value for the property.

(b) **Adding on improvement costs.** The assessor adds onto the frozen assessed value the cost of any improvements made to the principal residence.

(c) **One-year gaps in qualification.** If a claimant receiving the exemption fails to qualify for only one year because of high income, the previous frozen property value must be reinstated on January 1st of the following year when the claimant again qualifies for the program.

(d) **Moving to a new residence.** If an eligible claimant moves, the county assessor freezes the assessed value of the new principal residence on January 1st of the assessment year in which the claimant transfers the exemption to the replacement residence.

NEW SECTION

WAC 458-16A-150 Senior citizen and disabled person exemption—Requirements for keeping the exemption. (1) **Introduction.** This rule explains how and when a senior citizen or disabled person must file additional reports with the county assessor to keep the senior citizen or disabled person property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on the claimant's continued qualification for the senior citizen or disabled person property tax exemption. The claimant keeps the assessor up to date in three ways. First, the claimant submits a change in status form when any change affects his or her exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, or a purchaser to notify the county of a change in status affecting the exemption. Second, the claimant submits a renewal application for the exemption either upon the assessor's request following an amendment of the income requirement, or every four years. Third, the claimant applies to transfer the exemption when moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects his or her qualification for the senior citizen or disabled person property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of such change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving spouse, should submit a change in status form to avoid interest and in some cases the penalty for willfully claiming the exemption based upon erroneous information.

(b) **Changes in status described.** Changes in status include:

(i) Changes that affect the property (i.e., new construction, boundary line changes, rentals, ownership changes, etc.);

(ii) Changes to the property owner's annual income that increase or decrease property taxes due under the program; or

(iii) Changes that affect the property owner's eligibility for the exemption (i.e., death, moving to a replacement residence, moving to another residence the claimant does not own, moving into a hospice, a nursing home, or any other long-term care facility, marriage, improvement of a physical disability for a disabled person's claim, or a disabled person entering into gainful employment).

(c) **Change in status form.** The county assessor designs the change in status form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed.

The claimant, the claimant's agent, or a subsequent owner of the residence must use a change in status form from the county where the principal residence is located. The person filing the form must provide true and accurate information on the change in status form.

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where his or her principal residence is located.

(e) **Failure to submit the form after a change in status occurs.** If the claimant fails to submit the change in status form, the application information relied upon becomes erroneous for the period following the change in status. Upon discovery of the erroneous information, the assessor determines the status of the exemption, and notifies the county treasurer to collect any unpaid property taxes and interest from the claimant, the claimant's estate, or if the property has been transferred, from the subsequent property owner. The treasurer may collect any unpaid property taxes, interest, and penalties for a period not to exceed three years as provided for under RCW 84.40.380. In addition, if a person willfully fails to submit the form or provides erroneous information, that person is liable for an additional penalty equal to one hundred percent of the unpaid taxes. RCW 84.36.385. If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were paid as provided in chapter 84.69 RCW.

(f) **Loss of the exemption.** If the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based upon the current full assessed value of the property and paid from the date the change in status occurred. RCW 84.40.360. For example, the exemption is lost when the claimant dies (unless the spouse is also qualified). The property taxes are recalculated to the full assessed amount of the principal residence on a pro rata basis beginning the day following the date of the claimant's death for the remainder of the year.

(g) **Loss of exemption on part of the property.** If the change in status removes a portion of the property from the exemption, property taxes in their full amount on that portion of the property that is no longer exempt must be recalculated based upon the current full assessed value of that portion of the property and paid from the date the change in status occurred. For example, a property owner subdivides his or her one-acre lot into two parcels. The parcel that does not have the principal residence built upon it no longer qualifies for the exemption. The property taxes are recalculated to the full assessed amount of that parcel on a pro rata basis for the remainder of the year beginning the day following the date the subdivision was given final approval.

(h) **Exemption reduced.** If the change in status reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies on her principal residence are exempt. The claimant's income is based upon the assessment year. The following year when the taxes are collected, the property taxes due are calculated with only an exemption for excess levies.

(4) **Renewal application.** The county assessor must notify claimants when to file a renewal application with updated supporting documentation.

(a) **Notice to renew.** Written notice must be sent by the assessor in the year the renewal application is requested. Notice must be sent no later than December 10th, three weeks before the December 31st filing requirement.

(b) **When to renew.** The assessor must request a renewal application at least once every four years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted. Once notified, the claimant must file the renewal application by December 31st of that year.

(c) **Processing renewal applications.** Renewal applications are processed in the same manner as the initial application.

(d) **The renewal application form.** The county assessor may design the renewal application form or adapt either its own application form or the application master form obtained from the department. The county must obtain approval of the final renewal application form from the department before it may be distributed. The property owner must use a renewal form from the county where the principal residence is located. The claimant must provide true and accurate information on the renewal application form.

(e) **Obtaining the form.** The assessor provides this form to senior citizens or disabled persons claiming the exemption when requesting renewal.

(f) **Failure to submit the renewal application.** If the property owner fails to submit the renewal application form, the exemption is discontinued until the claimant reapplies for the program. The assessor may postpone collection activities and continue to work with an eligible claimant to complete an application for a missed period.

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, the claimant must file a change in status form with the county where his or her former principal residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

(a) **Exemption on the former residence.** The exemption on the former residence applies to the closing date on the sale of the former residence, provided the claimant lived in the residence for most of the portion of that year prior to the date of closing. Property taxes in their full amount must be recalculated based upon the current full assessed value of the property and paid from the day following the date the sale closed. The taxes are paid for the remaining portion of the year. RCW 84.34.360.

(b) **Exemption upon the replacement residence.** Upon moving, the claimant must reapply for the exemption in the county where the replacement residence is located if the claimant wants to continue in the exemption program. The same application, supporting documents, and application process is used for the exemption on the replacement residence as when a claimant first applies. See WAC 458-16A-135. The exemption on the replacement residence applies on a pro rata basis in the year he or she moves, but only from the latter of the date the claimant moves into the new principal

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residence or the day following the date the sale closes on his or her previous residence.

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WSR 03-03-119
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed January 22, 2003, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-24-037.

Title of Rule: Chapter 308-20 WAC, Cosmetologists, barbers, manicurists, and estheticians, amend WAC 308-20-210 Cosmetology, barber, manicurist, esthetician, salon/shop, booth renter, mobile operator and personal service operator fees.

Purpose: The department has reviewed the rule noted and recommends amending with new reduced fee levels which will still allow for a sufficient level of revenue to defray the costs of administering the program.

Statutory Authority for Adoption: RCW 18.16.030 and 43.24.086.

Statute Being Implemented: RCW 18.16.030.

Summary: Amend WAC 308-20-210 for a reduction in renewal fees.

Reasons Supporting Proposal: Amending the rule with a fee decrease will still ensure that there is a sufficient level of revenue to defray program administration costs as required under RCW 43.24.086.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rosie McGrew, 405 Black Lake Boulevard, Building 2, Olympia, WA 98502, (360) 664-6626.

Name of Proponent: Department of Licensing, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Fees to become effective on April 1, 2003.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amends one rule reducing renewal fees. New reduced fees will still allow the department sufficient revenue in order to maintain the costs associated with the administration of the program.

Proposal Changes the Following Existing Rules: Amended rule will allow for a reduction in revenue collection used to offset program administration fees required according to RCW 43.24.086.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 43.24.086 requires that regulatory programs raise sufficient revenue to be self-supporting. The current level of revenue collection warrants a reduction in fees and still maintains the level of revenue required to administratively operate the program.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Department of Licensing, 405 Black Lake Boulevard, Building 2, Conference Room 102, Olympia, WA 98502, on February 27, 2003, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Rosie McGrew by February 26, 2003, TTY (360) 664-8885 or (360) 664-6626.

Submit Written Comments to: Rosie McGrew, Cosmetology Section, P.O. Box 9026, Olympia, WA 98507-9026, fax (360) 664-2550, by February 26, 2003.

Date of Intended Adoption: February 28, 2003.

January 21, 2003
Alan E. Rathbun
Assistant Director

AMENDATORY SECTION (Amending WSR 02-09-040, filed 4/12/02, effective 1/1/03)

WAC 308-20-210 Cosmetology, barber, manicurist, esthetician, salon/shop, booth renter, mobile operator and personal service operator fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
Examination application	$ 25.00
Examination retake	25.00
Renewal per year	((~~25.00~~)) 20.00
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
Out-of-state application	25.00
Instructor:	
Examination application	30.00
Examination retake	30.00
Renewal, per year	((~~25.00~~)) 20.00
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
Out-of-state application	30.00
Manicurist:	
Examination application	25.00
Examination retake	25.00
Renewal per year	((~~25.00~~)) 20.00
Late renewal penalty	20.00
Duplicate	15.00
Certification	25.00
Out-of-state application	25.00
Esthetician:	
Examination application	25.00
Examination retake	25.00
Renewal per year	((~~25.00~~)) 20.00

Title of Fee	Fee
Late renewal penalty	20.00
Duplicate	15.00
Certification	25.00
Out-of-state application	25.00
Barber:	
Examination application	25.00
Examination retake	25.00
Renewal per year	((~~25.00~~)) 20.00
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
Out-of-state application	25.00
School:	
License application	175.00
Renewal per year	((~~185.00~~)) 175.00
Late renewal penalty	175.00
Duplicate	15.00
Curriculum review	15.00
Salon/shop:	
Application	50.00
Renewal	((~~60.00~~)) 50.00
Late renewal penalty	50.00
Duplicate license	15.00
Booth renter:	
Application	50.00
Renewal	((~~60.00~~)) 50.00
Late renewal penalty	50.00
Duplicate license	15.00
Mobile operator:	
Application	50.00
Renewal	((~~60.00~~)) 50.00
Late renewal penalty	50.00
Duplicate license	15.00
Personal service operator:	
Application	50.00
Renewal	((~~60.00~~)) 50.00
Late renewal penalty	50.00
Duplicate license	15.00

WSR 03-03-128
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed January 22, 2003, 10:03 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: Amend Regulation III, Sections 4.01 and 4.05.

Purpose: To change our definition of asbestos-containing waste material to exclude nonfriable material.

Other Identifying Information: Section 4.01 pertains to Asbestos Definitions; and Section 4.05 pertains to Procedures for Asbestos Projects.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Summary: This proposal amends our definition of asbestos-containing waste material and also changes other appropriate references in Article 4.

Reasons Supporting Proposal: This change is being made to reflect the intent of our regulations.

Name of Agency Personnel Responsible for Drafting: Larry Vaughn, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4035; Implementation: Dave Kircher, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4050; and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule amends our definition of asbestos-containing waste material, aligning it with the Asbestos NESHAP rule in 40 C.F.R. 61, Subpart M.

Proposal Changes the Following Existing Rules: Our definition of asbestos-containing waste material is clarified; and other appropriate references are changed to be consistent.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on February 27, 2003, at 9:15 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by February 20, 2003, TDD (800) 833-6388 or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, fax (206) 343-7522, by February 17, 2003.

Date of Intended Adoption: February 27, 2003.

January 21, 2003

Larry Vaughn

Engineer

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AMENDATORY SECTION

REGULATION III SECTION 4.01 ASBESTOS DEFINITIONS

(a) **AHERA BUILDING INSPECTOR** means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan; Interim Final Rule (40 CFR Part 763, Appendix C) and whose certification is current.

(b) **ASBESTOS** means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

(c) **ASBESTOS-CONTAINING MATERIAL** means any material containing more than one percent (1%) asbestos as determined using the method specified in EPA regulations Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized Light Microscopy.

(d) **ASBESTOS-CONTAINING WASTE MATERIAL** means any waste that contains or is contaminated with friable asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

(e) **ASBESTOS PROJECT** means any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of friable, asbestos-containing material. It includes the removal and disposal of stored, friable, asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

(f) **ASBESTOS SURVEY** means a written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.86), or an alternate method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos.

(g) **COMPONENT** means any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing material.

(h) **DEMOLITION** means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable.

(i) **FRIABLE, ASBESTOS-CONTAINING MATERIAL** means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Such materials include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.

(j) **LEAK-TIGHT CONTAINER** means a dust-tight and liquid-tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

(k) **NONFRIABLE, ASBESTOS-CONTAINING MATERIAL** means asbestos-containing material that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

(l) **RENOVATION** means altering a facility or a component in any way, except demolition.

(m) **SINGLE-FAMILY RESIDENCE** means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

(n) **SURFACING MATERIAL** means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

(o) **SUSPECT ASBESTOS-CONTAINING MATERIAL** means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and cement siding.

(p) **THERMAL SYSTEM INSULATION** means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AMENDATORY SECTION

REGULATION III SECTION 4.05 PROCEDURES FOR ASBESTOS PROJECTS

(a) **Training Requirements**

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current.

This certification requirement does not apply to asbestos projects conducted as part of a renovation in a single-family residence performed by the owner of the dwelling.

(b) **Friable Asbestos Removal Work Practices**

It shall be unlawful for any person to cause or allow the removal of friable, asbestos-containing material unless all the following requirements are met:

(1) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only.

(2) If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

(3) Absorbent, friable, asbestos-containing material, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Any unsaturated, absorbent, friable, asbestos-containing material exposed during removal shall be immediately saturated with a liquid wetting agent.

(4) Nonabsorbent, friable, asbestos-containing material, such as cement asbestos board, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent, friable, asbestos-containing material exposed during removal shall be immediately coated with a liquid wetting agent.

(5) Metal components (such as valves, fire doors, and reactor vessels) that have internal friable, asbestos-containing material are exempt from the requirements of Sections 4.05 (b)(3) and 4.05 (b)(4) if all access to the friable, asbestos-containing material is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the friable, asbestos-containing material from the environment.

(6) Except for surfacing materials being removed inside a negative pressure enclosure, friable, asbestos-containing materials that are being removed, have been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged.

(7) All ((~~friable,~~)) asbestos-containing waste material shall be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

(8) All absorbent, ((~~friable,~~)) asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers while saturated with a liquid wetting agent. All nonabsorbent, ((~~friable,~~)) asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers while coated with a liquid wetting agent.

(9) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

(10) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

(11) Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(12) The ((~~friable,~~)) asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

(c) **Method of Removal for Nonfriable, Asbestos-Containing Material**

It shall be unlawful for any person to cause or allow the removal of nonfriable, asbestos-containing material unless all the following requirements are met:

(1) Sanding, grinding, abrading, or sawing of nonfriable, asbestos-containing material shall be prohibited unless the material that is disturbed is handled as friable, asbestos-containing material in accordance with the requirements in Section 4.05(b) of this regulation;

(2) Appropriate dust control methods as provided in Section 9.15 of Regulation I shall be used, as necessary, to control fugitive dust emissions from the removal of nonfriable, asbestos-containing material;

(3) After being removed, the nonfriable, asbestos-containing material shall be promptly transferred to a disposal container; and

(4) Each disposal container shall have a sign identifying the material as nonfriable((~~, asbestos-containing waste material~~)) asbestos waste.

PROPOSED

WSR 03-03-130
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed January 22, 2003, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-22-076.

Title of Rule: WAC 16-303-200 Seed program testing fees, 16-303-210 Fees for special seed tests, 16-303-230 Official seed sampling or similar service, 16-303-250 Miscellaneous charges for seed services, 16-303-300 Phytosanitary certification of seed—Fees, 16-303-310 Organization for economic cooperation and development scheme for varietal certification (OECD) fees, 16-303-317 Annual and rough bluegrass quarantine fees, 16-303-320 Certification fees for seed certified by the department except grasses, and 16-303-330 Certification fees for grass seed.

Purpose: This proposal is intended to assure that fees charged for seed program services are sufficient to recover operating costs. Seed certification fees, laboratory analysis fees and miscellaneous fees for alfalfa, grass, vegetable and other minor seed crops would be increased by the fiscal growth rate factor for fiscal year 2003 (3.29%).

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 15.49.370(3) and 15.49.310.

Statute Being Implemented: RCW 15.49.370(3).

Summary: The Washington State Department of Agriculture (WSDA) proposes increasing seed program fees in the WAC sections identified above by the OFM 2003 fiscal growth rate factor of 3.29%.

Reasons Supporting Proposal: The proposed fee increases are necessary to help offset inflationary increases in the cost of operating the seed program.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Graydon Robinson, Program Manager, Yakima, (509) 225-2630.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

PROPOSED

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 16-303-200 Seed program testing fees, 16-303-210 Fees for special seed tests, 16-303-230 Official seed sampling or similar service, 16-303-250 Miscellaneous charges for seed services, 16-303-300 Phytosanitary certification of seed—Fees, 16-303-310 Organization for economic cooperation and development scheme for varietal certification (OECD) fees, 16-303-317 Annual and rough bluegrass quarantine fees, 16-303-320 Certification fees for seed certified by the department except grasses, and 16-303-330 Certification fees for grass seed.

This proposal is intended to assure that fees charged for seed program services are sufficient to recover operating costs. Seed certification fees, laboratory analysis fees and miscellaneous fees for alfalfa, grass, vegetable and other minor seed crops would be increased by the fiscal growth rate factor for fiscal year 2003 (3.29%).

Proposal Changes the Following Existing Rules: The proposal increases the fees in WAC 16-303-200, 16-303-210, 16-303-230, 16-303-250, 16-303-300, 16-303-310, 16-303-317, 16-303-320, and 16-303-330 by the allowable fiscal growth rate factor for fiscal year 2003 (3.29%).

No small business economic impact statement has been prepared under chapter 19.85 RCW. WSDA concludes that the proposed increases in current fees, based upon the OFM fiscal growth rate factor, does not impose a "more than minor cost" on the seed industry and, therefore, a small business economic impact statement is not required according to RCW 19.85.030 (1)(a).

RCW 34.05.328 does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

Hearing Location: Washington State Department of Agriculture, 21 North First Avenue, Suite 103 Conference Room, Yakima, WA 98902, on February 25, 2003, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Laurie Crose at TDD (360) 902-1996 or (360) 902-1976.

Submit Written Comments to: George Huffman, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2085, by February 25, 2003.

Date of Intended Adoption: March 20, 2003.

January 22, 2003
Robert W. Gore
Assistant Director

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-200 Seed program testing fees. Seed testing fees are as follows:

(1) **FIELD CROPS:**

	((~~MINIMUM SAMPLE SIZE~~	~~purity~~	~~GERMINATION~~	~~tz~~
~~alfalfa~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~22.61~~
~~alkaligrass~~	~~4 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~barley~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~22.61~~
~~beets, sugar~~	~~1.25 lb~~	~~19.53~~	~~21.58~~	~~22.61~~
~~bentgrass~~	~~2 oz~~	~~32.89~~	~~17.47~~	~~22.61~~
~~bermudagrass~~	~~4 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~black medic~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~22.61~~
~~bluegrass~~	~~4 oz~~	~~22.61~~	~~15.41~~	~~22.61~~
~~brassica sp.~~	~~6 oz~~	~~34.94~~	~~17.47~~	~~22.61~~
~~brome mountain~~	~~6 oz~~	~~23.64~~	~~12.33~~	~~22.61~~
~~brome smooth, meadow~~	~~6 oz~~	~~23.64~~	~~12.33~~	~~22.61~~
~~buckwheat~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~22.61~~
~~canarygrass~~	~~8 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~clover~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~22.61~~
~~fescue~~	~~4 oz~~	~~22.61~~	~~12.33~~	~~22.61~~
~~flax lewis~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~22.61~~
~~foxtail~~	~~4 oz~~	~~14.39~~	~~11.30~~	~~22.61~~
~~garbanzo bean~~	~~1.25 lb~~	~~13.36~~	~~12.33~~	~~N/A~~
~~indian ricegrass~~	~~6 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~junegrass~~	~~6 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~lentil~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~little bluestem~~	~~4 oz~~	~~21.58/hr~~	~~11.30~~	~~22.61~~
~~lupine~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~milkvetch~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~22.61~~
~~millet~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~needle & thread~~	~~6 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~needlegrass, green~~	~~6 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~oatgrass~~	~~6 oz~~	~~18.50~~	~~11.30~~	~~N/A~~
~~oats~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~22.61~~
~~orchardgrass~~	~~4 oz~~	~~25.69~~	~~13.36~~	~~22.61~~
~~peas~~	~~1.25 lb~~	~~13.36~~	~~12.33~~	~~N/A~~
~~prairie sandreed~~	~~6 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~primrose~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~redtop~~	~~2 oz~~	~~32.89~~	~~17.47~~	~~22.61~~
~~rice~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~rye~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~22.61~~
~~ryegrass, perennial~~	~~4 oz~~	~~22.61~~	~~11.30~~	~~22.61~~
~~ryegrass, annual~~	~~4 oz~~	~~22.61~~	~~11.30~~	~~22.61~~
~~safflower~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~sainfoin~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~sand dropseed~~	~~4 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~sand lovegrass~~	~~4 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~sideoats grama~~	~~4 oz~~	~~21.58/hr~~	~~11.30~~	~~22.61~~
~~small burnett~~	~~8 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~sorghum~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~sudangrass~~	~~8 oz~~	~~14.39~~	~~12.33~~	~~22.61~~
~~sunflower~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~swiss chard~~	~~1.25 lb~~	~~34.94~~	~~18.50~~	~~N/A~~
~~switchgrass~~	~~4 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~timothy~~	~~4 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~trefoil~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~triticale~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~22.61~~
~~vetch~~	~~1.25 lb~~	~~18.50~~	~~12.33~~	~~22.61~~
~~wheat~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~22.61~~
~~wheatgrass, beardless slender thickspike~~	~~6 oz~~	~~39.06~~	~~15.41~~	~~22.61~~

	((~~MINIMUM SAMPLE SIZE~~	~~purity~~	~~GERMINATION~~	~~tz~~
~~wheatgrass, bluebunch~~	~~6 oz~~	~~39.06~~	~~15.41~~	~~22.61~~
~~wheatgrass, crested~~	~~4 oz~~	~~26.72~~	~~15.41~~	~~22.61~~
~~wheatgrass, tall intermediate pubescent~~	~~6 oz~~	~~39.06~~	~~15.41~~	~~22.61~~
~~wheatgrass, western~~	~~6 oz~~	~~39.06~~	~~15.41~~	~~22.61~~
~~wildrye~~	~~6 oz~~	~~18.50~~	~~11.30~~	~~22.61~~
~~zoysia~~	~~4 oz~~	~~18.50~~	~~11.30~~	~~22.61~~))

	MINIMUM SAMPLE SIZE	PURITY	GERMINATION	TZ
alfalfa	4 oz	14.86	12.73	23.35
alkaligrass	4 oz	19.10	11.67	23.35
barley	1.25 lb	14.86	12.73	23.35
beets, sugar	1.25 lb	20.17	22.29	23.35
bentgrass	2 oz	33.97	18.04	23.35
bermudagrass	4 oz	19.10	11.67	23.35
black medic	4 oz	14.86	12.73	23.35
bluegrass	4 oz	23.35	15.91	23.35
brassica sp.	6 oz	36.08	18.04	23.35
brome-mountain	6 oz	24.41	12.73	23.35
brome-smooth, meadow	6 oz	24.41	12.73	23.35
buckwheat	1.25 lb	14.86	12.73	23.35
canarygrass	8 oz	19.10	11.67	23.35
clover	4 oz	14.86	12.73	23.35
fescue	4 oz	23.35	12.73	23.35
flax-lewis	4 oz	14.86	12.73	23.35
foxtail	4 oz	14.86	11.67	23.35
garbanzo bean	1.25 lb	13.79	12.73	N/A
indian ricegrass	6 oz	19.10	11.67	23.35
junegrass	6 oz	19.10	11.67	23.35
lentil	1.25 lb	14.86	12.73	N/A
little bluestem	4 oz	22.29/hr	11.67	23.35
lupine	1.25 lb	14.86	12.73	N/A
milkvetch	1.25 lb	14.86	12.73	23.35
millet	1.25 lb	14.86	12.73	N/A
needle & thread	6 oz	19.10	11.67	23.35
needlegrass, green	6 oz	19.10	11.67	23.35
oatgrass	6 oz	19.10	11.67	N/A
oats	1.25 lb	14.86	12.73	23.35
orchardgrass	4 oz	26.53	13.79	23.35
peas	1.25 lb	13.79	12.73	N/A
prairie sandreed	6 oz	19.10	11.67	23.35
primrose	4 oz	14.86	12.73	N/A
redtop	2 oz	33.97	18.04	23.35
rice	1.25 lb	14.86	12.73	N/A
rye	1.25 lb	14.86	12.73	23.35
ryegrass, perennial	4 oz	23.35	11.67	23.35
ryegrass, annual	4 oz	23.35	11.67	23.35
safflower	1.25 lb	14.86	12.73	N/A
sainfoin	1.25 lb	14.86	12.73	N/A
sand dropseed	4 oz	19.10	11.67	23.35
sand lovegrass	4 oz	19.10	11.67	23.35
sideoats grama	4 oz	22.29/hr	11.67	23.35
small burnett	8 oz	14.86	12.73	N/A
sorghum	1.25 lb	14.86	12.73	N/A
sudangrass	8 oz	14.86	12.73	23.35
sunflower	1.25 lb	14.86	12.73	N/A
swiss chard	1.25 lb	36.08	19.10	N/A
switchgrass	4 oz	19.10	11.67	23.35
timothy	4 oz	19.10	11.67	23.35
trefoil	4 oz	14.86	12.73	N/A
triticale	1.25 lb	14.86	12.73	23.35
vetch	1.25 lb	19.10	12.73	23.35
wheat	1.25 lb	14.86	12.73	23.35
wheatgrass, beardless slender thickspike	6 oz	40.34	15.91	23.35
wheatgrass, bluebunch	6 oz	40.34	15.91	23.35
wheatgrass, crested	4 oz	27.59	15.91	23.35
wheatgrass, tall intermediate pubescent	6 oz	40.34	15.91	23.35
wheatgrass, western	6 oz	40.34	15.91	23.35
wildrye	6 oz	19.10	11.67	23.35
zoysia	4 oz	19.10	11.67	23.35

(2) **VEGETABLES:**

	((~~minimum sample size~~	~~purity~~	~~germination~~	~~tz~~
~~asparagus~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~beans~~	~~1.25 lb~~	~~13.36~~	~~12.33~~	~~N/A~~
~~beets~~	~~1.25 lb~~	~~19.53~~	~~18.50~~	~~N/A~~
~~cantaloupe~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~carrot~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~39.06~~
~~celery~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~chard~~	~~4 oz~~	~~14.39~~	~~21.58~~	~~21.58~~
~~corn~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~cucumber~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~dill~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~eggplant~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~endive~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~leek~~	~~8 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~lettuce~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~okra~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~onion~~	~~8 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~parsley~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~parsnip~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~pepper~~	~~8 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~pumpkin~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~

PROPOSED

PROPOSED

	((~~minimum sample size~~	~~purity~~	~~germination~~	~~tz~~
~~radish~~	~~1.00 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~spinach, New Zealand~~	~~8 oz~~	~~14.39~~	~~21.58~~	~~N/A~~
~~spinach~~	~~8 oz~~	~~14.39~~	~~21.58~~	~~N/A~~
~~squash~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~
~~tomato~~	~~4 oz~~	~~14.39~~	~~12.33~~	~~N/A~~
~~turnip~~	~~6 oz~~	~~14.39~~	~~12.33~~	~~22.61~~
~~watermelon~~	~~1.25 lb~~	~~14.39~~	~~12.33~~	~~N/A~~))

	MINIMUM SAMPLE SIZE	PURITY	GERMINATION	TZ
asparagus	1.25 lb	14.86	12.73	N/A
beans	1.25 lb	13.79	12.73	N/A
beets	1.25 lb	20.17	19.10	N/A
cantaloupe	1.25 lb	14.86	12.73	N/A
carrot	4 oz	14.86	12.73	40.34
celery	4 oz	14.86	12.73	N/A
chard	4 oz	14.86	22.29	22.29
corn	1.25 lb	14.86	12.73	N/A
cucumber	1.25 lb	14.86	12.73	N/A
dill	4 oz	14.86	12.73	N/A
eggplant	4 oz	14.86	12.73	N/A
endive	4 oz	14.86	12.73	N/A
leek	8 oz	14.86	12.73	N/A
lettuce	4 oz	14.86	12.73	N/A
okra	4 oz	14.86	12.73	N/A
onion	8 oz	14.86	12.73	N/A
parsley	4 oz	14.86	12.73	N/A
parsnip	4 oz	14.86	12.73	N/A
pepper	8 oz	14.86	12.73	N/A
pumpkin	1.25 lb	14.86	12.73	N/A
radish	1.00 lb	14.86	12.73	N/A
spinach, New Zealand	8 oz	14.86	22.29	N/A
spinach	8 oz	14.86	22.29	N/A
squash	1.25 lb	14.86	12.73	N/A
tomato	4 oz	14.86	12.73	N/A
turnip	6 oz	14.86	12.73	23.35
watermelon	1.25 lb	14.86	12.73	N/A

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-210 Fees for special seed tests. Fees for special seed tests are as follows: (Standard noxious exam size unless otherwise specified.)

Test	Fee	Other Considerations
(1) All states noxious weed examination	$((~~10.27~~)) 10.60	
(2) Analysis of partially cleaned, uncleaned or field run seed with excessive inert, or crop or weed seeds	$((~~21.58~~)) 22.29 hourly rate	
(3) Brassica seed chemical identification	$((~~10.27~~)) 10.60	
(4) Cold (vigor) test for wheat	$((~~51.39~~)) 53.08	
(5) Crop and weed exam (Required for all foundation and registered class grass seeds)	Purity fee minus $((~~5.13~~)) 5.30	Hourly rate will be assessed when applicable; hourly rate applies when a larger amount is requested
(6) Fescue seed fluorescence test	$((~~15.41~~)) 15.91	Test required on certified samples
(7) Fluorescence test (400 seed test)	$((~~13.36~~)) 13.79	
(8) Miscellaneous services	$((~~21.58~~)) 22.29 hourly rate	
(9) Pest and disease	$((~~17.47~~)) 18.04	
(10) Poa annua check		
Bentgrass (5 grams)	$((~~17.47~~)) 18.04	
Bluegrass (5 grams)	$((~~17.47~~)) 18.04	
Other grasses (10 grams)	$((~~17.47~~)) 18.04	
(11) Rules test—Canadian	PURITY	GERMINATION
Alfalfa, clover	$((~~21.58~~)) 22.59	$((~~12.33~~)) 12.73
Kentucky bluegrass	$((~~32.89~~)) 33.97	$((~~15.41~~)) 15.91
Peas, lentils	$((~~21.58~~)) 22.59	$((~~12.33~~)) 12.73
Bentgrass	$((~~48.31~~)) 49.89	$((~~17.47~~)) 18.04

Test	Fee	Other Considerations
(12) Rules test—I.S.T.A.	PURITY	GERMINATION
Alfalfa, clover	$((~~21.58~~)) 22.59	$((~~15.41~~)) 15.91
Kentucky bluegrass	$((~~32.89~~)) 33.97	$((~~15.41~~)) 15.91
Peas, lentils	$((~~21.58~~)) 22.59	$((~~15.41~~)) 15.91
(13) Samples requiring special preparation for germination, for example pelleted seeds	$((~~21.58~~)) 22.59	Additional Charge
(14) Seed Count	$((~~17.47~~)) 18.04	
(15) Sod analysis check (25 gram exam to evaluate if a lot appears to be sod quality)	$((~~19.53~~)) 20.17	Phone report only
(16) Sod seed analysis (A special test of turf grasses for those who need a detailed examination of seed before purchase and/or use)	Bluegrass $((~~61.67~~)) 63.69 Fescue $((~~43.17~~)) 44.59 Ryegrass $((~~34.94~~)) 36.08	Bluegrass test includes purity, 25 gram crop and weed exam, and 10 gram Poa annua check. Ryegrass and Fescue test include purity and 50 gram crop and weed exam.
(17) Sodium Hydroxide test for presence of red and/or white wheat	$((~~10.27~~)) 10.60	
(18) Soil exam or similar (A visual examination of a representative sample)	$((~~17.47~~)) 18.04	Reported on seed analysis certificate
(19) Undesirable grass species examination (UGS test)	$((~~12.33~~)) 12.73	
(20) Variety separation of Kentucky bluegrass	$((~~19.53~~)) 20.17	
If separated at time of purity analysis	$((~~9.25~~)) 9.55	

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-230 Official seed sampling or similar service. (1) The fee for official seed sampling or similar service is as follows:

Crop	Fee	Minimum charge
Peas, beans, small grains or seeds of similar size	$ 0.05 Per cwt.	$((~~21.58~~)) 22.29
For all other kinds	$ 0.15 Per cwt.	$((~~21.58~~)) 22.29

(2) If a special trip is required to provide a service, the person requesting the service may be charged at the rate of $((~~17.47~~)) 18.04 per hour travel time plus a mileage fee set by the Washington State Office of Financial Management in addition to the specific fee for service. All standby time is charged at the rate of $((~~21.58~~)) 22.29 per man-hour.

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-250 Miscellaneous charges for seed services. (1) Fees for miscellaneous department seed services are as follows:

Service	Fee
Rush samples (including phone or FAX report if requested at time sample is submitted)	$((~~12.33~~)) 12.73
Phone reports on test result, per call	$((~~3.59~~)) 3.70 per call
Preliminary report on germination	$((~~8.22~~)) 8.49
Phone report only	$((~~1.54~~)) 1.59
Additional mailing of report	$((~~2.56~~)) 2.64 each destination
Additional copies of reports	$((~~2.56~~)) 2.64 (minimum fee)
Revised reports	$((~~5.13~~)) 5.29 (minimum fee - or hourly fee when applicable)
Fee for special handling service, for example Federal Express, Air Parcel or air freight	$((~~3.59~~)) 3.70
Fee for facsimile transmission of documents	$((~~3.59~~)) 3.70 per document
Travel time - additional or special requested trips	$((~~17.47~~)) 18.04

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Service	Fee
Mileage - additional or special requested trips	As established by the Washington State Office of Financial Management

(2) Test plot examinations or consultant work in seed plots, seed fields, seed conditioning plants, etc., shall be at the rate of $((~~21.58~~)) 22.29 per hour plus mileage and travel time at the rate of $((~~17.47~~)) 18.04 per hour traveled.

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-300 Phyto-sanitary certification of seed—Fees. (1) Fees for phyto-sanitary certification of seed are as follows:

Service	Fee	Other Considerations
Phyto-sanitary certificate	$((~~21.58~~)) 22.29 each	
Field inspection—All seed except wheat seed (for each required inspection)	$((~~5.13~~)) 5.29 per acre	$((~~20.55~~)) 21.22 minimum fee payable with application
Field inspection—Wheat seed only (for each required inspection)	$((~~2.05~~)) 2.11 per acre or fraction thereof	Payable with application
Area inspection	$.05 per cwt.	$((~~20.55~~)) 21.22 minimum fee per certificate $((~~154.18~~)) 159.25 maximum fee per certificate Billed at time certificate is issued
Late fee—		
Application	$((~~30.83~~)) 31.84 each	
Sampling (When Required)—		
Beans, peas, lentils, and cereal grains	$.05 per cwt.	
Other crops	$.15 per cwt.	
Serology test	Fee as established by the testing laboratory.	
Laboratory analysis of plant material to verify disease	An additional fee of actual cost shall be charged when necessary to examine plant material and/or seed	

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-310 Organization for economic cooperation and development scheme for varietal certification (O.E.C.D.) fees. In addition to fees required by applicable Washington certification rules, the following fees shall apply to all seed tagged O.E.C.D and is payable by the person requesting O.E.C.D. certificate. The certifying agency may require fees paid in advance:

Service	Fee	Other Considerations
O.E.C.D. certificate	$((~~10.27~~)) 10.60 each	
O.E.C.D. grow out test	$((~~47.28~~)) 48.83 each entry	No charge for control entry

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-317 Annual and rough bluegrass quarantine fees. Fees for sampling and analysis for the presence of annual or rough bluegrass are those fees established in this chapter and:

(1) Annual Bluegrass - inspection fee for nursery plantings for the presence of annual bluegrass is $((~~51.39~~)) 53.08 per acre or portion thereof. The tagging fee is $((~~0.51~~)) 0.52 cwt. with a minimum fee of $((~~10.27~~)) 10.60.

(2) Rough Bluegrass - inspection fee for nursery plantings is $((~~51.39~~)) 53.08 per acre or portion thereof.

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-320 Certification fees for seed certified by the department except grasses. Fees for seed certification services for seed certified by the department other than grasses are as follows. Fees apply to both new and renewal applications:

Seed	Application Fee 1/	Seedling producing or field inspection Fee 2/	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Production Fee (includes sampling and tagging)	Seed shipped Out-of-State (uncleaned)
Alfalfa, Red clover, White clover and Trefoil	$((~~15.41~~)) 15.91 per variety per grower	$((~~1.79~~)) 1.84/acre	$((~~30.83~~)) 31.84	$((~~41.11~~)) 42.46 ea. field	$((~~0.51~~)) 0.52/cwt. 5/	$0.19/cwt.
Bean	$((~~15.41~~)) 15.91 per variety per grower	$((~~1.79~~)) 1.84/acre 3/ (one inspection) $((~~3.59~~)) 3.70/acre 4/ (two inspections)	$((~~30.83~~)) 31.84	$((~~41.11~~)) 42.46 ea. field	$((~~0.51~~)) 0.52/cwt.	$0.19/cwt.
Corn	$((~~15.41~~)) 15.91 for each separate combination/or isolation	$((~~25.69~~)) 26.53 first acre $((~~10.27~~)) 10.60 ea. additional acre except hybrid corn $((~~3.59~~)) 3.70 ea. additional acre	——	——	——	——
Sudangrass	$((~~15.41~~)) 15.91 per field	$((~~1.79~~)) 1.84/acre	$((~~30.83~~)) 31.84 per field	——	$((~~0.41~~)) 0.42/cwt.	——
Rapeseed	$((~~15.41~~)) 15.91 per variety per grower	$((~~1.79~~)) 1.84/acre (one inspection)	$((~~15.41~~)) 15.91 per grower	$((~~20.55~~)) 21.22 ea. field	$((~~0.51~~)) 0.52/cwt.	——

1/ Refer to WAC 16-302-050 for seed certification application due dates.

2/ Refundable if acreage is withdrawn before inspection. Except for bean seed, required of seedling fields to be harvested for certification the year of planting. Notification of seeding field to be harvested for certification and required fees are due July 31.

3/ One inspection is required for Great Northern Red Mexican, pinto, pink, and small white bean.

4/ Includes windrow inspection which is required for certification of snap beans, kidney beans, and eligibility for shipment into Idaho.

5/ Sampling and production fees are billed at completion of tests. If none of the seed is tagged, ten cents of the ((~~fifty-one~~)) fifty-two cents per cwt. production fee is refundable.

AMENDATORY SECTION (Amending WSR 02-12-061, filed 5/30/02, effective 6/30/02)

WAC 16-303-330 Certification fees for grass seed. Certification fees for grass seed except Sudangrass are as follows:

(1) Application fees:

(a) Seedling application fee:

Per variety, per field $((~~15.41~~)) 15.91

(b) Late seedling penalty fee: (Per kind) $((~~30.83~~)) 31.84

(c) Seedling producing application fee:

Per field, per grower $((~~15.41~~)) 15.91

Required of seedling fields to be harvested for certification the year of planting. Notification of seedling field to be harvested for certification and required fees shall be due July 31:

(2) Renewal applications:

(a) Renewal application fee:

Per variety, per grower $((~~15.41~~)) 15.91

(b) Late renewal penalty fee: (Per variety) $((~~30.83~~)) 31.84

This additional fee shall be charged for renewal applications received after May 1.

(c) Inspection fee per field. $((~~30.83~~)) 31.84

(3) Annual grasses inspection fee per acre $((~~1.79~~)) 1.84

Applications are due within sixty days after planting.

(4) Reinspection: Other than isolation—each field $((~~41.11~~)) 42.46

(5) Inspection and final certification fees: Inspection and final certification fees are based on pounds sampled and billed upon completion of required tests (Option A). Those dealers requesting sampling and tagging privileges and/or participation in Option B must sign a memorandum of agreement that shall expire on June 30 of each year. The memorandum may be terminated by the director if the conditioner violates certification standards or requirements of memorandum.

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(a) Option A: When based on pounds sampled, and billed at completion of required laboratory tests, the fees are:

(i) Final certification fee $((~~0.82~~)) 0.84

per one hundred pounds. (If no seed is tagged, twenty cents of the final certification fee is refundable upon request.)

(ii) Seed shipped out-of-state for conditioning per one hundred pounds (unclean weight). $0.30

(iii) Service fee for out-of-state origin (per cwt.) $0.30

(iv) Blend fee is as established by blend rule, and in addition to above fees. However, blend fee is not applicable to salvage blends.

(v) Payment of fees is the responsibility of the person signing the application. However, conditioner may assume this responsibility.

(b) Option B: When based on pounds tagged after required laboratory tests are completed, the fee is:

(i) Final certification fee $((~~1.13~~)) 1.16

per one hundred pounds. (Minimum fee per tagging) $((~~10.27~~)) 10.60

(ii) Service fee for out-of-state origin $((~~0.66~~)) 0.68

per one hundred pounds.

(iii) Blend fee (in addition to fee established by blend rule) is payable upon completion of blend on total weight of blend, and is as follows:

(A) Washington origin certified seed used in blend per one hundred pounds. $((~~1.02~~)) 1.05

(B) Out-of-state origin certified seed used in blend per one hundred pounds $((~~0.61~~)) 0.63

except that those fees listed in (a) and (b) above are not applicable to certified seed that is tagged and sealed, and on which final fees have been paid.

(C) A refund or credit is issued for the percent of the blend lot not tagged. (For example, if forty percent of the blend is not tagged, forty percent of the fees charged under Option B above are refundable.)

(6) Payment of fees is the responsibility of the conditioner. A conditioner choosing this program must handle all certified grasses in his warehouse under this program for the entire crop year. Upon termination or nonrenewal of Option B memorandum of agreement, conditioner is responsible for Option A fees on all certified seed not tagged at termination date.

(7) Fees for services such as O.E.C.D. and sod quality, etc., are in addition to the fees listed in these standards.

(8) Fees for reissue of tags are ten cents per tag with a minimum fee of ten dollars and ((~~twenty-seven~~)) sixty cents.

(9) The seed processor is responsible for seed certification fees including sampling, testing, production and final certification fees, and may request the responsibility for additional fees.

WSR 03-03-132
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Filed January 22, 2003, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-15-173.

Title of Rule: WAC 284-30-390 Automobile claims, repairs, and total loss settlements.

Purpose: Automobile total loss settlement is the single largest source of consumer inquiries and complaints received by the property and casualty section of the consumer advocacy division. The commissioner has reviewed WAC 284-30-390 and this proposed regulation clarifies, simplifies, and makes this chapter more effective.

Other Identifying Information: Insurance Commissioner Matter No. R 2002-06.

Statutory Authority for Adoption: RCW 48.02.060, 48.30.010.

Statute Being Implemented: RCW 48.02.060, 48.30.010.

Summary: WAC 284-30-390 is amended, clarified and presented in more consumer friendly language. The subject is the single largest source of consumer complaints received by the property and casualty section of the consumer advocacy division.

Reasons Supporting Proposal: Automobile total loss settlement is the single largest source of consumer inquiries and complaints received by the property and casualty section of the consumer advocacy division. Considerable time is spent by the Office of the Insurance Commissioner (OIC) and industry in administering the regulation. A clearer, more

understandable regulation will be better understood by consumers and easier to implement.

Name of Agency Personnel Responsible for Drafting: Jon Hedegard, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7039; Implementation and Enforcement: Scott Jarvis, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262.

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Automobile total loss settlement is the single largest source of consumer inquiries and complaints received by the property and casualty section of the consumer advocacy division. The current WAC 284-30-390 is entitled "Standards for prompt, fair and equitable settlements applicable to automobile insurance" and addresses claims handling processes, valuation, repair and total losses. Considerable agency staff time is spent working with consumer complaints through the existing regulation. Even more time is spent by the insurers themselves responding to the complaints whether received by the OIC or directly from their insureds. One goal of this rule making is to make these processes more understandable to consumers. Consumers should have a greater awareness of their rights and clearer expectations of what may occur in the claims process. Another goal is to create more certainty in the standards for compliance for the industry representatives who administer the claims process. Another goal is a reduction in the time and cost spent by the OIC and insurer staff in responding to consumer complaints due to the increased clarity and specific changes to the rules.

Proposal Changes the Following Existing Rules: WAC 284-30-390 would be amended and new sections WAC 284-30-3901 through 284-30-3915 would be created.

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

Small Business Economic Impact Statement

Background: Automobile total loss settlement is the single largest source of consumer inquiries and complaints received by the property and casualty section of the Insurance Commissioner's Consumer Advocacy Division. A massive amount of agency time is spent working with consumers working through the existing regulation and insurers' total loss process. Considerably more time is spent by the insurers themselves. They must respond to complaints received by the OIC as well as the inquiries and complaints they receive directly from their insureds.

On July 24, 2002, the insurance commissioner filed a CR-101 announcing his intention to review WAC 284-30-390 and determine if the current regulation can be clarified, simplified, and made more effective. The current WAC section is entitled "Standards for prompt, fair and equitable settlements applicable to automobile insurance" and addresses claims handling processes, valuation, repair, and total losses. One goal of this rule making is to make these processes more understandable to consumers. Consumers should have a greater awareness of their rights and clearer expectations of what may occur in the claims process. Another goal is to create more certainty in the standards for compliance for the industry representatives who administer the claims process. Another goal is a reduction in the time and cost spent by OIC and insurer staff in responding to consumer complaints; this goal may be achievable due to the increased clarity and specific changes to the rules.

Is the Rule Required by Federal Law or Federal Regulation? This rule is not required by federal law or regulation.

Industry Affected by the Proposed Rule: The proposed rules would impact 100% of property and casualty insurers who offer insurance on vehicles. The SIC Code is #6331 - Fire, Marine, and Casualty Insurance.

Parts of the Proposed Rule That May Impose a Cost to Business: The agency staff reviewed procedures adopted by other states and discussed drafts with industry. Since a goal of the rule making is to make the process easier to understand for consumers, the rules are written in an easy to read question and answer format.

Below is an overview of each proposed WAC section.

Proposed WAC 284-30-390 eliminates existing provisions and serves as a scope section.

Proposed WAC 284-30-3901 provides definitions for the following WAC sections.

Proposed WAC 284-30-3902 poses and responds to the question of what must occur when a vehicle is repairable.

Proposed WAC 284-30-3903 asks if an insured can get their vehicle repaired at a shop of their choice.

Proposed WAC 284-30-3904 asks if the insurer will try to collect the insured's deductible.

Proposed WAC 284-30-3905 asks if insured will be fully reimbursed if the insurer collects the insured's deductible.

Proposed WAC 284-30-3906 asks if the insurer can refuse to settle damages and force an insured to use their collision coverage.

Proposed WAC 284-30-3907 asks how an insurer may settle a total loss claim.

Proposed WAC 284-30-3908 asks if there are factors that may reduce the settlement.

Proposed WAC 284-30-3909 asks if the insured can keep their total loss vehicle.

Proposed WAC 284-30-3910 asks if the insurer can move the vehicle prior to settlement.

Proposed WAC 284-30-3911 asks what information must be in the insurer's total loss report.

Proposed WAC 284-30-3912 asks what happens if the insured accepts the insurer's settlement offer but can't find a comparable vehicle reasonably close.

Proposed WAC 284-30-3913 asks what the insurer must do prior to denying storage or towing costs.

Proposed WAC 284-30-3914 asks about the insured's right to a rental vehicle when dealing with someone else's insurer.

Proposed WAC 284-30-3915 asks what happens if the other insurer offers a flat rental amount.

Compliance Costs for the Industries Affected by the Proposed Rules: Conversations with industry indicate that the reopening option is the greatest possible cost concern of

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insurers. The commissioner recognizes the concerns but does not agree that this will incur significant costs. The insurers may be reading greater duties and costs into the rule than exist. The rule requires the insurer to reopen the file when an insured agrees to a settlement amount but can't find a comparable replacement car for that amount within thirty-five days. If the insured can only find a more expensive comparable vehicle they can ask that their claim file be reopened. The insurer can locate a comparable vehicle for the settlement amount, pay the difference in the settlement amount and a comparable vehicle, or settle the loss via the appraisal part of the policy. The provision does not apply if the insurer informs the insured of a specific vehicle and the insured does not buy it. It does not apply if the insured buys a more expensive vehicle before notifying the insurer. This provision gets at the limited instances where an insured settles for an amount then finds that it is not adequate to replace their vehicle. This can happen where specific, local vehicles are not used to value the loss. If the settlement amount is based on specific, comparable vehicles identified by the insurer that are available for purchase, there should be no need to reopen a file. All the insurer needs to do is pass along the specific information about one or more of those vehicles that can be purchased for the settlement amount. It is only if they are not actually comparable or not available for that price that the claim may have to be reopened. In either of those cases, there was a problem that the insured was not and could not have been aware of by relying on the information provided by the insurer. Several carriers noted that the insured may not want to buy a comparable car but may want to trade up. The provision would not be an issue then. The arguments regarding this issue are noted in greater detail in the "mitigation" sections. The commissioner does not believe that this issue will result in any significant costs if the valuation processes are undertaken in the manner that industry insists they are[.]

The contiguous zip codes or searching by radius was a concern of insurers. They contract these searches out of vendors. The OIC staff has had several conversations with the vendors and the commissioner has been assured that the vendors have the current ability to do these searches in either fashion by distance or by zip code. The searches should not incur any more expense than the current procedures.

Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: There are no new reporting requirements or record-keeping requirements as a result of this rule. There is a potential record-keeping issue related to proposed WAC 284-30-3912. The proposed rule addresses the situation where an insured accepts the settlement amount offered by an insurer and can't find a comparable vehicle for the amount. The insurer may have to reopen a file. The option must be exercised by the insurer within thirty-five days. As noted earlier, this scenario is limited to when the insurer does not give the insured specific comparable vehicles that are available for the settlement amount. If the insurer provides that insured with detailed information on where they can get the specific vehicle and that vehicle is comparable, the insurer has no further duty.

Professional Services That May Be Needed to Comply with the Requirements of the Proposed Rule:

Cost of equipment: There is no anticipated additional cost of equipment.

Cost of supplies: There is no anticipated additional cost of supplies.

Cost of labor and increased administration: There may be some additional costs of increased labor and administration. The commissioner has attempted to mitigate or eliminate as many of those costs as possible (see the section addressing mitigation techniques that were incorporated into the rule). There is possible additional administration in the "right of recourse" but the insurer can preclude that option if it provides specific, timely information to the insured. The rules should also have factors that should at least offset the increase in labor or administration. Currently, this is the single largest source of complaints for the property/casualty section of the Consumer Advocacy Division. Rules that are easier to understand and implement should lead to lessened consumer confusion, fewer complaints, and less time resolving complaints or inquiries.

Mitigation Measures That Could Be Used to Reduce the Economic Impact of the Rule on Small Businesses and Still Meet the Objectives: As noted earlier, the commissioner and staff have been discussing these issues with industry and interested parties for many months. Proposed concepts and language has been exposed for comments and suggestions in an attempt to mitigate costs, improve the ease of filing, and reduce the time for approval. The commissioner will continue to be receptive to suggestions that will allow the rule to be administered more efficiently while meeting the objectives of the regulation.

Mitigation Techniques or Clarifying Suggestions That Have Been Incorporated into the Proposed Rule: The commissioner and his staff have had numerous discussions with industry and interested parties as the proposal was developed. The proposal has been through several drafts and numerous changes to clarify and mitigate potential costs have been made. The commissioner would like to thank the industry and interested parties for providing timely and useful comments and suggestions throughout this process. Clearer, more efficient regulation benefits the consumer, industry, and the regulator. Some examples of mitigatory or clarifying changes that have been made include:

Proposed WAC 284-30-3901(3)[(1)] Actual cash value, it was requested that the word "retail" be removed or changed from the definition. It was believed that the word confused the issue of who was selling and at what price. "Retail" was eliminated and "available to you" was added. It was noted that "applicable taxes, license fees, and other fees incidental to transfer of evidence of ownership" was not a part of the actual cash value but, rather something that may be added to the actual cash value. This language was moved from the definition of actual cash value to proposed WAC 284-30-3906 and it was noted that these must be added to the actual cash value. Subsection (6) "Verified" it was requested that the language should be added to allow a phone call by subcontractor to establish comparability. This was done.

Proposed WAC 284-30-3902(1) was modified. It was noted that insurers may not make their own estimate and will not estimate repair damages in obvious total loss situations.

Language was changed to require insurers to provide an estimate when they use the estimate as the basis for payment. Subsection (5) was modified to reflect that this is a contractual right of the insurer and applies to first party claims. It was also noted that the language regarding "causing the vehicle to be repaired" raised issues concerning the insurer's role. It was asked if this burden on the insurance company was applicable only if the company specifically designates the shop where the vehicle is to be repaired. That is the purpose of the language which was clarified.

Proposed WAC 284-30-3903, an insurer noted that insured choice may incur liability beyond the insured's estimate. Language to that effect was added.

Proposed WAC 284-30-3904(1), an insurer noted that they do not always pursue subrogation and do not always have an interest. The subsection was modified to account for when the insurer is pursuing subrogation.

Proposed WAC 284-30-3905, an insurer stated that their recovery provision was more generous than contemplated by the proposed WAC. The language was modified to account for this possibility.

Proposed WAC 284-30-3907, it was requested that the contiguous zip code language might be difficult to administer or may be too confusing. Several insurers search that way today, others expand out in mileage increments. The language was changed to have an increasing circle of twenty-five mile increments. It was requested that the word "retail" be removed. It was believed that the word confused the issue of who was selling and at what price. "Retail" was eliminated and "available to you" was added. Subsection (2)(b), it was asked if the comparable vehicles should be replaced by licensed dealers. The change was made. Subsection (3), it was noted that not all companies may include an appraisal clause; language was modified to reflect that possibility.

Proposed WAC 284-30-3908, an insurer asked if there should be additions or reductions for conditions given the definition of "comparable vehicle." The language in subsection (3) was modified accordingly. It was requested that the number of days be reduced from thirty-five to thirty and that the insurer be protected from changes in the salvage condition. The timeline was reduced to thirty days. A sentence was added to eliminate the option if the condition of the salvage is changed.

Proposed WAC 284-30-3911 (3)(f), an insurer stated that they currently note the city but do not provide distances and stated that they or their vendor would have to expend considerable extra labor and incur costs. While it is our understanding that the vendors have the mileage already in their database (based on reports from the vendors that note the mileage), we have changed the wording to simply require the location. An insurer stated that they weren't clear about the meaning of provision preventing the exclusion of a vehicle based on a mathematical formula. The sentence was deleted. It was noted that there was a requirement for two lists and it was asked if those could be combined. The lists were combined and redundancies eliminated. It was noted that if a vehicle has been sold, the insurance company will not know "the location of the comparable vehicle." This was clarified to the location of the comparable vehicle "at the time of the valuation."

Proposed WAC 284-30-3912, an insurer asked for additional clarity regarding the mechanics of the process and how a reopened claim was resolved. Additional language was added and the section was clarified regarding the reopening of claims and the options for insurers for resolution.

Proposed WAC 284-30-3913, it was requested that letters to insureds or claimants should be required in addition to documenting the claim file. The language was changed from "reasonable notice" to "written or electronic mail notice." It was also suggested that the answer implied that coverage might be broader than in the contract. A reference to possible contract language was added. It was asked if a phone call could be sufficient if documented. The language was changed to allow an appropriately documented phone call.

Proposed WAC 284-30-3914, an insurer noted that they did not see a provision for cash-outs, which can be of benefit to insureds. Language was changed to address this concern.

Proposed WAC 284-30-3915, asks what happens if the other insurer offers a flat rental amount. It was stated that it was not clear if this was applicable to first and/or third party claimants. The question was changed to indicate the applicability to third party claimants.

Mitigation Techniques or Clarifying Changes That Were Considered for Incorporation into the Proposed Rule but Were Rejected: The dialogue between the OIC and interested parties was very productive and lead to many changes. The commissioner did not adopt all of the suggestions intended to clarify language or mitigate potential costs. Some of the suggestions were one of several options to address an issue. Some suggestions did not further the goals of the rule making. Several suggestions or questions were made regarding provisions that are requirements of the current WAC section. All for the suggestions were reviewed but the following are some examples of mitigatory or clarifying changes that were not made in the proposed draft include:

Proposed WAC 284-30-3901(2) Comparable, it was suggested that the requirement that a car be the same year or newer was too restrictive, older cars may be better matches, some cars may be difficult to value, and some manufacturers use different models with the same style and that may have a similar value. While there may be some situations where a car is similar to a car that is three or more years older or a different make by the same manufacturer, this could be the basis for much confusion and some abuse. A consumer may not agree that their Ford Taurus should be compared to a Mercury Sable and this could lead to additional complaints and suits. The insurers do have other evaluation options if they believe that fairer, more consistent results can be achieved.

Proposed WAC 284-30-3902(5), it was suggested that there are problems in requiring the vehicle to be "restored to its condition prior to the loss." This wording, "restored to its condition prior to the loss" is part of existing WAC 284-30-390(6).

Proposed WAC 284-30-3906, an insurer asked how it was determined that "liability and damages are reasonably clear?" They suggested that this could be changed to when both parties agree liability is reasonably clear. This language exists in the existing WAC 284-30-390(2) and it has not been

suggested to be a problem in the past to administer by insurers or the subject of consumer complaints.

Proposed WAC 284-30-3907 (2)(b), it was suggested that dealer quotes only be allowed if the other methods are exhausted. The option is written as it now exists in WAC 284-30-390 (1)(b)(ii), this option has not been the source of consumer complaints so no change is made at this time. The requirement to verify that a vehicle is comparable was questioned. It was stated that requiring phone or other contact would be too time-consuming and expensive and preclude the use of private ads. This is a current requirement of WAC 284-30-390 (1)(b)(i). Despite this requirement, insurers have, on some occasions, used vehicles in comparisons to establish value that are not similar in condition, mileage, or other features. The commissioner does not want to remove this valuable consumer protection and questions how the use of limited information can establish value. It was asked if vendors could track by zip codes because insurers would have to track that if the function could not be outsourced to their current vendors. The OIC had conversations with the three major vendors and it is our understanding they already track by zip code so no change is necessary.

Proposed WAC 284-30-3908, it was stated by an insurer that they only deduct certain limited items and suggested that only unusual deductions should be explained. This provision has not substantively changed from existing WAC 284-30-390(8) and the commissioner chooses not to make changes at this point.

Proposed WAC 284-30-3911(3), it was asked if "all" could be changed to a representative sampling. The commissioner believes that it is important that a consumer has the right to all information used to determine value. Additionally, how "representative" a sample was would surely lead to disputes.

Proposed WAC 284-30-3912, this section raised numerous questions. Changes have been made but not all of the changes are in response to the questions. An insurer asked if they went through the appraisal process, could the policyholder come back and challenge that result, then go through the entire process again. The answer is no. The section applies to a "settlement based on the insurer's valuation." A settlement based on the use of the appraisal clause in the policy would not apply. An insurer was concerned about getting the vehicle identification numbers (VIN) for all cars. The VIN number is needed only when the settlement was based on a specific comparable vehicle. It was stated that allowing dealer quotes and the insurer to choose the settlement procedure would also streamline this process. This section does not preclude the use of dealer quotes, advertisements, etc. and does not preclude the insurer from negotiating a deal with a dealer for a comparable vehicle. An insurer was concerned about a claimant paying more than the settlement for a replacement vehicle and asking the carrier for the difference, using a higher priced but allegedly comparable vehicle as evidence. The section states that it does not apply if the consumer purchased a vehicle at a higher price without giving the insurer notice prior to the purchase. It was suggested that the timeframe be reduced from thirty-five days to fifteen or twenty days. The commissioner chose not to make that change at this time. An insurer noted that the insurer has no control over what the insured does after receipt of the money and that many people do not buy the same type of vehicle but utilize the money to upgrade. A few comments were received that asked to delete this provision. Some comments said something to the effect that the claim is negotiated and settled claim and that the value of property does not change based on the ability or inability to replace the property. The insurer should not have to shop around for and purchase a replacement vehicle for the insured or to hold a claim open until the insured finds a replacement vehicle. The commissioner recognizes that insurers have concerns. However, a common complaint of the insureds is that the price the insurer has established of a "comparable" vehicle with the complex valuation programs or via other mechanism used by insurers or vendors can't actually buy a comparable vehicle. The point of this section is not to give consumers the right to delay the process or push up settlements. The purpose is to ensure that when an insurer states that a comparable vehicle can be purchased for a certain amount, the insured can presumably find a vehicle for that amount. If the insured can only find comparable vehicles that cost more than the settlement amount, there is a presumption that the amount was not adequate. In this scenario, the insurer has several options. The insurer can locate a vehicle that is available for the settlement amount; pay the difference between a comparable vehicle and the settlement amount or purchase a comparable vehicle for the insured; or use the appraisal section in the policy. The section does not apply when the insured is given written information about a specific vehicle that is available, including location and VIN at the time of settlement. The concern regarding the insured dawdling and not buying an available vehicle is not applicable. If an insured is not buying a comparable vehicle but "trading up," this section should not come into play. When an insurer is telling the consumer that comparable vehicles are used to value their car and the consumer finds that the vehicles are not comparable or not available for the settlement amount, there is a fundamental problem. This section addresses that scenario. There are eight states who have similar "Right of Recourse" provisions in effect; Illinois, California, Indiana, Rhode Island, Utah, Oregon, New York, and Hawaii. Those states have not reported administrative difficulties or costs in implementing these sections and are satisfied that the provisions are working well.

Steps the Commissioner Will Take to Reduce the Costs of the Rule on Small Businesses: The commissioner does not believe that there are any property and casualty insurers that operate in Washington that employ fewer than fifty employees. However, the commissioner is interested in reducing the costs for all business, especially smaller businesses. OCI staff has engaged in lengthy discussions about reducing the costs of the rules; the mitigatory techniques used to date are listed previously in this document. The commissioner welcomes any new suggestions that could lessen any economic impacts that are attributable to the rules.

The Proportionality of the Cost of Compliance: The cost of compliance should be proportional for smaller businesses. The rules should not create any difference in terms of implementation, processes, or impacts. Smaller insurers should, in general, have fewer insureds and fewer claims.

There should be fewer potential disputes. Similarly, any costs issues with the "right of recourse" should be proportional due to the proportionality of insureds and of claims. The fewer insureds should lead to fewer probable occurrences of claims and fewer possible times that an insured may need to exercise this right. The commissioner is hoping that the new rules will allow for quicker, less contentious settlement of automobile claims. There will hopefully be some cost savings due to the increased clarity and fewer disputes with insureds. Any offsets or saving should also be proportional. The commissioner welcomes any comments regarding the proportionality of compliance and is committed to a diligent review of any issues posed.

Informing and Involving Affected Businesses: The CR-101 was filed on July 24, 2002. The proposal was published in the Washington State Register and was posted on the insurance commissioner's website with contact names and numbers. Affected parties, including smaller insurers, were mailed the CR-101. The CR-101 requested comments and gave agency contact numbers for parties interested in participating in the rule-making process.

The commissioner has provided concepts and draft language to interested parties and encouraged comments, suggestions, and critiques. More refined concepts and drafts were shared and additional responses were solicited.

The commissioner continues to encourage comments from insurers and any interested parties on the proposal. The commissioner asks for any and all suggestions that make the proposed rule clearer, fairer, or easier to administer.

Informing and Involving Small Business in the Development of the Proposed Rule: See above.

A copy of the statement may be obtained by writing to Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacys@oic.wa.gov, fax (360) 586-3109.

RCW 34.05.328 applies to this rule adoption. This proposal is a significant legislative rule for the purposes of RCW 34.05.328.

Hearing Location: Insurance Commissioner's Office, Conference Room 221, 5000 Capitol Boulevard, Tumwater, WA, on February 26, 2003, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Lori Villaflores by February 24, 2003, TDD (360) 664-3154 or (360) 407-0198.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by February 25, 2003.

Date of Intended Adoption: March 12, 2003.

January 22, 2003
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-390 ((~~Standards for prompt, fair and equitable settlements applicable to automobile insurance.~~)) Regulation of settlements of insurance claims relating to vehicles. ((~~The following standards apply to insurance claims relating to motorcycles and private passenger automobiles as defined in RCW 48.18.297:~~

~~(1) When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:~~

~~(a) The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.~~

~~(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fee incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by~~

~~(i) The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area. Any settlement offer which relies upon prices of automobiles advertised for sale in local newspapers may include only prices for automobiles verified by the insurer as being comparable in age and condition to the insured automobile; or~~

~~(ii) One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area. An insurer must accurately describe the age and condition of the insured automobile to the dealers surveyed and may use only price quotations for the retail selling price of a comparable automobile.~~

~~(c) When a first party automobile total loss is settled on a basis which deviates from the methods described in subsections (1)(a) and (1)(b) of this section, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.~~

~~(2) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.~~

~~(3) Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop, or to obtain a temporary rental or loaner automobile.~~

~~(4) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allo-~~

PROPOSED

~~eated loss adjustment expense. An insurer shall keep first party claimants apprised of its efforts relative to subrogation claims.~~

~~(5) If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be itemized and shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and shall, upon request, furnish to the claimant the names of repair shops convenient to the claimant that will satisfactorily complete the repairs for the estimated cost, having in mind, particularly, the problems associated with the repair of unibody vehicles.~~

~~(6) In first party claim situations, if an insurer elects to exercise a contract right to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.~~

~~(7) In any claim situation, an insurer shall make a good faith effort to honor a claimant's request for repairs to be made in a specific repair shop of the claimant's choice, and shall not arbitrarily deny such request. A denial of such a request solely because of the repair shop's hourly rate is arbitrary if such rate does not result in a higher overall cost of repairs. The insurer shall make an appropriate notation in its claim file setting forth the reason it has rejected a claimant's request.~~

~~(8) Deductions for betterment and depreciation are permitted only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and depreciation shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount which the resale value of the vehicle is increased by the repair or replacement. Calculations for betterment, depreciation, and normal useful life must be included in the insurer's claim file.~~)) WAC 284-30-390 through 284-30-3915 are the standards for prompt, fair, and equitable settlements for insurance claims relating to vehicles.

NEW SECTION

WAC 284-30-3901 Definitions for settlement of vehicle claims. In addition to the definitions in WAC 284-30-320, the following definitions apply to WAC 284-30-3901 through 284-30-3915.

(1) "Actual cash value" means the selling price, available to you, required to replace your vehicle with a comparable vehicle.

(2) "Comparable vehicle" means vehicles that have been verified by the insurer to be the same make and model, same or newer year, similar body style, similar options and mileage as your vehicle and in as good or better overall condition.

(3) "Current data" means retail market data no older than ninety days from the date of loss.

(4) "Principally garaged" means the zip code where the vehicle is normally kept.

(5) "Settlement" means when the payment is actually made to you and/or your lien holder.

(6) "Verified" means at a minimum, phone contact with the source to confirm comparability.

NEW SECTION

WAC 284-30-3902 When my vehicle is repairable, what can I expect from the insurer? (1) The insurer must provide you a copy of the itemized estimate it is using as the basis for payment.

(2) Upon your request, the insurer must provide you names of repair shops within your principally garaged area that will satisfactorily complete the repairs for the estimated cost.

(3) The insurer cannot require you to travel unreasonably to:

(a) Inspect a replacement vehicle;

(b) Obtain a repair estimate;

(c) Have the vehicle repaired at a specific repair shop; or

(d) Obtain a temporary rental or loaner vehicle.

(4) Deductions for betterment and depreciation may be taken only for parts normally subject to repair and replacement during the useful life of the insured motor vehicle. Deductions for betterment and depreciation are limited to the increase in the actual cash value of the vehicle caused by the replacement of the part, or the amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, whichever is less.

(5) Your insurer may elect to exercise its right, under the terms of your insurance contract, to repair your vehicle and designate a specific repair shop for your vehicle repairs. In this case, the insurer shall restore your vehicle to its condition prior to the loss at no additional cost to you other than as stated in your policy.

NEW SECTION

WAC 284-30-3903 Can I get my vehicle repaired at a shop of my choice? (1) The insurer must make a good faith effort to honor your request for repairs to be made in a specific repair shop and cannot arbitrarily deny your request.

(2) A denial of your request solely because of the repair shop's hourly rate is arbitrary if the rate does not result in a higher overall cost of repairs.

(3) If the overall cost of repairs cannot be agreed upon, the insurer will:

(a) Provide you with the name of a reputable repair shop that can satisfactorily complete the repairs for the amount of their estimate; and

(b) Make an appropriate notation in its claim file setting forth the reason it has rejected your request.

(4) If you choose to take your vehicle to a repair facility in which the overall cost for a satisfactory repair is higher than the insurer's estimate, you may be liable for any additional amount above their estimate.

NEW SECTION

WAC 284-30-3904 Will my insurer pursue collection of my deductible? (1) Yes, if the company is pursuing col-

lection of its interest, you may request they pursue collection of your deductible for you.

(2) The insurer will inform you of its efforts relative to collection of your deductible.

NEW SECTION

WAC 284-30-3905 If my insurer collects my deductible back, will I recover the full amount of my deductible? (1) At a minimum, recovery will be shared on a proportionate basis with your insurer.

(2) No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery, and then only for the pro rata share of the allocated loss adjustment expense.

NEW SECTION

WAC 284-30-3906 Can an insurer refuse to settle my vehicle damages and force me to use my own collision coverage? When liability and damages are reasonably clear, an insurer cannot recommend that you make a claim under your own collision coverage solely to avoid paying the claim.

NEW SECTION

WAC 284-30-3907 How can an insurer settle my vehicle total loss claim? An insurer can adjust and settle vehicle total losses by one of the following methods:

(1) Replacing your vehicle: An insurer can settle your claim by offering to replace your vehicle with a comparable vehicle that is available for inspection within a reasonable distance from where your vehicle is principally garaged. All offers must be in writing.

(2) Cash settlement: An insurer can settle your claim by offering a cash settlement based on the actual cash value to purchase a comparable vehicle. Only vehicles identified as comparable may be used to arrive at the typical or average actual cash value. You can request a copy of the "valuation report" that notes the information used to determine the amount of the cash settlement. The offer of a cash settlement must use one of the following methods:

(a) The selling price, available to you, of a comparable vehicle based on current data obtained from the zip code where your vehicle was principally garaged. If two or more comparable vehicles cannot be found within the zip code where your vehicle is principally garaged, the search area may be expanded only in an increasing circle of twenty-five mile increments until two or more comparable vehicles are identified.

(b) Quotations for the selling price available to you of a comparable vehicle obtained from two or more licensed dealers located within the principally garaged area. If two or more licensed dealers cannot be found within the zip code where your vehicle is principally garaged, the search area may be expanded only in an increasing circle of twenty-five mile increments until two or more quotes for comparable vehicles are obtained.

(c) The selling price available to you of one of two or more comparable vehicles advertised for sale in the local media if the advertisement is no older than ninety days. The vehicle must be located within the principally garaged area. If two or more comparable vehicles cannot be found within the zip code where your vehicle is principally garaged, the search area may be expanded only in an increasing circle of twenty-five mile increments until two or more comparable vehicles are identified.

(3) Appraisal: If you and your insurer fail to agree on the actual cash value of your vehicle and your policy has an appraisal provision, you or your insurer may request that the appraisal provision of your policy be used as a method to resolve disputes concerning the actual cash value.

Applicable taxes, license fees, and other fees incidental to transfer of evidence of ownership must be added to the actual cash value.

NEW SECTION

WAC 284-30-3908 Are there factors that may reduce my settlement? Your settlement may be reduced by one of the following methods:

(1) Deductions are allowable for prior damage. The amount of deduction can be no greater than the decrease in actual cash value due to prior damage.

(2) When you retain your total loss vehicle, your insurer may deduct the salvage value from your settlement. The insurer must provide you with the name and address of a salvage dealer or dismantler who will purchase the salvage for the amount deducted with no additional charge. This option must be available for at least thirty days after receipt of the settlement. This option will not be available if, after settlement, the condition of the salvage has been changed.

(3) Any additions or deductions from the actual cash value must be measurable, discernible, itemized and specified as to dollar amounts.

NEW SECTION

WAC 284-30-3909 If my vehicle is determined to be a total loss, can I keep it? (1) If your claim is being handled by another person's liability insurer, you may negotiate to keep your vehicle.

(2) If your claim is being handled under your insurance policy, it will depend on the terms and conditions in your policy.

NEW SECTION

WAC 284-30-3910 Can the insurer move my vehicle prior to settlement of the claim? Yes, the insurer may move your vehicle with your consent. An insurer may seek to move the vehicle to eliminate additional storage costs. If you do not consent to move the vehicle, you may be held liable for those additional storage costs.

PROPOSED

PROPOSED

NEW SECTION

WAC 284-30-3911 What information must be included in the insurer's valuation report? The valuation report must include:

(1) All information collected during the initial inspection that sets forth the condition, equipment, and mileage of the vehicle;

(2) All information that the insurer used to arrive at the retail value of the vehicle;

(3) A list of all vehicles found in the area surrounding the location of the principal garaging. This list must include:

(a) The source of the information used;

(b) The date of the information;

(c) The seller's telephone number;

(d) The asking price;

(e) The sold price, if verified;

(f) The location of the comparable vehicle at the time of the valuation.

Any supplemental or ancillary information must be clearly identified with a separate heading. Any weighing of identified vehicles to arrive at an average must be documented and explained.

NEW SECTION

WAC 284-30-3912 What if I accept the settlement based on the insurer's valuation and cannot find a comparable vehicle within a reasonable distance of my vehicle's principally garaged area? (1) When you accept the settlement, the insurer must provide you with written notice regarding reopening of your claim file. If you cannot purchase a comparable vehicle for the settlement amount within thirty-five days after you receive the settlement and you located, but did not purchase a comparable vehicle in excess of the settlement amount, the insurer must reopen your claim file.

(2) If you notify the insurer within thirty-five days of receipt of the settlement that you cannot purchase a comparable vehicle for the settlement amount and you located, but did not purchase a comparable vehicle in excess of the settlement amount, the insurer must reopen your claim file and either:

(a) Locate a comparable vehicle that is currently available for the settlement amount;

(b) Pay you the difference between the settlement amount before applicable deductions and the cost of the comparable vehicle or purchase the comparable vehicle for you; or

(c) Conclude the loss settlement in the manner provided in the appraisal section of your insurance policy in force at the time of the loss.

(3) The insurer is not required to reopen your claim file if:

(a) At the time of settlement you were provided written notification, including the vehicle identification number, of the availability and location of a specific and comparable vehicle that could have been purchased for the settlement amount; and

(b) You did not purchase the vehicle within thirty-five days of the receipt of the settlement.

NEW SECTION

WAC 284-30-3913 What must the insurer do prior to the denial of storage and towing costs? The insurer must:

(1) Advise you by phone or in writing before they stop payment for storage of your vehicle. This communication must be documented in the claim file. If it is a phone call, the documentation must include the date, time, name of the person in your household they spoke with, and specifics of the conversation;

(2) Provide reasonable time for you to remove your vehicle from storage before stopping payment; and

(3) Pay any and all reasonable towing charges unless otherwise provided in your policy. You may use any towing company unless the insurer provides you with the name of a specific towing company before your vehicle is towed.

NEW SECTION

WAC 284-30-3914 When I am dealing with someone else's insurer, what are my rights regarding a rental vehicle? In vehicle property damage liability claims in which liability is reasonably clear, the insurer will negotiate the reasonable and necessary costs in direct proportion to the extent of its liability for the rental of another vehicle and may not require you to rent a vehicle to actually cover these costs.

NEW SECTION

WAC 284-30-3915 What if the other person's insurer offers a flat rental amount per day, week, or month? When the insurer offers a flat rental amount per day, week, or month, they must disclose to you where you can obtain a vehicle for the amount of its payment.

WSR 03-03-096
EXPEDITED RULES
DEPARTMENT OF HEALTH
[Filed January 17, 2003, 3:31 p.m.]

Title of Rule: WAC 246-887-165 Adding Xyrem to Schedule III of the Uniform Controlled Substances Act.

Purpose: The proposed rule will add Xyrem to Schedule III of the Uniform Controlled Substances Act. This action is taken to be consistent with federal rules.

Statutory Authority for Adoption: RCW 69.50.201, 18.64.005.

Statute Being Implemented: RCW 69.50.201.

Summary: The main active ingredient in the drug Xyrem is Gamma-hydroxybutyric acid (GHB). GHB is currently a Schedule I controlled substance. The proposed rule will place the drug Xyrem in Schedule III of the Uniform Controlled Substances Act based upon the approval of the FDA. All other forms of GHB will remain in Schedule I of the Uniform Controlled Substances Act.

Reasons Supporting Proposal: The Food and Drug Administration recently approved Xyrem for use in the treatment of cataplexy associated with narcolepsy. GHB-containing drugs approved by the FDA can be placed in Schedule III of the Uniform Controlled Substances Act.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Donald H. Williams, P.O. Box 47863, Olympia, WA 98504-7863, (360) 236-4825.

Name of Proponent: Department of Health, Board of Pharmacy, governmental.

Rule is necessary because of federal law, C.F.R. 13235.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule will add Xyrem to Schedule III of the Uniform Controlled Substances Act. The proposal will allow for the legitimate medical use of Xyrem. Xyrem will now be available in the state of Washington for the treatment of cataplexy associated with narcolepsy. The proposed rule addresses a public health concern, the treatment of cataplexy.

Proposal Changes the Following Existing Rules: Adopts WAC 246-887-165 adding Xyrem to Schedule III of the Uniform Controlled Substances Act.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Lisa Salmi, Lisa.Salmi@doh.wa.gov, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, AND RECEIVED BY March 24, 2003.

January 6, 2003
D. H. Williams
Executive Director

NEW SECTION

WAC 246-887-165 Adding Xyrem to Schedule III. The Washington state board of pharmacy finds that Xyrem, sodium oxybate, Gamma-hydroxybutyric (GHB), is approved for medical use by the Food and Drug Administration and hereby places that substance in Schedule III.

WSR 03-03-123
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE
[Filed January 22, 2003, 8:49 a.m.]

Title of Rule: Chapter 16-662 WAC, Weights and measures—National Handbooks.

Purpose: Adoption of 2003 National Handbooks. NIST Handbook 44 provides uniform standards for the specifications and tolerances of weighing and measuring devices. NIST Handbook 130 provides regulations governing the labeling and the methods of sale of commodities offered for sale in the marketplace. NIST Handbook 133 sets out regulations and procedures for checking the net contents of packaged goods.

Statutory Authority for Adoption: Chapters 19.94 and 34.05 RCW.

Statute Being Implemented: Chapter 19.94 RCW.

Summary: These rules adopt the 2003 edition of NIST Handbook 44 (Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195. The rules also adopt the Packaging and Labeling Regulation and the Method of Sale Regulation in the 2003 edition of NIST Handbook 130 (Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality) and the 2003 edition of NIST Handbook 133 (Checking the Net Contents of Packaged Goods).

Reasons Supporting Proposal: RCW 19.94.195 requires the most current version of NIST Handbook 44 be adopted every year. The agency also adopts the current version of NIST Handbook 130 and NIST Handbook 133 each year in order to maintain uniformity with other states. Forty-eight of the fifty states adopt NIST Handbook 130, and the majority of states use NIST Handbook 44 and NIST Handbook 133.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry Buendel, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1856.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules will adopt the 2003 edition of NIST Handbook 44 (Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195. The rules will also adopt the Packaging and Labeling Regulation and the Method of Sale Regulation in the 2003 edition of NIST Handbook 130 (Uniform Laws and Regulations in the areas of legal metrology

EXPEDITED

and engine fuel quality) and the 2003 edition of NIST Handbook 133 (Checking the Net Contents of Packaged Goods). The current rule has adopted the 2002 versions, this change is an update and includes minor changes to the administrative rule.

Proposal Changes the Following Existing Rules: The change adopts the 2003 versions of NIST Handbook 44, NIST Handbook 130 and NIST Handbook 133. There is also minor revision to delete WAC 16-662-110 (1)(a). The change is being made to bring Washington's rules into alignment with the national standards.

EXPEDITED

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jerry Buendel, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, jbuendel@agr.wa.gov, AND RECEIVED BY March 24, 2003.

January 22, 2003
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 97-12-075, filed 6/4/97, effective 7/5/97)

WAC 16-662-100 Purpose. The purpose of this rule is to establish requirements for the state of Washington that are reasonably consistent with uniform state rules that have been adopted by the National Conference on Weights and Measures and that are in effect in other states. This chapter applies specifically to subject areas for:

(1) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in the *National Institute of Standards and Technology Handbook 44;*

(2) Uniform procedures for checking the net contents of packaged goods addressed in the *National* ((~~Bureau of Standards Handbook 133 with supplements~~)) *Institute of Standards and Technology, Handbook 133*;

(3) Uniform packaging and labeling requirements;

(4) Uniform method of sale of commodities requirements; and

(5) Uniform examination procedures for price verification addressed in the *National Institute of Standards and Technology Handbook 130.* The publications cited in this chapter, Handbook 44, Handbook 130 and Handbook 133, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The handbooks are also available on the National Institute of Standards and Technology website. For information regarding the contents of these publications, contact weights and measures in the Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, or e-mail wts&measures@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 02-12-029, filed 5/29/02, effective 6/29/02)

WAC 16-662-105 Adoption—Weighing and measuring equipment requirements—Package checking—Packaging and labeling—Method of sale—Price verification. (1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment shall be those contained in the ((~~2002~~)) 2003 Edition of the National Institute of Standards and Technology (NIST) Handbook 44, published by the U.S. Department of Commerce, entitled the *National Institute of Standards and Technology Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices.*

(2) The procedures for checking the accuracy of the net contents of packaged goods shall be those contained in the Fourth Edition of National Institute of Standards and Technology (NIST) Handbook 133 published by the United States Department of Commerce, entitled *NIST Handbook 133 - Fourth Edition - Checking the Net Contents of Packaged Goods - Fourth Edition, ((~~2002~~)) 2003 Edition.*

(3) The requirements for packaging and labeling, method of sale of commodities, and the examination procedures for price verification shall be those contained in the ((~~2002~~)) 2003 Edition of National Institute of Standards and Technology Handbook 130, entitled the *NIST Handbook 130 - Uniform Laws And Regulations in the areas of legal metrology and motor fuel quality,* specifically:

(a) Weights and measures requirements for all food and nonfood commodities in package form shall be the *Uniform Packaging and Labeling Regulation* requirements as adopted by the National Conference on Weights and Measures and published in NIST (National Institute of Standards and Technology) Handbook 130, ((~~2002~~)) 2003 Edition.

(b) Weights and measures requirements for the method of sale of food and nonfood commodities shall be those found in the *Uniform Regulation for the Method of Sale of Commodities* as adopted by the National Conference on Weights and Measures and published in NIST (National Institute of Standards and Technology) Handbook 130, ((~~2002~~)) 2003 Edition.

(c) Weights and measures requirements for price verification shall be the *Examination Procedures for Price Verification* as adopted by the National Conference on Weights and Measures and published in NIST (National Institute of Standards and Technology) Handbook 130, ((~~2002~~)) 2003 Edition.

AMENDATORY SECTION (Amending WSR 01-16-005, filed 7/19/01, effective 8/19/01)

WAC 16-662-110 Modifications to NIST Handbook 44. The following modifications are made to Handbook 44, identified in WAC 16-662-105:

(1) General Code:

((~~(a) Section G-T. Tolerances. In paragraphs (b), (c), and (d) of subsection G-T.1. "Acceptance Tolerances", change "30 days" to "90 days."~~

~~(b)~~)) Section G-UR. User Requirements. In the last sentence of subsection G-UR.4.1. "Maintenance of Equipment", change "device user" to "device owner or operator."

(2) Scale Code: Section UR.3. Use Requirements. At the end of subsection UR.3.7.(a) add "and homeowner refuse."

((~~(3) Appendix D Definitions, Direct Sale. Replace with the following: "A sale in which both parties in the transaction are present when the quantity is being determined."~~))

AMENDATORY SECTION (Amending WSR 98-13-072, filed 6/15/98, effective 7/16/98)

WAC 16-662-115 Modifications to NIST Handbook 130. The following modifications are made to the *Uniform Regulation for the Method of Sale of Commodities* requirements published in NIST Handbook 130, identified in WAC 16-662-105 (3)(b):

(1) Section 2.20. Gasoline-Oxygenate Blends. Delete Section 2.20 ((~~because~~)). The requirements for this subject are addressed in RCW 19.94.505 and chapter 16-657 WAC.

(2) Section 2.23. Animal Bedding. Add a new subsection 2.23.1. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. Quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials when advertised, offered for sale, or sold within the state of Washington shall be in terms of cubic measure or units and fractions thereof.

WSR 03-03-124
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE
[Filed January 22, 2003, 8:50 a.m.]

Title of Rule: Chapter 16-321 WAC, Grass sod—Certification standards.

Purpose: This chapter was adopted by the department in 1980 as a voluntary program for the purpose of maintaining high quality sod of turf grasses and making it available to the public. The program's intent was to insure that turf grass sods maintained their genetic identity and purity and were free, to a high degree, from weeds, diseases, injurious insects, and other pests. To the department's knowledge, no one has ever participated in this program and it is not wanted by industry. Therefore, the department, after conducting an Executive Order 97-02 rule review, is proposing to use the expedited rule-making process to repeal the entire chapter because the rule is no longer necessary due to changed circumstances (RCW 34.05.353 (2)(c)). There are currently no growers of certified sod in this state, and there does not appear to have been any in at least a decade.

Statutory Authority for Adoption: Chapters 15.13 and 34.05 RCW.

Statute Being Implemented: Chapter 15.13 RCW.

Summary: This proposal repeals chapter 16-321 WAC in its entirety. There are currently no growers of certified sod in this state, and there does not appear to have been any in at least a decade. The rule is not needed.

Reasons Supporting Proposal: There are currently no growers of certified sod in this state. This rule is unnecessary because it is neither used nor wanted by industry.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this chapter is to maintain and make available to the public high quality sod of turfgrasses to insure genetic identity and purity and high degree of freedom from weeds, diseases, injurious insects, and other pests. The department is proposing to repeal the entire chapter. Participation in the program is voluntary and to the department's knowledge no one has participated in the program since it was adopted in 1980. There are currently no growers of certified sod in this state, and there does not appear to have been any in at least a decade.

Proposal Changes the Following Existing Rules: This proposal repeals the entire chapter. This rule is neither used nor wanted by industry.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mary A. Martin Toohey, Assistant Director, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY March 24, 2003.

January 22, 2003

Mary A. Martin Toohey

Assistant Director

EXPEDITED

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-321-001	Purpose.
WAC 16-321-010	Grass sod certification standards.
WAC 16-321-020	By whom certified.
WAC 16-321-030	Varieties eligible.
WAC 16-321-040	Application for sod certification.
WAC 16-321-050	Certification fees.
WAC 16-321-060	Land requirements.
WAC 16-321-070	Eligibility of seed stock.
WAC 16-321-080	Field standards.
WAC 16-321-090	Specific requirements.
WAC 16-321-100	Inspection.
WAC 16-321-110	Labeling.
WAC 16-321-120	Responsibility and obligations.

EXPEDITED

WSR 03-03-134
EXPEDITED RULES
OFFICE OF THE INSURANCE COMMISSIONER
[Filed January 22, 2003, 11:26 a.m.]

Title of Rule: WAC 284-43-220 Network reports.

Purpose: The proposed rule is intended to reduce the burden of network reporting and increase the consistency of data. The proposal clarifies the information to be reported, limits the reporting to necessary information, extends the deadline for reporting, and changes the manner in which they must be filed.

Other Identifying Information: Insurance Commissioner Matter No. R 2003-01.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.43.515, 48.44.050, 48.46.030, 48.46.200.

Statute Being Implemented: RCW 48.42.100, 48.43.515, 48.46.030.

Summary: The proposed rule renames the network reports that carriers must file. It eliminates the paper filing option for the Form A and B reports. It also modifies the reporting timeline for the Form B report from January 1 to March 31 of each year, and requires the reporting of enrollees by network, rather than by product. The tables containing example Form A and Form B reports are eliminated.

Reasons Supporting Proposal: The extension of the filing date for the Form B report, transition from paper to electronic filing, and modification of the manner in which enrollee information is reported should increase the speed and efficiency of filing, while lowering carrier costs for compilation and transmittal and OIC costs for storage.

Name of Agency Personnel Responsible for Drafting: Ruth Ammons, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7036; Implementation: Donna Dorris, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7119; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule renames network reports and modifies the reporting timeline for the Form B report. It is intended to clarify the information to be reported under Form B and eliminate the filing of unnecessary information to assure efficiency and consistency in data reported by health carriers.

Currently, the health carriers do not file their provider and enrollee network report data with the OIC in a consistent manner. The proposed rule clarifies the reporting requirements and eliminates unnecessary data. Carriers are currently required to file separate reports for each network by product; the proposed rule eliminates that requirement for reporting by product line. This will reduce the number of required reports and the administrative burden on the carriers. The information will also be easier to use by the OIC staff.

The existing timeline for Form B reporting is January 1 of each year. Carriers have had some difficulties with the timeline since not all of their data is readily available at year-end. Carriers have often requested an extension in the reporting timeline to assure accuracy of data they report. The extended timeline for reporting will provide carriers with additional time to capture and report accurate data.

Currently, the Form A and B reports may be transmitted in electronic or hard copy format. The option for filing in hard copy is eliminated by the proposed rule, which should increase the speed and efficiency of filing and lower filing costs for carriers and storage and handling costs for the OIC.

The rule changes should make filing less burdensome and less costly for all carriers while providing the OIC with all necessary information.

Proposal Changes the Following Existing Rules: The following WAC sections are proposed to be amended as follows:

WAC 284-43-220, the introductory paragraph is amended to eliminate confusing examples and clarify the specific network forms that carriers must file. Included are references to the four specific forms to be filed.

Subsections (1) and (2) are amended and renumbered as subsections (1), (2), (3) and (4). Included are changes that clarify that carriers must file four network reports, including an annual access plan as prescribed by WAC 284-43-210, and a "Geographic Network Report." The reports previously referred to as "Form A" and "Form B" are renamed "Provider Network Form A" and "Network Enrollment Form B." The changes require these forms to be filed electronically and delete examples of the forms previously provided in the

tables. Beginning in 2004, the annual filing date for the "Network Enrollment Form B" is changed to March 31. The changes also require carriers to file a separate Form B report for each network by line of business.

Subsection (3) is renumbered as subsection (5).

Subsection (6) is created. Included are definitions for the terms "network" and "line of business."

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kacy Scott, Insurance Commissioner, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacys@oic.wa.gov, AND RECEIVED BY March 25, 2003.

January 22, 2003
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 99-2, filed 1/24/00, effective 1/1/01)

WAC 284-43-220 Network reports—Format. ((~~Beginning January 1, 1999, and by January 31st of every subsequent year,~~)) Each health carrier ((~~shall provide a description of each of its networks to the commissioner. In describing its network, each carrier shall include an explanation of its established access standards, noting the criteria used to measure the standards. For example, a carrier should indicate whether travel distances or driving times are used to determine accessibility. In addition, each carrier shall indicate which providers are classified as primary care providers, obstetric and women's health care providers~~)) must file with the commissioner an access plan, Provider Network Form A, Network Enrollment Form B and Geographic Network Report.

(1) ((~~Beginning January 1, 1999, each health carrier shall provide the insurance commissioner with:~~

(~~a) An annual~~)) **Access plan.** A health carrier must describe each of its networks in an access plan as prescribed by WAC 284-43-210.

(2) **Provider Network Form A.** A carrier must file an electronic ((~~or hard copy paper~~)) report of all participating providers by network ((~~and monthly updates~~)). This report ((~~shall~~)) must contain all ((~~the~~)) data items shown in ((~~the table. (Form A.)~~)) Provider Network Form A prescribed by and available from the commissioner. Updated reports must be filed each month. Filing of this data satisfies the reporting requirements of RCW 48.44.080 and the requirements of RCW 48.46.030 relating to filing of notices that describes changes in the provider network.

((~~(b) An annual electronic or hard copy paper report indicating~~)) (3) **Network Enrollment Form B.** By March 31, 2004, and every year thereafter, a carrier must prepare an electronic report showing the total number of covered persons who were entitled to health care services during each month of the year, excluding nonresidents((~~, by line of business, by product (with identifying form number filed with this office, if appropriate), by county, and by sex. The report shall conform to the table. (Form B.)~~)

(~~(2) In addition to the provider and covered persons reports, each carrier shall file annual reports meeting the standards below and shall~~)). A separate report must be filed for each network by line of business. The report must contain all data items shown in and conform to the format of Network Enrollment Form B prescribed by and available from the commissioner.

(4) **Geographic Network Report.** By March 31st of every year, a carrier also must file an electronic or hard copy paper report meeting the standards below. The carrier must update the reports whenever a material change in ((~~a~~)) the carrier's provider network occurs that significantly affects the ability of covered persons to access covered services. Each carrier ((~~shall~~)) must file for each network ((((~~with identifying form number(s) filed with this office, if appropriate~~))), using a network accessibility analysis system, such as GeoNetworks or any other similar system:

(a) A map showing the location of covered persons and primary care providers with a differentiation between single and multiple provider locations((~~.~~));

(b) An access table illustrating the relationship between primary care providers and covered persons as of December of each year by county, including at a minimum:

(i) ((~~County.~~

(~~ii~~))) Total number of covered persons((~~.~~));

((~~(iii)~~)) (ii) Total number of primary care providers((~~.~~)) (or, if the plan is a Preferred Provider Organization style of managed care, the total number of contracted providers);

((~~(iv)~~)) (iii) Number of covered persons meeting the carrier's self defined access standard((~~.~~));

((~~(v)~~)) (iv) Percentage of covered persons meeting the carrier's self defined access standard((~~.~~)); and

((~~(vi)~~)) (v) Average distance to at least one primary care provider for its covered persons((~~.~~)); and

(c) ((~~A list indicating alphabetically by county and by city:~~

(~~i) County;~~

(~~ii) City;~~

(~~iii~~))) An alphabetical list by county and city showing:

(i) Total number of covered persons;

((~~(iv)~~)) (ii) Total number of primary care providers (or, if the plan is a Preferred Provider Organization style of managed care, the total number of contracted providers);

((~~(v)~~)) (iii) Total number of obstetric and women's health care providers;

((~~(vi)~~)) (iv) Total number of specialists;

((~~(vii)~~)) (v) Total number of nonphysician providers by license type;

((~~(viii)~~)) (vi) Total number of hospitals; and

((~~(ix)~~)) (vii) Total number of pharmacies.

EXPEDITED

(((~~(3)~~))) (5) A carrier may vary the method of reporting required under subsection (((~~(2)~~))) (4) of this section upon written request and subsequent written approval by the commissioner ((~~after a showing by~~)). In the request, the carrier must show that the carrier does not use or does not have easy access to electronic or data systems permitting the method of reporting required without incurring substantial costs.

(6) For purposes of this section:

(a) "Line of business" means either individual, small group or large group coverage;

(b) "Network" means the group of participating providers and facilities providing health care services to a particular line of business.

EXPEDITED

FORM A: PROVIDER LISTING FORMAT

ORGANIZATION REPORTING:_____ FOR THE YEAR ENDED DECEMBER 31, 19____

FIELD NAME	PROVIDER TYPE			FIELD WIDTH	VALID CODES/STANDARD
	PRACTITIONER	HOSPITAL	PHARMACY		
Health Carrier	*	*	*	10	Alpha
Provider Type	*	*	*	1	1=Practitioner, 2=Hospital, 3=Pharmacy
National Provider Indentifier					If available
WA Licence Number (Primary)	*			10	AA00000000 (2 Alpha, 8 Numeric)
WA Licence Number (Secondary)	*			10	AA00000000 (2 Alpha, 8 Numeric)
Licence Type	*			12	Alpha
Last Name	*			25	Alpha
First Name	*			15	Alpha
Middle Initial/Name	*			15	Alpha
Birth Date	*			10	Month-Day-Year (XX-XX-XXXX)
Primary Specialty	*			14	Alpha
Secondary Specialty	*			14	Alpha
Languages, other than English	*			30	Alpha, If multiple, truncate and separate with commas
Business on Building	*	*	*	36	Alphanumeric
Address 1	*	*	*	36	Not a PO Box, meets US Postal Service requirements
Address 2	*	*	*	36	Not a PO Box, meets US Postal Service requirements
City	*	*	*	20	Alpha
State	*	*	*	2	WA,OR,ID
Zip	*	*	*	10	Numeric
County	*	*	*	13	Alpha
Day Phone	*			23	(XXX) XXX-XXXX ext XXXXX
Managed Care Plan (s)	*	*	*	60	String with comma separators if multiple
Plan Contract Number (s)	*	*	*	60	String with comma separators if multiple
Provides obstetric care?	*			1	Y=Yes, N=No
PCP, Specialist or Both	*			1	P=PCP, S=Specialist, B= Both
Date Credentialed					Month-Day-Year (XX-XX-XXXX)
Enrollee capacity	*			5	Numeric

* = Required

Date:_____ Signed:_____ Title:_____

EXPEDITED

FORM B: REPORT OF COVERED PERSONS AND PLAN VOLUME

ORGANIZATION REPORTING:_____ BUSINESS:_____ PRODUCT: _____ FOR THE CALENDAR YEAR ENDED DECEMBER 31, ____

	Jan			Feb			Mar			Apr			May			Jun		
	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees
Adams																		
Asotin																		
Benton																		
Chelan																		
Clallam																		
Clark																		
Columbia																		
Cowlitz																		
Douglas																		
Ferry																		
Franklin																		
Garfield																		
Grant																		
Grays Harbor																		
Island																		
Jefferson																		
King																		
Kitsap																		
Kittitas																		
Klickitat																		
Lewis																		
Lincoln																		
Mason																		
Okanogan																		
Pacific																		
Pend Orielle																		
Pierce																		
San Juan																		
Skagit																		
Skamania																		
Snohomish																		
Spokane																		
Stevens																		
Thurston																		
Wahkiakum																		
Walla Walla																		
Whatcom																		
Whitman																		
Yakima																		
Total																		

Date _____ Signed _____ Title: _____

FORM B: REPORT OF COVERED PERSONS AND PLAN VOLUME

ORGANIZATION REPORTING:_____BUSINESS:_____PRODUCT: _____ FOR THE CALENDAR YEAR ENDED DECEMBER 31, ____

	Jul			Aug			Sep			Oct			Nov			Dec		
	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees	Female enrollees	Male enrollees	Total enrollees
Adams																		
Asotin																		
Benton																		
Chelan																		
Clallam																		
Clark																		
Columbia																		
Cowlitz																		
Douglas																		
Ferry																		
Franklin																		
Garfield																		
Grant																		
Grays Harbor																		
Island																		
Jefferson																		
King																		
Kitsap																		
Kittitas																		
Klickitat																		
Lewis																		
Lincoln																		
Mason																		
Okanogan																		
Pacific																		
Pend Orielle																		
Pierce																		
San Juan																		
Skagit																		
Skamania																		
Snohomish																		
Spokane																		
Stevens																		
Thurston																		
Wahkiakum																		
Walla Walla																		
Whatcom																		
Whitman																		
Yakima																		
Total																		

Date _____ Signed _____ Title: _____

EXPEDITED

WSR 03-01-065
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. UT-990146, General Order No. R-507—Filed December 12, 2002, 8:36 a.m., effective July 1, 2003]

In the matter of amending, adopting and repealing chapter 480-120 WAC, relating to telephone companies.

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 02-12-055, filed with the code reviser on May 30, 2002. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The commission adopts this rule on the date that this order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325 requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the commission's consideration of the comments.

5 The commission often includes a discussion of those matters in its rule adoption order. In addition, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the commission considered whether to begin a rule making and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This rule repeals the following sections of the Washington Administrative Code: WAC 480-120-029 Accounting requirements for competitively classified companies, 480-120-031 Accounting, 480-120-032 Expenditures for political or legislative activities, 480-120-033 Reporting requirements for competitively classified companies, 480-120-041 Availability of information, 480-120-042 Directory service, 480-120-043 Notice to the public of tariff changes, 480-120-045 Local calling areas, 480-120-046 Service offered, 480-120-051 Availability of service—Application for and installation of service, 480-120-056 Establishment of credit, 480-120-081 Discontinuance of service, 480-120-087 Telephone solicitation, 480-120-088 Automatic dialing-announcing devices, 480-120-089 Information delivery services, 480-120-101 Complaints and disputes, 480-120-106 Form of bills, 480-120-116 Refund for overcharge, 480-120-121 Responsibility for delinquent accounts, 480-120-126 Safety, 480-120-131 Reports of accidents, 480-120-136 Retention and preservation of records and reports, 480-120-138 Pay phone service providers (PSPs), 480-120-139 Changes in local exchange and intrastate toll services, 480-120-141 Operator service providers (OSPs), 480-120-340 911 Obligations of local exchange companies, 480-120-350 Reverse search by E-911 PSAP of ALI/DMS data base—When permitted, 480-120-500 Telecommunications service quality—General requirements, 480-120-505 Operator services, 480-120-510 Business offices, 480-120-515 Network performance standards applicable to local exchange companies, 480-120-520 Major outages and service interruptions, 480-120-525 Network maintenance, 480-120-530 Emergency services, 480-120-531 Emergency operation, 480-120-535 Service quality performance reports, 480-120-541 Access charges, 480-120-542 Collective consideration of Washington intrastate rate, tariff, or service proposals, 480-120-543 Caller identification service, 480-120-544 Mandatory cost changes for telecommunications companies, and 480-120-545 Severability.

This order amends the following sections of the Washington Administrative Code: WAC 480-120-011 Application of rules, 480-120-015 Exemptions from rules in chapter 480-120 WAC, 480-120-021 Definitions, and 480-120-061 Refusing service.

7 This order adopts the following sections of the Washington Administrative Code: **GENERAL RULES:** WAC 480-120-017 Severability, and 480-120-019 Telecommunications performance requirements—Enforcement; **ESTABLISHING SERVICE AND CREDIT:** WAC 480-120-102 Service offered, 480-120-103 Application for service, 480-120-104 Information to consumers, 480-120-105 Company performance standards for installation or activation of access lines, 480-120-112 Company performance for orders for nonbasic services, 480-120-122 Establishing credit—Residential services, 480-120-123 Establishing credit—Business services, 480-120-124 Guarantee in lieu of deposit, 480-120-128 Deposit administration, 480-120-132 Business offices, 480-120-133 Response time for calls to business office or repair center during regular business hours, 480-120-146 Changing service providers from one local exchange company to another, 480-120-147 Changes in local exchange and intrastate toll services, and 480-120-148 Canceling registration; **PAYMENTS AND DISPUTES:** WAC 480-120-161 Form of bills, 480-120-162 Cash and urgent payments, 480-120-163 Refunding an overcharge, 480-120-164 Pro rata credits, 480-120-165 Customer complaints, 480-120-166 Commission-referred complaints, and 480-120-167 Company responsibility; **DISCONTINUING AND RESTORING SERVICE:** WAC 480-120-171 Discontinuing service—Customer requested, 480-120-172 Discontinuing service—Company initiated, 480-120-173 Restoring service after discontinuation, and 480-120-174 Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility; **TELECOMMUNICATIONS SERVICES:** WAC 480-120-251 Directory service, 480-120-252 Intercept services, 480-120-253 Automatic dialing-announcing device (ADAD), 480-120-254 Telephone solicitation, 480-120-255 Information delivery services, 480-120-256 Caller identification service, 480-120-257 Emergency services, 480-120-261 Operator services, 480-120-262 Operator service providers

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(OSPs), 480-120-263 Pay phone service providers (PSPs), and 480-120-265 Local calling areas; **FINANCIAL RECORDS AND REPORTING RULES:** WAC 480-120-301 Accounting requirements for competitively classified companies, 480-120-302 Accounting requirements for companies not classified as competitive, 480-120-303 Reporting requirements for competitively classified companies, 480-120-304 Reporting requirements for companies not classified as competitive, 480-120-305 Streamlined filing requirements for Class B telecommunications company rate increases, 480-120-311 Access charge and universal service reporting, 480-120-321 Expenditures for political or legislative activities, 480-120-322 Retaining and preserving records and reports, and 480-120-323 Washington Exchange Carrier Association (WECA); **SAFETY AND STANDARDS RULES:** WAC 480-120-401 Network performance standards, 480-120-402 Safety, 480-120-411 Network maintenance, 480-120-412 Major outages, 480-120-414 Emergency operation, 480-120-436 Responsibility for drop facilities and support structure, 480-120-437 Responsibility for maintenance and repair of facilities and support structures, 480-120-438 Trouble report standard, 480-120-439 Service quality performance reports, 480-120-440 Repair standards for service interruptions and impairments, excluding major outages, 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies, 480-120-451 Local exchange carrier contact number for use by public safety answering points (PSAPs), and 480-120-452 Reverse search by enhanced 9-1-1 (E911) public safety answering point (PSAP) of ALI/DMS data base—When permitted; and **ADOPTION BY REFERENCE:** WAC 480-120-999 Adoption by reference.

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on April 15, 1999, at WSR 99-09-027.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The statement advised interested persons that the commission was considering entering a rule making to review rules relating to regulated telephone companies for content and readability pursuant to Executive Order 97-02, with attention to the rules' need, effectiveness and efficiency, clarity, intent, and statutory authority, coordination, cost, and fairness. The statement also advised that the review would include consideration of whether substantive changes or additional rules are required for telecommunications regulation generally, and in concert with the Federal Telecommunications Act of 1996 and potential actions by the Washington legislature during its 1999 session. The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies and the commission's list of telecommunications attorneys. The commission posted the relevant rule-making information on its Internet website at http://www.wutc.wa.gov.

10 **MEETINGS OR WORKSHOPS; ORAL COMMENTS:** The commission held rule-making workshops on May 5, 1999, March 9, 2000, April 11, 2000, April 18, 2000, November 29, 2000, February 21, 2001, March 14, 2001, March 22, 2001, May 8, 2001, April 16, 2001, June 5, 6, and 7, 2001, September 19, 2001, October 18 and 19, 2001, November 20, 2001, March 27, 2002, and November 1, 2002. Representatives of a diverse group of telecommunications companies and several consumer advocacy organizations attended the open meetings and workshops.

11 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on May 30, 2002, at WSR 02-12-055. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 02-12-055 at 9:30 a.m., Friday, July 26, 2002, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

12 **COMMENTERS (WRITTEN COMMENTS):** The commission received written comments on the proposed rules from: Affiliated Tribes of Northwest Indians, AT&T, Low Income Telecommunications Project (LITE), NorMed, Northwestern Mutual Financial Network, Public Counsel Section of the Attorney General of Washington, Qwest Corporation, Senior Rights Assistance, Seattle Telecom Consortium, Sprint, Tana Johnson, Telephone Ratepayers for Cost-Based and Equitable Rates (TRACER), Verizon, Washington Independent Telephone Association (WITA), Washington Protection and Advocacy System, Washington State Military Department, and the Welfare Rights Organizing Coalition.

13 **RULE-MAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rule-making hearing scheduled during the commission's regularly scheduled open public meeting on July 26, 2002, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick J. Oshie. The commission heard oral comments from: Andrea Abrahamson, representing Washington Protection and Advocacy System; Robert Cromwell, representing Public Counsel Section of the Office of Attorney General; Richard Finnigan, representing Washington Independent Telephone Association and others; Joan Gage, representing Verizon; Theresa Jensen, representing Qwest Corporation; Greg Kopta, representing AT&T; Jean Mathison, representing Senior Services; Tracey Rascon, representing Affiliated Tribes of Northwest Indians; Sandra Ripley, Seattle Telecom Consortium; and Robert Snyder, representing Whidbey Telephone and several other rural incumbent local exchange carriers.

14 **SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED OR REJECTED:** In this section the commission responds to comments made on the proposed rules. We received hundreds of pages of comments from a large number of commenters, including telecommunications companies, consumer advocates, and others.

15 The material is organized by rule number. For ease of description, commenters are identified by categories of participants, i.e., companies, consumer advocates, or others. At times, the distinction between local service providers and long-distance (interexchange) providers and the distinctions between incumbent and competitive providers are important, and commenters are identified by type of provider. In each

response we indicate whether we made a change in the adopted rules based upon the comment, or whether we adhered to the language in the proposed rule.

WAC 480-120-015 Exemptions from rules in chapter 480-120 WAC.

16 In subsection (2) we clarified that companies may allege that force majeure was the factor leading to a request for a waiver. We added this to the rule in response to more general comments about the effects of force majeure events on the ability of companies to meet standards contained in other sections.

WAC 480-120-021 Definitions.

17 Companies stated that the definition of "held order" as proposed is inconsistent with industry use of the term. They suggested an alternative that ties the lack of completion of an order to the unavailability of facilities, or suggested we choose another term. We have chosen another term, one suggested by companies, and retained the definition but apply it to the term "Missed commitment."

18 Throughout the rule making, companies requested that we expand the definition of "force majeure" to include more circumstances that would qualify as force majeure event. We adhere to the proposed definition because our intention is to limit this exception for not meeting certain standards to circumstances that cannot be anticipated or controlled. We did not, for example, included [include] delays in shipping in the definition because companies can compensate this through planning and inventory. As noted below, we did alter the proposed rules to include force majeure as an acceptable reason for not meeting one of the standards in WAC 480-120-105.

19 Companies suggested an addition to the definition of "residential service" to include service not used for business purposes. They wanted to make clear that businesses operating households are required to pay business service rates. We disagree that this suggestion would clarify the definition and we decline to make a change. Companies have authority under existing rules and these newly adopted rules to determine if someone paying for household service is operating a business with the telephone and to charge the customer accordingly.

20 Companies state that the meaning of part (c) of the definition of "telecommunications-related products and services" is confusing. They suggest that it could include network equipment but that such a meaning, in their opinion, would not make sense in light of the term's usage in the proposed customer information rules. They recommend substituting "customer premise equipment" (CPE). We decline to make the change suggested by companies because part (c) of the definition is essentially the definition of CPE found in the Telecommunications Act, and is therefore more descriptive than the insertion of the term.

WAC 480-120-061 Refusing service.

21 Companies requested changes to WAC 480-120-061 to include permitting companies to refuse, suspend, or cancel service without notice in the event of excessive network usage that is determined to be fraudulent. We decline to make the change in WAC 480-120-061 because in the adopted rules we already include language that permits companies to discontinue service without notice if a customer has tampered with company property, has an illegal connection, is unlawfully using service or using service for an unlawful purpose, or is obtaining service in a false or deceptive manner.

22 Companies suggested the language of proposed WAC 480-120-061 was confusing with respect to the circumstances under which a company could refuse service. The proposed rule was revised to change the format and eliminate confusion, but the substance remains essentially what it was when proposed.

23 Companies suggested that there may not be five pieces of identification that can be used to substantiate the identity of customers, and that a list of four would be sufficient. We have changed the rule and require companies offer four ways for customers to substantiate their identity. We note that consumer advocates asked us to preclude companies from requiring a social security number or card to establish identity. We did not alter the rule because customers will be able to choose from four choices of identification. A customer who does not wish to provide a social security number or card will not be required to do so.

24 Companies criticize as vague the portion of WAC 480-120-061 that permits companies to discontinue service without notice when one person at a premise has an unpaid, prior obligation and another person living in that premise helped avoid payment. The companies further complain that it may be impossible to show cooperation. We disagree. The company must show that the person in whose name service is now provided cooperated with the prior customer with the intent to avoid payment. It is important that people be able to obtain telephone service, and not have it discontinued without notice, even if there is a person living in the home who owes money to the company. We have revised this rule from what was proposed, but maintain that more is needed to deny service than the mere presence of someone with an overdue or unpaid obligation.

25 Companies suggest that the minimum repayment period of six months is too long when the overdue amount is less than one hundred dollars. The six-month repayment period has been the standard for years and we have not had presented to us evidence that indicates it is either too long or too short. Neither companies nor consumer advocates supplied any actual data about repayments. Neither demonstrated any inconvenience or hardship that results from this standard.

26 Companies have stated that the requirement in the proposed rule to not withhold or release telephone numbers when customers change providers is problematic because numbers can be used only within one rate center. We have changed the rule to acknowledge this limitation.

27 Competitive companies have expressed a concern that WAC 480-120-061 does not limit specifically their obligation to build facilities if service is requested in a location where they do not serve. That is correct; that obligation is addressed in statute and not in this rule. Whatever obligation

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there is in statute, it is neither expanded nor limited by this rule with respect to construction of facilities by competitive carriers.

28 Companies would like us to remove the limitation on denying one class of service because of an overdue or unpaid obligation for another class of service. We decline to change the rule. A customer that experiences, for example, a bankruptcy in business that results in unpaid bills for telephone service, should not face the inability to obtain residential service. Similarly, a person associated with an unpaid residential obligation resulting from an acrimonious dissolution, should not be faced with the inability to obtain business service.

29 Consumer advocates have requested we include in this rule a requirement that companies maintain records of applications for service that are [is] denied. Because the rule already requires companies to maintain records of applications, we believe this is addressed and decline to alter the rule.

30 Companies requested that the requirement to obtain rights of way, easements and permits be modified by inclusion of the word necessary. We have modified the requirements placed on both customers and companies so that each is responsible for obtaining only that which is necessary.

WAC 480-120-102 Service offered.

31 Consumer advocates have requested that we include a requirement that companies offer local measured service in addition to flat-rate service. Advocates believe such a requirement would be beneficial to low-income customers who use their telephone very sparingly. State law requires companies to offer flat-rate service, but does not require local measured service. Many companies, however, offer local measured service. We do not believe a case has been made for compelling companies to offer this service and decline to change the rule.

WAC 480-120-103 Application for service.

32 Companies suggested that WAC 480-120-103(3) should be made more flexible by adding "if requested by the customer" to the requirement that companies offer each customer a service appointment that falls within a four-hour period. Throughout the rule making, companies have argued against the requirement to provide appointments with four-hour windows. We rejected the idea of placing the burden on the customer to know what could be requested, and then request an appointment within a four-hour window. We have chosen instead to require companies to offer the four-hour window. We consider the four-hour window to be consistent with practices in other service industries where household visits are necessary.

33 Companies suggested that language be inserted to the effect that company obligations begin when an application is accepted. We have declined to make this change because it would turn common carriage on its head. It is the obligation of companies to serve applicants in the absence of a reason not to do so. We have supplied in these rules a list of reasons that permit companies not to serve, and many reasons that would permit companies to discontinue service without notice. We also adopt substantial provisions for the collection of deposits and allow local service to be paid in advance. No company demonstrated that it is experiencing difficulties. Finally, more than 95% of local service is provided by monopoly, rate-of-return companies that may recover bad debt as an expense in rate cases.

34 Companies have asked us to modify the calculation of the order date as it applies to service extensions. Companies have up to eighteen months to install a service extension pursuant to WAC 480-120-071. Some applicants have reported the experience of companies not billing them for the extension under WAC 480-120-071 and then suggesting that the applicant has not actually ordered the extension because the applicant has not paid (the unsent bill). Under the provision in this rule, the order date is either the date the company is contacted by the applicant or six weeks before the applicant pays the first installment for service, whichever is later. The rule requires companies to inform applicants for extensions within six weeks of the request for service if the company will construct the extension or seek a waiver from the commission that would permit the company not to construct the extension. Taken together, the rule provides companies six weeks to make the evaluation and then requires the company either to bill the applicant or to inform the applicant that it will not construct until a commission determination. The alternative suggested would increase the eighteen months to nineteen and one-half months. We continue to believe eighteen months is sufficient time for all activities related to extensions and decline to alter this section.

35 Consumer advocates have requested that we alter the proposed rule to require companies that solicit the business of a consumer to accept that person as a customer if the person accepts the solicitation. We have altered the rule to require companies to process the application of a person who is solicited. Companies may ultimately refuse service if the person does not meet the requirements of this section.

36 Consumer advocates have requested that we include language in this section that requires the processing of applications without discrimination based on nationality, race, gender, marital status, age, income, or address. We decline to make such a change because other statues [statutes] and rules address discrimination based on some or all of these factors.

WAC 480-120-104 Information to consumers.

37 Companies have requested that we eliminate the requirement to send a welcome letter, or, if the welcome letter requirement is retained, to eliminate the requirement to include the rate for service in the welcome letter. Welcome letters are quite common in the industry today, and our consumer affairs staff informs us that one of the largest categories of complaints results from disagreements between customers and companies over rates. We have included the welcome letter requirement because it is common and because, with rates included, it will assist customers in understanding their rates when service has begun and when action can be taken before bills greatly exceed their expectations. We note also that price is one of the basic elements of contract.[1]

38 Companies have stated that interexchange carriers (IXCs) that offer international service will have to provide a

complete list of country charges. As with any other service, price is an essential element of contract with respect to international calls; company representatives must have this country-by-country information and it can be provided to customers.

39 Consumer advocates comment that the better policy in this rule as it relates to general consumer information about service is that such information should be required in the welcome letters [as] well as the telephone directory. We disagree and decline to make a change. We decline to require the welcome letter to state in detail everything that can be found in the directory. It is possible that too much information obscures the most important information. A voluminous welcome letter could detract form [from] its main purposes - to make sure customers know the services for which they will be charged and the rates for those services. It is confusion about these elements of the relationship that has caused many customers to contact our consumer affairs section. As discussed below, some information must be listed in both places, but not all.

40 Consumer advocates have also suggested the rule be revised to include information about customer credits and repair and service requirements. Because we have withdrawn two credit rules, these references to them would now be inappropriate. The rule intended to correct overcharges, requiring pro-rata credits, is a requirement placed on companies and they must correct their overcharges without prompting by customers. It is not necessary to add this to the welcome letter and detract from the purpose discussed above.

41 Companies have requested that we not require the welcome letter to contain the TTY number for customers with hearing problems. We decline to remove that requirement. We think this is a reasonable accommodation for those who need the service provided through TTY.

42 Companies have stated that providing telephone numbers for service and business offices and the hours when calls will be answered is unnecessary because that information is in the directory. While it is true that this information is in the directory, it does not necessarily follow that the same information should not be repeated in the welcome letter and notices of changes in service. We think contact information is basic and that repetition will assist customers more than it could possibly be problematic for companies. We decline to make a change on this matter.

43 Companies have stated that the requirement to send the welcome letter within ten business days is too short. Suggestions for fifteen and thirty days have been made as a replacement. We have changed the rule and replaced ten business days with fifteen days.

44 Companies have requested we remove subsection (1)(c) that requires local exchange companies (LECs) to include in the welcome letter the name of the customer's presubscribed IXC carrier. We agree with the companies that this is an obligation that could often not be met and we have removed that section from the adopted rules.

45 Companies have asked us to qualify the type of service for which notice of a change in service must be provided to customers. We think the reasonable result is that customers receive notice of material changes only and we have changed the rule to reflect this.

46 Consumer advocates have requested that we require companies to include in the welcome letter the toll-free telephone number for the customer's presubscribed long distance carrier. We decline to make this change because with the name of the presubscribed carrier, the customer can determine the carrier's telephone number if the customer does not already have that information.

WAC 480-120-105 Company performance standards for installation or activation of access lines.

47 Companies commented that WAC 480-120-105(2) is complex and unworkable, that it is contrary to the commission's practice of basing penalties on the totality of circumstances, that it could lead to a "tripling-up" of penalties, and it suggests that when there is more than one order that was not installed as required, the commission will not know which order was the one that resulted in the company exceeding the allowable number of missed commitments for each period. We disagree because the subsection is not a penalty section; it merely explains how violations will be determined. It does not require that violations be found, or that penalties be assessed. If penalties are assessed, the subsection does not require a penalty assessment for every violation.

48 Some violations of the monthly standard, if not rectified, could also result in violations of the calendar-quarter standard and the one-hundred-eighty-day standard. There are three standards and it is possible that one missed order, if not fulfilled for more than one hundred eighty days, could contribute to a determination of a violation of all three standards.

49 If a sufficient number of missed commitments in a given period result in the standard not being met, it is not necessary to determine which commitment or commitments resulted in the standard being violated. We decline to make changes based on the comments.

50 Companies requested that we include force majeure in the list of exceptions in subsection (3). We have provided an exception for force majeure with respect to the monthly standard because a force majeure event could inhibit efforts to comply with the standard for the shortest period of the three, but decline to extend it to the calendar-quarter and one-hundred-eighty-day standards. In the event a company experiences a difficulty due to force majeure that would prevent it from meeting these standard[s], it may ask for an exemption under WAC 480-120-015.

51 We have included, as requested by companies, a statement that the standards do not apply if an applicant has not met its (the applicant's) obligations.

52 Consumer advocates oppose the change from the current measurement of installation and activity at the exchange level to measurement of that activity at the statewide level. They argue this is a reduction in the standard. We proposed, and now adopt, the change but we do not believe it will reduce the quality of service that will be provided around the state. We have the ability to review the activities of companies on an exchange basis if we have an indication that disparities among regions or types of exchanges (e.g., rural vs. urban) have arisen. While we have withdrawn the section

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that provided credits to customers for late installation or activation service, we retain the reporting requirement so that we can monitor this activity.

53 Companies have requested that we modify the requirement for completion of *all* orders for access lines within one hundred and eighty days to be for completion of orders of up to five access lines. We have chosen to differentiate between the one-month and calendar-quarter standards, which concern only orders up to five access lines, and the one-hundred-and-eighty-day standard for *all* access line orders. The public interest will be served by having a minimum standard upon which applicants and customers can rely. We decline to make the requested change. Indeed, we have gone further and altered the proposed rule that did not apply this one-hundred-and-eighty-day standard to competitive local exchange carries [carriers] and adopted a rule that applies the same minimum standard to those companies. In doing so, we satisfy the request of incumbent carriers that requested the standard apply to all local exchange companies. We do not apply the one-month and calendar-quarter standards to competitive companies because their need to coordinate with incumbents limits their ability to meet the shorter deadlines in some instances.

54 Companies have requested that we modify the requirements of subsection (1) to exclude circumstances where the company technician arrives at a premise prepared to install service and the customer is not present. While we decline to alter this section, we have altered the reporting requirement pertaining to this standard to accommodate the expressed concern. There, we have provided for alternative measures under some circumstances.

WAC 480-120-107 Installation and activation credits.

55 Companies state that the commission should not adopt proposed WAC 480-120-107 and force companies to alter tariffs to include a credit. The commission has withdrawn proposed WAC 480-120-107.

WAC 480-120-108 Missed appointment credits.

56 Companies state that the commission should not adopt proposed WAC 480-120-108 and force the company to alter tariffs to include a credit. The commission has withdrawn proposed WAC 480-120-108.

WAC 480-120-112 Company performance for orders for nonbasic service.

57 Companies have requested that we eliminate this rule or modify it, stating that the commission should not regulate nonbasic services. The purpose for this rule is to set a minimum standard for service from all local exchange companies. Because of the importance of telecommunications to commerce and society, a minimum performance standard is appropriate. We have revised this rule so that it also applies to competitively classified carriers, as requested by incumbents.

58 Companies have asked that we restate in this rule what we have stated in WAC 480-120-103 - that companies may refuse applications when an applicant has not complied with tariffs, price lists, or commission rules. We decline to make an unnecessary restatement when it is clear WAC 480-120-103 applies.

WAC 480-120-122 Establishing credit—Residential services.

59 Companies request a change to proposed WAC 480-120-122(6) to include interchange (toll) service along with ancillary services. Such a change would not permit customers to pay a deposit in installments. Companies have not provided any support for their apparent concern that toll customers given the opportunity to pay a deposit in installments are more likely to be delinquent than those that pay a deposit in a lump sum. We address deposits for interexchange service in subsection (3) and maintain the long-standing practice of requiring companies to permit customers to pay the deposit in installments. We decline to make the suggested change.

60 Consumer advocates oppose this rule because it permits the use of credit reports for determinations of customer credit-worthiness with respect to long distance (toll) service and ancillary services (features such as call forwarding, voice messaging). Companies would have us extend the use of credit histories to local service. While rewritten for clarity, we decline to change this section with respect to the substance as it relates to customer credit determinations.

61 We treat local service differently from the other services because it is an essential service for maintaining health and safety, and so that citizens can participate in their communities as employees, job seekers, parents, and family members. We accept the assertion, based on at least one cited study, that show individuals pay for local telephone service even while defaulting on other obligations, and for that reason do not believe a general credit history is indicative of whether a customer will pay for local service. We permit companies to require a deposit for local service only if the customer has a history of defaulting on local service payments.

62 We distinguish between local and long distance primarily because there are many alternate means to gain access to long distance services. A customer that cannot afford a long distance deposit may, for example, purchase a telephone calling card at a convenience or grocery store. We distinguish between local service and ancillary service because one is a necessary component of daily life and the others are adjuncts that are not essential and because the maximum deposit amount for an ancillary service is in the range of eight to twelve dollars, an amount that should not hinder a customer that feels an ancillary service is necessary to him or her.

63 Part of each side's argument on this issue is the reliability, or lack thereof, of the information in credit history reports. Credit reporting is governed extensively under laws that are not administered by this commission. We are not in a position to make determinations about the reliability of credit reports. Nor are we in a position to state that what is a generally accepted commercial practice should not be available to companies, absent a showing of a specific reason not to permit the use of credits [credit] reports. As stated above,

we think that reasons exist with respect to local service, but not with respect to other services.

64 Consumer advocates suggest that a two-tiered system for deposit determination will be confusing to consumers. Our response is that the world is often much more complicated that [than] our two-track approach to credit determination and that customers are not so easily confused as some suggest.

65 Consumer advocates also state that we do not have a record that supports the change. This issue was one of the most hotly contested by consumer and company advocates and we received considerable oral and written comment and material in support of each position throughout three-plus years of rule making. In general, we are inclined to provide opportunities for companies to use automated systems to protect themselves against credit risks to the extent that their efforts would not unnecessarily result in the inability of some customers to subscribe to local service. We consider this a reasonable policy.

66 Consumer advocates requested that we not permit local exchange companies to require deposits for local service for customers enrolled in the Washington telephone assistance plan (WTAP) or the federal enhanced tribal lifeline program. Advocates argue that a deposit is a significant barrier to low-income households. We decline to make the change because the deposit amount for local service is capped at two months. For WTAP customers, this currently amounts to eight dollars. We think that amount strikes a balance between the need to protect companies from credit risk and a deposit requirement for low-income customers that is not insurmountable.

WAC 480-120-123 Establishing credit—Business services.

67 Companies have requested that subsection (1) be altered to remove the requirement to place in a tariff or price list the criteria used for determining the credit worthiness of a business applicant. Companies inform us that this information is not currently included in tariffs or price lists. We have changed the adopted rule.

68 Companies have asked for clarification on the application of subsection (3) and have proposed specific changes. We have made the requested changes to promote clarity.

WAC 480-120-128 Deposit administration.

69 Companies requested thirty days, rather than the proposed fifteen days, to return a deposit. They state that more time is necessary to determine the final balance when service has been terminated and to process the final payment. We consider the change reasonable and have made the change.

WAC 480-120-133 Response time for calls to business office or repair center during regular business hours.

70 Companies requested that we establish an answer-time standard for business and service calls at the monthly rather than weekly level. We understand monthly measurements to be the norm. We have changed WAC 480-120-133 and the adopted rule contains a monthly standard.

71 Companies have requested that this standard apply during regular business hours. We have changed the proposed rule so that it applies only to regular business hours.

72 Companies requested that we alter subsection (2)(b) to include, as an alternative to providing a customer with a method to reach a live operator, that the result of listening to the entire message would be that a customer is transferred automatically. We have made that change and, in addition, we have increased the amount of time when a message must offer a way to reach an operator or make the automatic transfer from thirty seconds to sixty seconds. Sixty seconds is a reasonable, though not desirable, time for a customer to wait.

WAC 480-120-146 Changing service providers from one local exchange company to another.

73 Incumbent companies have requested the deletion of this rule and have suggested it approaches a complex set of circumstances in a manner that is too simple. The rule is designed to stem the growth of complaints by customers who are changing from one provider to another, with the result that one company discontinues service before the new company provides service. Incumbents state there are a number of circumstances in which this rule will be unworkable: When the new provider will be using the current provider's loop; when there are three companies involved, one providing the loop to a competitor and another competitor to whom the customer is migrating using the same loop; and when the new provider has no relationship to the current provider.

74 We have made changes to the rule, but decline to change it from one that addresses the issue generally, to one that addresses every possible variation in the process of moving a customer from one company to another. The alteration we make is to state that the rule does not apply when the customer submits a request for discontinuation of service directly to the customer's local exchange provider. The result is that when companies are cooperating to move a customer from one company to another, the company losing the customer must not discontinue service until informed by the other company that it has activated service. We expect companies to cooperate to serve customers, including entering into agreements when necessary to determine respective responsibilities in the transfer of service.

WAC 480-120-147 Changes in local exchange and intrastate toll services.

75 Companies indicate that the language in subsection (1)(b) is too restrictive and limits the methods for electronic verification of changes in carriers. In response to comments and subsequent discussions of the topic, we have changed this subsection to permit greater flexibility in confirming the change.

76 Companies also requested a change of reference from interstate preferred carrier to interLATA preferred carrier. We have made that change because it is consistent with applicable law.

77 Companies requested that the reference to "sales" in subsection (1)(b) be changed to a reference to preferred carrier change. Such a change would promote accuracy. We have made the change in the adopted rule.

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78 Companies suggested that the phrase "and provided to" be eliminated in subsection (4)(a). Such a change would promote accuracy and readability. We have made the change.

79 Companies have stated that providing rates for each vertical service may be difficult. Once again, we note that price (a calculation based on a rate multiplied by the application of that rate, e.g., number of minutes) is a fundamental element in contract and we decline to change our proposed rule to permit customers to be billed for services for which no calculation of price is stated on the bill.

80 Competitive companies have requested that we address this rule in a separate proceeding for the purpose of examining the need for local PIC[2] freezes. This issue has been the subject of recent litigation before the commission. We are satisfied that we understand fully the issues and that we are consistent in the rule with our other proceedings on this topic. We decline to withdraw this rule and decline a separate proceeding at this time.

81 Consumer advocates praised the language in this section that requires letters of agency and related material to be entirely in one language, whether English or another language. They have requested that we adopt in a variety of locations a similar requirement that if a solicitation or other activity is provided in a language other than English, then all subsequent communications with a customer that accepts that solicitation be in the language of the original solicitation. We decline to do so. The letter of agency is different from a solicitation; it is a legal document and it is important that any customer presented with such a document have the opportunity to understand the entire contents. With respect to other materials, we think the better course is for competition to drive companies to accommodate the needs of would-be customers.

WAC 480-120-161 Form of bills.

82 Companies requested that we remove the long-standing requirement that permits customers to ask to be placed in a billing cycle that accommodates the time of each month when they receive income. We reject this request because no company indicated how this long-standing provision has caused any harm and because consumer advocates stated that it is beneficial.

83 Companies requested that we eliminate the provision that permits customers an amount of time to pay late-provided bills equal to the time the company delayed billing. Companies suggest the delay may sometimes be caused by the customer providing incorrect billing information and that companies might be delayed because of a regulatory investigation. No detail was provided that suggested a large number of delayed bills are caused by either customers or regulatory investigations. Delayed bills may be unexpected bills and additional time may be needed for customers to make unanticipated outlays. On balance, we think the fair general rule is to give customers the same period of time to pay a delayed bill as it took the company to provide the bill.

84 Companies have also expressed a concern for circumstances when the delayed billing is the result of a third party, such as a long distance provider whose calls are billed through the local service provider. In the event a third party does not perform in the manner agreed to and the result is a delayed bill and costs for accommodating a customer, then the company's problem is not with the customer but with the third party. We decline to make changes to the rule that would inconvenience customers when problems are caused by third parties. If the level of difficulty experienced by any company is more than occasional, then the appropriate response is to address it systemically. Companies, customers, and even third parties will be better off when bills are not delayed.

85 Companies suggested that subsection (4) be changed to avoid any difficulties where the service is supplied to someone other than the customer. We have made a change to accommodate this concern. We retain a requirement that the company provide the service in order to avoid circumstances where a customer is billed for a requested service that is not actually provided.

WAC 480-120-162 Cash and urgent payments.

86 Companies requested the authority to charge fees to customers who pay in-person at payment agencies. Companies stated it is difficult to find and retain payment agents. Some history is important to understanding our action on this rule.

87 Over the past twenty years we have permitted companies to reduce the number of payment agents and offices from one or more in every exchange to a handful. This coincided with the changes in telecommunications that, among other things, permitted customers to purchase their own telephones from a myriad of vendors. There is no longer a reason to maintain such a presence in each community, and companies and customers have benefitted from the efficiencies that have resulted.

88 At the same time, there is a segment of the population that cannot afford the services of a bank or chooses to pay in cash for other reasons. Collecting payments has always been a part of doing business, and for an essential service such as telecommunications it is important to accommodate every sector of society. Also, companies have asked us to permit them to substantiate customer identity in some instances before the company must provide service. Payment agents provide convenient locations for customers to present identification in order to obtain service.

89 We have maintained the requirement for companies to provide payment agents at the level that has been in our rules for several years. We have also, however, permitted companies to add additional payment agents that may charge a fee for processing transactions. Nothing prevents companies from compensating payment agents for their services.

90 Companies have stated that finding replacement agents is difficult and that thirty days is insufficient time to locate a replacement. A specific suggestion was made to provide sixty days and to require progress reports to the commission if a company is unable to locate a replacement in that period. We have accepted the suggestion and altered this subsection as requested.

WAC 480-120-163 Refunding an overcharge.

91 Companies suggested changes to the language to this rule and stated changes would more accurately reflect the requirements of the statute. We decline to make changes because we believe the rule accurately reflects the requirements of the statute.

WAC 480-120-164 Pro rata credits.

92 Companies commented that we should not adopt proposed WAC 480-120-164 Pro rata credits. They state this would be unlawful and that it would stifle innovation in customer service programs. The pro rata credits for failure to provide a service for more than twenty-four hours when the service is priced on a monthly basis has the effect of prohibiting overcharges for service that is not provided. We do not agree that it is unlawful for us to adopt a rule that prevents overcharges and prescribes the proper method for correcting overcharges. We also disagree that this will prevent innovation in customer service programs. The final sentence of the rule permits companies to provide equal or greater credit than that required by the rule.

WAC 480-120-165 Customer complaints.

93 Consumer advocates request that we prescribe standards for complaint handling more specific than the requirements in the proposed rule. Among other things, they advocate for a requirement that companies have an information system dedicated to complaint handling. We decline to adopt the more specific requirements or to impose a systems requirement for this purpose. Companies generally keep track of customer activity, whether it is an order for service, an inquiry, a gripe, or a complaint, in one record system. We do not think the expense of a record system dedicated to complaints is warranted when the information is available. It is true that those systems typically are not designed to answer questions such as how many people complained of an incorrectly billed long distance call for a given month, but to the extent a particular customer has a particular concern, the systems reflect that information and it can be found under the individual name or telephone number.

94 While our rule is not overly specific, it is clear. Companies must have adequate numbers of trained personnel available to assist customers and must make prompt investigations and give prompt responses to customers. Companies must also inform customers that they may ask for a supervisor to review the disposition of their complaint and must be informed of the commission's address and telephone number.

WAC 480-120-166 Commission-referred complaints.

95 Companies request that we modify the rule as it relates to retention of records and limit that requirement to complaints where the commission is involved. Companies state that systems are not necessarily designed to capture complaint data, but that notations are made when customers call and make inquiries, when they register complaints, and for other purposes. The rule does not require production of reports by complaint category. It only requires the retention of records. If companies keep those records by customer and not by category, the requirement is met and, accordingly, we decline to change this requirement.

96 Companies suggested modifying subsection (4) to modify "action" with "collection or enforcement." The proposed rule reflects current practice. We decline to make such a change because it could result, for example, in a company toll restricting a customer when that is the subject of the dispute.

97 Companies have requested that the standard in subsection (8) that requires a response within three days, unless commission staff specify a later date, be altered in favor of a requirement that assumes information may not be available within three days in some instances. The three-day standard is the practice to date and one goal of this rule making has been to state in rule what has been unofficial practice. It has also been the practice for staff to specify a later date when presented with a reasonable statement of company needs for additional time. We favor the more certain standard and expect staff to specify later dates when presented with reason to do so. We decline to make the requested change.

98 Companies suggested an additional requirement that customer proprietary network information be provided to commission staff only after written authorization from the complaining customer. This is addressed in WAC 480-120-205(5) and it is unnecessary to address it in this section.

WAC 480-120-167 Company responsibility.

99 Companies suggested that the length of time before companies must contact the commission after conferring is too short. We agree and have changed the period to five days.

100 Companies have stated that this rule may lead to companies without responsibilities to a particular customer to be held accountable for resolution of a customer's concern. This statement misapprehends the rule. The rule arises from the circumstance that many services are provided by two or more companies. The rule is directed at those circumstances where it is unclear which company, or companies, have responsibility for remedying a complaint. The rule does not require a company resolve a complaint for which it is not ultimately responsible; it requires companies to cooperate to the extent necessary to make a determination of responsibility.

WAC 480-120-171 Discontinuing service—Customer requested.

101 There were no comments concerning this section, but we did make changes to conform it to the changes made in WAC 480-120-061, 480-120-172, and 480-120-173. In the proposed rules as well as the adopted rules, those three sections work together with WAC 480-120-171 to describe the circumstances under which service may be refused, and when and what process must be followed to disconnect service. In the process of reviewing the proposed rules and the comments on them, we concluded that the four sections needed to be revised in order to state more clearly the policies practices related to these subjects. The four sections were rewritten together. To the extent there were policies expressed by the proposed rules, those remained the same in the rewrite except where we determined that as a result of a comment we should make a change. The discussion about

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comments and changes to the policies related to refusal of service and disconnection of service are found in the sections on [in] WAC 480-120-061, 480-120-172, and 480-120-174.

WAC 480-120-172 Discontinuing service—Company initiated.

102 Companies expressed uncertainty about the change in the standard related to medical emergencies. The standard had been loss of telephone service that would "significantly endanger the physical health..." and in the proposed rule it was altered to loss of service that would "aggravate an existing medical condition." After review of the two standards, we have altered the adopted rule so that the standard for delaying discontinuation of telephone service in a medical emergency is if the discontinuation would endanger the physical health of a person in the household. We make the change because the proposed standard was concerned with aggravation of a condition but our concern should be with the physical health of the person. We removed "significantly" as a modifier to endangerment because we believe that endangerment is sufficient alone to warrant a reprieve from discontinuation for the short period permitted in the rule.

103 Companies complained that the requirement to attempt to contact customers at business or message telephones in addition to their home number before discontinuation of service is a new requirement and not discussed at workshops. This is not a new requirement. It appears in current rule (WAC 480-120-081 (5)(b)). In addition, the requirement appeared in the discussion draft of rules provided in August 2001, the draft that formed the basis of approximately twenty hours of workshops attended by commissioners. We think this level of effort is reasonable prior to discontinuation of service.

104 Companies have stated that the requirement to reinstate service on the same day a customer informs the company of the existence of a medical emergency could be a difficult standard with which to comply. We disagree because service is discontinued at the switch by throwing a lever or by giving a computer command. Each of these can be undone as rapidly as they can be done. Given the circumstances for which this requirement exists, this is not an unreasonable standard and we decline to make a change.

105 Companies have requested that we alter the rule with respect to discontinuation notices to reflect delivery rather than receipt. Companies state their obligation should be to deliver notices as required by our rules, not to be certain of receipt. We have made changes to reflect this request.

106 Companies have requested that we require the physician to state the name of the person whose physical health would be endangered by discontinuation of telecommunications services. We decline to make the change because we consider it sufficient that the company know that there is a person dwelling in the residence of the customer for whom a physician has stated that discontinuation of service would endanger the physical health of that resident. In the event a company should have reason to suspect it has been misled, it may approach the commission for an exception to this rule that would permit it to seek more information.

107 Companies requested that we revert to the former standard for payment by customers that claim a medical emergency. The former standard was 25% of the outstanding balance for local service, or ten dollars, whichever is greater. Our proposed rule had reduced the amount of the balance to be paid to one-sixth. We have reconsidered the amount and based on previous experience we now consider 25% to provide a better balance.

108 Companies requested that we establish discontinuation of service intervals after notice based on the type of notice. We require final notice be delivered by hand, by mail, by electronic mail if that has been the method of doing business with the customer, or by telephone before discontinuation can take place. We have revised subsection (8) so that the interval between delivery of final notice and when the company may disconnect varies based upon the manner in which the final notice is delivered. That change will facilitate payment rather than disconnection, presumably the goal of both companies and customers.

109 Consumer advocates oppose permitting companies to discontinue service without notice when a customer defaults on a payment agreement (this provision originally appeared in proposed WAC 480-120-061, but is now found in this section). They argue this presents a public health and safety concern. What is proposed, however, could result in an endless series of defaults, notices, agreements and subsequent defaults. We decline to change the proposed rule because a customer in these circumstances has received notice and understands the obligation to pay for the service.

110 Consumer advocates have requested that companies be required to include in notices of discontinuation the TTY number. A TTY number connects a hearing impaired person with translation services. We consider it reasonable to require the inclusion of the TTY number in discontinuation notices because what is at stake is a basic service, and have made a change in the adopted rules to reflect our position.

111 Companies have requested that we alter the requirement to offer a four-hour window for a premise visit to require a four-hour window for a premise visit only if the customer requests one. We have addressed this issue in the context of other sections and for the same reasons stated above we decline to make the requested change.

WAC 480-120-173 Restoring service after discontinuation.

112 Companies have requested that the rule be changed as it applies to persons who have obtained service through deceptive means. The proposed rule permitted companies to discontinue service without notice upon discovering a person had obtained service through a deceptive practice, but it also required companies to restore service if the person paid the full cost of the service obtained by deceptive means. Under the proposed rules, companies could refuse to restore service after a person obtained service a second time through deceptive means. Companies complained that once someone has used deception and been disconnected the company should not have to restore service. We decline to make a change. Telephone service is a basic service and it is important that it be reasonably available. We think it is reasonable that a per-

son found to have used deception be permitted one opportunity to make the company whole and obtain service in the correct manner. It is also reasonable not to require restoration of service if the person acts deceptively twice.

113 This section, like others, requires companies to offer to schedule a service appointment within a four-hour window. Companies have requested changes to this requirement that would place the burden on the customer to ask for an appointment within a four-hour window. We have addressed this issue earlier in this order and decline to make the requested change in this section for the same reasons we have declined to make the change elsewhere.

WAC 480-120-251 Directory service.

114 Companies indicated that this rule as proposed addresses cellular telephone numbers but not the larger category of services that can be offered by a commercial mobile radio service company (or a radio communications service company). We have altered the rule to address this concern. The rule now requires companies that must publish directories to publish all subscriber list information provided to them by any type of service provider.

115 Consumer advocates have requested changes to subsection (6), which requires certain information be placed in telephone directories. Our proposed rule would have had the information appear in either a welcome letter or in a directory. We have revised the rule to require inclusion in the directory whether or not the information appears in a welcome letter because directories are used by people who may not be in possession of a welcome letter. This change assures any user of a directory can obtain the basic information to which all customers should have ready access.

WAC 480-120-252 Intercept service.

116 Competitive companies state they may find it difficult to meet the requirements of this rule because in some circumstances the activities that must be undertaken to meet the requirements can only be taken by the incumbent, not by the competitor that leases elements or resells service. It is true that some of the required activities might be under the control of the incumbent when the requirement is placed upon the competitor, but this is not sufficient reason to rewrite the rule. The nature of leasing and resale is that companies must cooperate to provide service to customers. We decline to reduce protections for customers because that is an inappropriate response to companies that sometime have difficulties cooperating. Those difficulties should be addressed through carrier-to-carrier rules and interconnection agreements.

WAC 480-120-253 Automatic dialing-announcing device (ADAD).

117 Companies have requested that the earliest time at which an automatic dialing and announcing device may be used should be changed from 8:30 a.m. to 8:00 a.m. in order to be consistent with FCC rules. We have made the requested change.

WAC 480-120-254 Telephone solicitation.

118 Companies have asked us to change the rule to require telemarketers to identify themselves promptly, rather than within the first thirty seconds. Identifications within the first thirty seconds is required by statute. We decline to make the change. We do, however, make another requested change and have inserted in the identification requirement the language from the statute requiring identification of the company or organization on whose behalf the solicitation is made.

119 We have also made some editorial changes to reflect earlier discussions concerning the clarity of earlier drafts of this rule that appeared prior to publication of the proposed rule. We decline to pursue changes based on the general comments that certain federal laws and rules address solicitation. This rule implements a specific state statute.

WAC 480-120-255 Information delivery service.

120 Companies have requested that we alter this rule and parrot the federal standard adopted in 1991. The standard that is claimed to be at odds with the federal standard has been the standard in Washington for many years. We have not been informed of any specific problems during the time the state and federal standards have coexisted, and while they may be different no company has claimed that there is a conflict as that term is used in preemption jurisprudence. Accordingly, we decline to alter the proposed rule.

WAC 480-120-262 Operator service providers (OSPs).

121 Companies have suggested a change to the definition of operator service provider and stated the suggestion would make the definition more complete. We consider the definition to be complete and decline to make the change.

122 Companies suggested there is an inconsistency in the use of "rates" and "charges" in subsection (4). We do not agree there is an inconsistency and decline to make any change.

123 Companies requested that we not adopt the requirement for rate quotes by operator service providers when the total cost of a call exceeds a benchmark rate. Companies suggest this is "back door" rate regulation, and complain that the benchmarks are unworkable and inconsistent with previous findings that operator services are competitive. Companies also stated that the proposed rule would increase costs, and at least one indicated it might exit this line of business.

124 We have changed the benchmark rates subsection to make the standard easier to apply in every type of calling circumstance, e.g., collect, third-number billed, and person-to-person. This addresses the concerns raised that a benchmark tied to the length of a call would mean that some types of calls would fall inside the benchmark, and other types, collect for example, might not. We have adopted a revised standard that can be applied to all types of calls and calls of any length.

125 Consumer complaints concerning outrageous charges for operator service calls is one of our most commonly received complaints. Customers experience shock and outrage when per-minute rates range as high as $10.00. The shock and outrage are both due to reasonable customer

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expectation based on rates advertised for most types of calls in the range of four to fifteen cents per minute.

126 Our adopted rule requires a rate quote when the call exceeds, for any duration of the call, the sum of fifty cents ($0.50) multiplied by the duration of the call in minutes plus fifty cents ($0.50). The rule does not establish a rate. It may be that information about the cost of calls will affect the rates charged, but that is not the same as rate regulation.

127 The requirement to inform customers of the cost in advance of completing a call is not inconsistent with our past determinations that operator services are competitive. It is an indication that one of the benefits that should result from competition has not been realized - customers are not receiving information that will let them operate in their self-interest in the marketplace. Required disclosure of rates is consistent with the promotion of competition.

128 We do not dispute that providing rate quotes could increase costs, but that cost must be balanced with the benefit of providing information to customers.

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WAC 480-120-263 Pay phone service providers (PSPs).

129 Companies have provided only general comments that we have been too prescriptive with respect to the regulation of payphones. There was no specific request for a specific change, and we decline to make any. We have substantial experience with payphone complaints and believe the prescriptive rules are warranted.

130 We have made an editorial change, removing a misplaced definition from the beginning of the section.

WAC 480-120-302 Accounting requirements for competitively classified companies.

131 Companies suggest that adopting the FCC's Part 32 rules that were published in 1998 as the standard for accounting for certain expenses is choosing an outdated standard. The FCC has taken a deregulatory approach to accounting in the last few years because it can, among other things, depend on states to regulate rates. The most recent FCC accounting rules that require the information the commission will need in the event of a rate case concerning the expenses treated in Part 32 are the accounting standards published in 1998. We decline to change this rule and adopt the standard we need to carry out our statutory obligations.

132 Companies have also requested that they be permitted to make changes to the uniform system of accounts that have an annual revenue effect of less than 1% or $1 million dollars. We decline to make such a change because over time this could amount to considerable changes in revenue and because current events have underscored the correctness of our position that regulatory agencies must continue to monitor accounting practices.

WAC 480-120-311 Access charge and universal service reporting.

133 Companies stated that this rule will increase regulatory burdens with no public benefit, that it is tied to an invalidated rule, that the information sought is not related to universal service, and that we seek assurances on the use of certain federal universal service funds for which the FCC does not require certification. We disagree on all points.

134 The adopted rule requires that companies provide information about access service. These rates are used to provide support for universal service. Making provisions for support of universal service is an obligation of the commission under state and federal law. The validity or invalidity of WAC 480-120-540 does not negate the existence of many tariffs that authorize access charges for the purpose of supporting universal service. The information sought is directly related to universal service.

135 The rule also requires annual certification of the use of all federal universal service funds. This rule replaces an order that required the annual certification; we understand the APA to have a preference for rules over orders when a requirement is generally or broadly applicable. While it is the case that the federal rule does not put all federal universal service funds at risk if the certification is not timely made, it is also true that the federal rule requires the state to certify that *all* federal universal service funds, even those not at risk, are used only for the intended purposes. *See 47 U.S.C. § 254(e) and 47 C.F.R. 54.314(a).*

WAC 480-120-312 Universal service cost recovery authorization.

136 The Washington Telecommunications Ratepayers Association for Cost-based and Equitable Rates (TRACER) commented on June 26, 2002, that it considered WAC 480-120-312 to be vague and in violation of RCW 80.36.600, [80.36.]610, and [80.36.]620. The commission received substantially the same comments on September 4, 2002, in a letter from Senator Timothy Sheldon, Representative Jeff Morris, and Representative Larry Crouse. At the request of TRACER and public counsel, the commission held an additional workshop on this rule on November 1, 2002.

137 The commission disagrees with TRACER's reading of the law. In enacting the statutes cited by TRACER, the legislature recognized and carefully protected the commission's existing authority to protect universal service through the rate-setting process. In the absence of a state universal service fund, which all agree is outside the commission's statutory authority, the commission is allowed and expected to set the rates of individual companies in a way that promotes competition, universal service, and the public interest generally. RCW 80.36.300. TRACER's arguments, if accepted, would implicate not just the proposed WAC 480-120-312 but also the existing tariffs of approximately twenty-five local exchange companies. These companies are serving hundreds of thousands of customers in small towns and rural areas of the state, and there is no reason to believe that the legislature ever intended those customers to pay higher local rates when they enacted RCW 80.36.600 et seq. The mechanism described in proposed WAC 480-120-312 is one that the commission is authorized to implement and operate.

138 While we disagree with TRACER's analysis of the law, the question remains whether this proposed rule should be adopted. As some commenters have noted, the rule is explanatory only. It describes an allowable way of recovering a company's costs of serving customers in high-cost loca-

tions, but it does not confer any new authority on either companies or the commission. Indeed, this is demonstrated by the fact that so many companies are already collecting their high-cost amounts in this fashion.

139 The commission proposed WAC 480-120-312 because the state Administrative Procedure Act and Governor Locke's Executive Order 97-02 encourage state agencies to codify in rule existing informal policies or practices. Today telephone companies are collecting a substantial amount of money for service to high-cost areas with no formal explanation of how the specific amounts are calculated. However, in written comments and at the November 1, 2002, workshop, local exchange companies expressed no support for adoption of the rule. The lack of favorable response from the intended beneficiaries suggests that the explanation in the proposed rule is unnecessary. It thus would appear that the proposal has generated more heat than light, and we will not adopt WAC 480-120-312 at this time.

WAC 480-120-323 Washington Exchange Carrier Association (WECA).

140 As a result of our own reexamination of this rule, we revised subsection (3)(a) and added price lists and contracts. This expands a list of several items that members of WECA may file directly with the commission. The result is greater flexibility for member companies.

WAC 480-120-401 Network performance standards.

141 Companies have suggested the rule be modified by inclusion of the modifier "average" before "busy season." This is the industry standard and we have made the change in the adopted rule.

WAC 480-120-412 Major outages.

142 Companies have suggested that the expectations for repair of major outages in subsection (4) are arbitrary or too short. We disagree. In this rule we make a departure from our over all effort made in these rules to change existing input-oriented rules into outcome-oriented rules. In this rule we express priorities and expectations for responses, but in each instance we carefully permit companies to take more time than is indicated in the subsection when circumstances beyond the reasonable ability of the company to control do not permit repair within the stated periods. We modified the adopted rule in order to make this even more clear than apparently was the case.

143 Companies have also stated it would be time consuming and expensive to notify customers when major outages are planned. Companies also expressed a concern that criminals would also be informed and could take advantage of the lack of 9-1-1 service. We considered their concerns, and modified the notice section to require only reasonable efforts. We share the concern for security, but believe that informed emergency management authorities and citizens can better protect themselves if they know to prepare for a period without telephone service.

144 We note that we do not require notice when the outage is anticipated to be of a very short duration. We proposed five minutes between the hours of 12:00 a.m. and 5:00 a.m. This proposal was adopted after discussion with companies. Only one company suggested lengthening it to ten minutes, which we reject because no reason was provided and because it is inconsistent with what we learned from several companies about network maintenance needs.

145 Incumbent companies have also stated that the increase in reporting progress in restoring service through intercompany trunk and toll trunks from once a day to twice a day is unnecessary and no change is warranted. Competitively classified companies stated in the course of this rule making that they would prefer hourly updates on repair progress, but indicated that twice daily would be beneficial. We decline to make a change in the proposed rule because we think we have struck a reasonable balance.

WAC 480-120-438 Trouble report standard.

146 Companies suggested the trouble report standard in the proposed rule would create problems for small central offices because only a handful of trouble reports could result in the below standard performance. Our proposed rule recognized this same concern and the standard was changed so that a wire center must have four or more trouble reports in two consecutive months, or four trouble reports in four months out of twelve, before it will be considered below standard. Small or large, it is important to know if there are chronic problems in a wire center because the effect on the customer is the same whether the customer is served from a large or small central office. We decline to make any additional change.

WAC 480-120-439 Service quality performance reports.

147 Companies have suggested the reporting requirements for installation and activation are complicated and the commission should adopt a rule only if company performance deteriorates. Our experience is that we had an ineffective reporting rule that resulted in an inability to detect problems and remedy them at a time when we had a severe problem in this state. The report required by this subsection will assist us in spotting trends in this area and permit faster action than was possible in the past.

148 Companies have asked that we modify subsection (4) to permit reporting of completed orders rather than orders taken because not all companies may be able to state the number of orders taken each month. We decline to make that change, but we have added a subsection that allows a company to propose an alternate manner in which information is reported.

149 Companies have also asked that the report be on a statewide basis rather than by central office. We currently have an installation and activation standard by central office and reporting by central office. We have modified the standard in the proposed rule to require a certain level of installation and activation on a statewide basis, but we proposed a reporting standard by central office so that we could determine if the quality of service in any given location is significantly different than the statewide average. Our proposed rule to alter the standard from central office to statewide is opposed by consumer advocates. Prior to proposing the new standard we determined that a statewide standard would bal-

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ance company and consumer advocate concerns, but also determined that we should monitor this service quality indicator closely. We decline to alter the proposed reporting rule.

150 Companies have requested that orders for installation or activation that could not be completed within five days due to force majeure not be included in the report required by subsection (4). We have modified the standard in WAC 480-120-105 (1)(a) and this subsection to reflect that the standard for installation and activation of orders within a month and the report related to that standard may exclude orders that cannot be installed or activated within five business days due to force majeure. A delay due to force majeure that affects a company's ability to meet the standard for installing or activating at least 90% of all orders for up to five access lines in five business days does not alter its obligations to meet the standards for the calendar quarter and one hundred and eighty day periods. A company could seek an exception under WAC 480-120-015 if the extent of the effect of a force majeure event is such that it believes such an event prevented it from meeting those standards found in WAC 480-120-105.

151 Companies have requested that the interoffice, intercompany, and interexchange trunk blocking report include a requirement to report on the standard in WAC 480-120-401(5). This is a standard that applies to the same types of facilities for which this report is required and we consider it reasonable to increase the reporting requirement as requested.

152 Companies have requested that we eliminate the requirement to report the number of construction orders requiring permits as provided for in WAC 480-120-440. We agree that this information is not critical to the commission's ability to monitor performance as it relates to repairs. Accordingly, we have modified the rule to remove that specific requirement and replace it with a report of the number of service interruptions and impairments that are exempt from the repair interval standard as provided for in WAC 480-120-440.

153 Companies have requested that we alter the reporting requirement that demonstrates compliance with the repair standards related to the time it takes for repairs to be completed. They request that they be permitted to report the repairs completed in two working days or three working days (in conjunction with a similar request to change the standards for two different types of repairs from forty-eight hours and seventy-two hours to working days). We have not altered those standards and therefore decline to alter the report requirement. This is an area where a company may consider approaching the commission under subsection (12) of this section.

WAC 480-120-440 Repair standards for service interruptions and impairments, excluding major outages.

154 Companies have suggested a standard for repair of service-affecting and nonservice-affecting interruptions in telecommunications service in two working days and three working days, respectively, rather than forty-eight hours and seventy-two hours. Other comments were made that a 100% standard is too difficult and it should be replaced with a 95% standard.

155 The current standard requires all repairs to be made within two working days. The proposed rule separates service interruption (no dial tone) from nonservice interruptions (noisy line) and requires action on the former within forty-eight hours and on the latter within the less demanding seventy-two hours.

156 We have a standard that has served well but we are providing even more time to companies for one type of repair, while placing increased emphasis on the most important repairs. We think we have struck a fair balance and decline to make any changes.

157 We also decline to adopt a percentage repair standard. The requirement for all repairs to be completed within two working days has not been shown to be unreasonable. Neither has our enforcement of the standard been unreasonable. If we were to change to a percentage standard, then we would have to investigate the entirety of a company's performance to know if one customer has received substandard service, or if the customer is one of the group that make up the percentage that may not receive repair assistance for some very long time without the percentage standard being broken.

158 We have modified the notice subsection in the same manner as we modified it with respect to major outages. Companies must make reasonable efforts to notify customers when an outage must be created as part of the repair process.

WAC 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies.

159 The Military Department, Emergency Management Division, commented on May 22, 2002, and asked us to clarify disparate references to state emergency management authorities and state emergency management division. We changed the reference to division to be a reference to authorities. We addressed several other changes sought by the Emergency Management Division that arose in consultation prompted by written comments. While the changes made are not identical to what was submitted in writing, the changes reflect the suggestions made after consultation.

160 Companies suggested that the rule be changed to accommodate circumstances where the service is foreign exchange service. Foreign exchange service is a very small percentage of service and we are disinclined to establish rules for this small portion of service. Companies and emergency management personnel have the ability to route foreign exchange calls to the proper 9-1-1 answering point. There is no need for a change to this rule and we decline to make one.

161 Companies suggest that a secure, Internet-based method for maintaining customer records (of telephone locations) not be required, that companies that provide data base management be permitted to offer only a secure dial-up method for access to the data base to maintain records. This issue is very important to emergency management personnel because out-of-date records can literally mean the difference between life and death. Unfortunately, in large buildings and building complexes when personnel are moved, the records are not always updated and the location of the telephone in an emergency may be reported to be on a different floor, or even

in a different building, than is really the case. Many large employers would like to contract with vendors that will maintain accurate records and this rule is intended to accommodate that activity. We remain convinced that the secure, Internet-based method will result in records being kept more up-to-date than is the case today. We permit companies to provide the dial-up method as well.

162 Companies suggested requirements tied to a twenty-four hour standard be changed to a one day standard. We consulted with emergency management personnel and as a result of their concurrence we make the requested changes in the adopted rules.

163 Companies have requested changes to subsection (1)(b) because the location associated with a telephone number sometimes is different from the location of the station. We have made changes to subsection (1)(b), to other parts of this rule, and to WAC 480-120-263, in an effort to make certain that in most instances the information provided to a public safety answering point (PSAP) will result in accurate station location information. The responsibility for inclusion of accurate station location information in E911 data bases falls upon local exchange companies, but we have added an obligation for pay phone service providers to report accurate station location information to LECs. We have also made it easier for operators of private branch exchanges (PBXs) to provide station location to LECs that is more detailed than just the location of the PBX.

164 Local exchange companies asked that subsection (1)(c) be altered so that the address displayed to the PSAP would be the address of the point of demarcation. We have altered this subsection, but as explained above, we have also made other changes, including to WAC 480-120-263. Those changes require payphone service providers to make available to LECs much more detailed descriptions of the locations of payphones, which is far superior to the demarcation point.

165 Companies requested changes to subsection (2)(c) because the proposed rule seemed to require LECs to maintain information not in their possession. Changes to WAC 480-120-263 will result in LECs receiving the information that subsection (2)(c) requires be maintained.

166 Companies requested changes to subsection (2)(e) that would reduce the obligation to resolve reported errors in the E911 data base to an obligation to respond to a reported error in that time. We decline to make the change because we believe it is in the public interest to have data base errors resolved within five working days. We were presented with no compelling information to support a need to weaken a requirement on which public safety depends.

167 Companies requested that we remove from the proposed rule the currently existing requirement that E911 services including selective routing, data base management, and transmission of calls to PSAPs be offered by tariff or price list. Companies state their opinion that these are not telecommunications services and the commission should not, therefore, require that they be offered in this manner. RCW 80.04.010 defines telecommunications as the "transmission of information by wire, radio...or similar means" and facilities as "lines...instruments...and all devises...used...to facilitate the provision of telecommunications service." Because we believe the activities and equipment used in the provision of E911 service are telecommunications facilities we decline to alter the proposed rule and eliminate the current requirement that these activities be offered by tariff or price list.

Arrearage payments by Washington telephone assistance program (WTAP) participants.

168 The Welfare Rights Organizing Coalition stated it believes the Washington telephone assistance program is an entitlement program and that our rules cannot condition participation in the WTAP program on payment of an arrearage. Whether or not it is an entitlement program, we believe that we can require repayment of prior obligations. We have adopted a rule that provides for generous repayment terms for prior obligations arising out of local service.

Consumer bill of rights.

169 Throughout the last year of this rule making, consumer advocates have urged us to adopt a consumer bill of rights. We view the rules we adopt with this order to be more valuable to consumers than a general, but not specifically enforceable, statement of rights. We provide specific, enforceable requirements that companies must follow in performing their obligations. The specific requirements we adopt, when viewed as a whole, are very much like a bill of rights, but without the ambiguity that such a document might contain.

170 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission repealed, adopted and amended the rules in the CR-102 at WSR 02-12-055 with the changes described below.

171 **CHANGES FROM PROPOSAL:** After reviewing the entire record, the commission adopted the proposal with the following changes from the text noticed at WSR 02-12-055. Changes were made in the following sections: WAC 480-12-015 [480-120-015], 480-120-021, 480-120-061, 480-120-102, 480-120-103, 480-120-104, 480-120-105, 480-120-107 (withdrawn), 480-120-108 (withdrawn), 480-120-112, 480-120-123, 480-120-128, 480-120-133, 480-120-147, 480-120-161, 480-120-162, 480-120-165, 480-120-166, 480-120-167, 480-120-171, 480-120-172, 480-120-173, 480-120-251, 480-120-254, 480-120-262, 480-120-263, 480-120-311, 480-120-312 (withdrawn), 480-120-323, 480-120-401, 480-120-412, 480-120-439, 480-120-440, and 480-120-450. The substance of the changes in these rules is discussed in paragraphs 17 through 166, except where the change conforms one rule to a change to another rule discussed in paragraphs 16 through 169, or the change is editorial.

172 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the commission determines that WAC 480-120-029, 480-120-031, 480-120-032, 480-120-033, 480-120-041, 480-120-042, 480-120-043, 480-120-045, 480-120-046, 480-120-051, 480-120-056, 480-120-081, 480-120-087, 480-120-088, 480-120-089, 480-120-101, 480-120-106, 480-120-116, 480-120-121, 480-120-126, 480-120-131, 480-120-136, 480-120-138, 480-120-139, 480-120-141, 480-120-340, 480-120-350, 480-120-500, 480-120-505, 480-120-510, 480-120-515, 480-120-520, 480-120-525,

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480-120-530, 480-120-531, 480-120-535, 480-120-541, 480-120-542, 480-120-543, 480-120-544, and 480-120-545 should be repealed effective July 1, 2003.

173 The commission determines that WAC 480-120-011, 480-120-015, 480-120-021 and 480-120-061 should be amended to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on July 1, 2003.

174 The commission also determines that WAC 480-120-102, 480-120-103, 480-120-104, 480-120-105, 480-120-112, 480-120-122, 480-120-123, 480-120-124, 480-120-128, 480-120-132, 480-120-133, 480-120-146, 480-120-147, 480-120-148, 480-120-161, 480-120-162, 480-120-163, 480-120-164, 480-120-165, 480-120-166, 480-120-167, 480-120-171, 480-120-172, 480-120-173, 480-120-174, 480-120-251, 480-120-252, 480-120-253, 480-120-254, 480-120-255, 480-120-256, 480-120-257, 480-120-261, 480-120-262, 480-120-263, 480-120-265, 480-120-301, 480-120-302, 480-120-303, 480-120-304, 480-120-305, 480-120-311, 480-120-321, 480-120-322, 480-120-323, 480-120-401, 480-120-402, 480-120-411, 480-120-412, 480-120-414, 480-120-436, 480-120-437, 480-120-438, 480-120-439, 480-120-440, 480-120-450, 480-120-451, 480-120-452, and 480-120-999 should be adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on July 1, 2003.

[1] At least one comment suggested that our small business economic impact statement (SBEIS) was inaccurate with respect to this section. We note that in an SBEIS process that spanned months and included multiple requests for comments, not one company out of more than five hundred registered in Washington commented on this section. Indeed, we received two comments in the entire SBEIS process, one from a company that provides data base management for E911 purposes, and one from a large telecommunications company.

[2] PIC is an acronym for presubscribed interexchange carrier. It is an acronym that more properly applies to long distance (interexchange) service, but is used routinely by companies and regulators in the phrase "local PIC freeze" to mean a notation that a customer's local service may not be switched at the request of a new provider without direct contact from the customer to the existing provider indicating the change is desired.

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 2, 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 57, Amended 4, Repealed 41.

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

ORDER

175 THE COMMISSION ORDERS:

176 WAC 480-120-029, 480-120-031, 480-120-032, 480-120-033, 480-120-041, 480-120-042, 480-120-043, 480-120-045, 480-120-046, 480-120-051, 480-120-056, 480-120-081, 480-120-087, 480-120-088, 480-120-089, 480-120-101, 480-120-106, 480-120-116, 480-120-121, 480-120-126, 480-120-131, 480-120-136, 480-120-138, 480-120-139, 480-120-141, 480-120-340, 480-120-350, 480-120-500, 480-120-505, 480-120-510, 480-120-515, 480-120-520, 480-120-525, 480-120-530, 480-120-531, 480-120-535, 480-120-541, 480-120-542, 480-120-543, 480-120-544, and 480-120-545 are repealed effective July 1, 2003.

177 WAC 480-120-011, 480-120-015, 480-120-021 and 480-120-061 is amended to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on July 1, 2003.

178 WAC 480-120-102, 480-120-103, 480-120-104, 480-120-105, 480-120-112, 480-120-122, 480-120-123, 480-120-124, 480-120-128, 480-120-132, 480-120-133, 480-120-146, 480-120-147, 480-120-148, 480-120-161, 480-120-162, 480-120-163, 480-120-164, 480-120-165, 480-120-166, 480-120-167, 480-120-171, 480-120-172, 480-120-173, 480-120-174, 480-120-251, 480-120-252, 480-120-253, 480-120-254, 480-120-255, 480-120-256, 480-120-257, 480-120-261, 480-120-262, 480-120-263, 480-120-265, 480-120-301, 480-120-302, 480-120-303, 480-120-304, 480-120-305, 480-120-311, 480-120-321, 480-120-322, 480-120-323, 480-120-401, 480-120-402, 480-120-411, 480-120-412, 480-120-414, 480-120-436, 480-120-437, 480-120-438, 480-120-439, 480-120-440, 480-120-450, 480-120-451, 480-120-452, and 480-120-999 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on July 1, 2003.

179 This order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 12th day of December, 2002.

Washington Utilities and Transportation Commission
Marilyn Showalter, Chairwoman
Richard Hemstad, Commissioner
Patrick J. Oshie, Commissioner

PART I. GENERAL RULES

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-480, filed 7/11/01, effective 8/11/01)

WAC 480-120-011 Application of rules. (1) The rules in this chapter apply to any company that is subject to the jurisdiction of the commission as to rates and services under ((~~RCW 80.04.010~~)) the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.

(2) The ((~~effective~~)) tariffs ((~~provisions~~)) and price lists filed by companies ((~~shall~~)) must conform to these rules. ((~~The commission's acceptance of a tariff that conflicts with these rules does not constitute a waiver of these rules~~)). If the commission accepts a tariff or price list that conflicts with

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these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC). Tariffs or price lists that conflict with these rules without approval are superseded by these rules ((~~unless the commission authorizes the deviation in writing~~)).

(3) Any affected person may ask the commission to review the interpretation of these rules by a company or customer by posing an informal complaint under WAC 480-09-150((~~,~~)) (Informal complaints), or by filing a formal complaint under WAC 480-09-420((~~,~~)) (Pleading and briefs—Application for authority—Protests).

(4) No deviation from these rules is permitted without written authorization by the commission. Violations will be subject to ((~~penalty provisions of chapter 80.04 RCW~~)) penalties as provided by law.

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-480, filed 7/11/01, effective 8/11/01)

WAC 480-120-015 Exemptions from rules in chapter 480-120 WAC. (1) The commission may grant an exemption from the provisions of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, ((~~giving~~)) and provide a full explanation of the reason for requesting the exemption. In addition to any other reason, parties may allege force majeure was the factor leading to the request for waiver.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request, or setting it for hearing, pursuant to chapter 480-09 WAC.

NEW SECTION

WAC 480-120-017 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 480-120-019 Telecommunications performance requirements—Enforcement. The commission may enforce the performance requirements set forth in this chapter by imposing administrative penalties under RCW 80.04.405, 80.04.380, or other appropriate penalty statutes. These performance requirements are not intended to establish civil duties owed to any individual or class for any other purpose.

AMENDATORY SECTION (Amending Order R-452, Docket No. UT-970301, filed 12/29/98, effective 1/29/99)

WAC 480-120-021 ((~~Glossary.~~)) Definitions. ((~~Access line - a circuit between a subscriber's point of demarcation and a serving switching center.~~

~~Access code - sequence of numbers that, when dialed, connect the caller to the provider of operator telecommunication services associated with that sequence.~~

~~Aggregator - is referenced in these rules as a call aggregator, defined below.~~

~~Alternate operator services company - is referenced in these rules as an operator service provider (OSP), defined below.~~

~~Applicant - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., applying to the utility for new service or reconnection of discontinued service.~~

~~Automatic dialing-announcing device - any automatic terminal equipment which incorporates the following features:~~

~~(1)(a) Storage capability of numbers to be called; or~~

~~(b) A random or sequential number generator that produces numbers to be called; and~~

~~(c) An ability to dial a call; and~~

~~(2) Has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.~~

~~Automatic location identification/data management system (ALI/DMS) - ALI/DMS is a feature that forwards to the public safety answering point (PSAP) a caller's telephone number, the name and service address associated with the telephone number, and supplementary information as defined in the DMS for automatic display at the PSAP. The DMS is a combination of manual procedures and computer programs used to create, store, manipulate, and update data required to provide selective routing, ALI, emergency service numbers, and other information associated with the calling party's telephone number.~~

~~Billing agent - a person such as a clearing house which facilitates billing and collection between a carrier and an entity such as a local exchange company which presents the bill to and collects from the consumer.~~

~~Base rate area or primary rate area - the area or areas within an exchange area wherein mileage charges for primary exchange service do not apply.~~

~~Call aggregator - any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator ser-~~

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vices, including but not limited to hotels, motels, hospitals, campuses, and pay phones (see also pay phone service provider).

Centrex - a telecommunications service providing a subscriber with direct inward dialing to telephone extensions and direct outward dialing from them.

Central office - a switching unit in a telephone system having the necessary equipment and operating arrangements for terminating and interconnecting subscribers' lines, farmer lines, toll lines and interoffice trunks. (More than one central office may be located in the same building or in the same exchange.)

Commission (agency) - in a context meaning a state agency, the Washington utilities and transportation commission.

Commission (financial) - in a context referring to compensation for telecommunications services, a payment from an AOS company to an aggregator based on the dollar volume of business, usually expressed as a percentage of tariffed message toll charges.

Competitive telecommunications company - a telecommunications company which is classified as such by the commission pursuant to RCW 80.36.320.

Competitive telecommunications service - a service which is classified as such by the commission pursuant to RCW 80.36.330.

Consumer - user not classified as a subscriber.

Customer premises equipment (CPE) - telecommunications terminal equipment, including inside wire, located at a subscriber's premises on the subscriber's side of the standard network interface/point of demarcation (excluding pay telephones provided by the serving local exchange company).

Emergency calling - the ability to access emergency services by dialing 911, or dialing a local number to police and/or fire where 911 is not available, without the use of a coin or the entering of charge codes. Where enhanced 911 is operational, the address displayed to the public safety answering point (PSAP) shall be that of the phone instrument if different from the public access line demarcation point and the phone number must be that of the pay phone.

Exchange - a unit established by a telecommunications company for communication service in a specific geographic area, which unit usually embraces a city, town or community and its environs. It usually consists of one or more central offices together with the associated plant used in furnishing communication service to the general public within that area.

Exchange area - the specific area served by, or purported to be served by an exchange.

Farmer line - outside plant telephone facilities owned and maintained by a subscriber or group of subscribers, which line is connected with the facilities of a telecommunications company for switching service. (Connection is usually made at the base rate area boundary.)

Farmer station - a telephone instrument installed and in use on a farmer line.

Foreign exchange service - a communications exchange service that uses a private line to connect a subscriber's local central office with a distant central office in a community outside the subscriber's local calling area.

Interexchange telecommunications company - a telecommunications company, or division thereof, that does not provide basic local service.

Interoffice facilities - facilities connecting two or more telephone switching centers.

Local coin call - a connection from a pay phone within the local calling area of not less than fifteen minutes.

Location surcharge - a flat, per call charge assessed by an operator service provider (OSP) on behalf of a call aggregator/pay phone service provider in addition to message toll charges, local call charges, and operator service charges. A location surcharge is remitted, in whole or in part, to the call aggregator/pay phone service provider.

Operator service charge - a charge, in addition to the message toll charge or local call charge, assessed for use of a calling card, a credit card, or for automated or live operator service in completing a call.

Operator service provider (OSP) - any corporation, company, partnership, or person providing a connection to intrastate or interstate long distance or to local services from locations of call aggregators. The term "operator services" in this rule means any intrastate telecommunications service provided to a call aggregator location that includes as a component any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than: Automatic completion with billing to the telephone from which the call originated; or completion through an access code used by the consumer with billing to an account previously established by the consumer with the carrier.

Outside plant - the telephone equipment and facilities installed on, along, or under streets, alleys, highways, or on private rights of way between the central office and subscribers' locations or between central offices.

Pay phone or pay telephone - any telephone made available to the public on either a fee per call basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coin operated or is activated by calling collect or using a calling card.

Pay phone access line, public access line, pay telephone access line, pay station service, pay phone service (PAL) - is referenced in these rules as an access line, see above.

Pay phone services - provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

Pay phone service provider (PSP) - any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

Presubscribed provider of operator services - the provider of operator services to which the consumer is connected when a call is placed without dialing an access code.

Person - unless the context indicates otherwise, any natural person or an entity such as a corporation, partnership, municipal corporation, agency, or association.

Private branch exchange (PBX) - customer premises equipment installed on the subscriber's premises that functions as a switch, permitting the subscriber to receive incoming calls, to dial any other telephone on the premises, to access a tie trunk leading to another PBX or to access an outside trunk to the public switched telephone network.

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~~Private line - a dedicated, nonswitched telecommunications channel provided between two or more points.~~

~~Public safety answering point (PSAP) - an answering location for enhanced 911 (E-911) calls originating in a given area. PSAPs are designated as a primary or secondary. Primary PSAPs receive E-911 calls directly from the public; secondary PSAPs receive E-911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.~~

~~Reverse search of ALI/DMS data base - a query of the automatic location identification (ALI/DMS) data base initiated at the public safety answering point (PSAP) to obtain electronically the ALI data associated with a known telephone number for purposes of handling an emergency call when the searched telephone line is not connected to the PSAP.~~

~~Special circuit - an access line specially conditioned to give it characteristics suitable for handling special or unique services.~~

~~Standard network interface (SNI) - the point of interconnection between telecommunications company communications facilities and terminal equipment, protective apparatus, or wiring at a subscriber's premises. The network interface or demarcation point is located on the subscriber's side of the telecommunications company's protector, or the equivalent thereof in cases where a protector is not employed.~~

~~Station - a telephone instrument installed for the use of a subscriber to provide toll and exchange service.~~

~~Subscriber - any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., supplied with service by any utility.~~

~~Toll station - a telephone instrument connected for toll service only and to which message telephone toll rates apply for each call made therefrom.~~

~~Trunk - a single or multichannel telecommunications medium between two or more switching entities which may include a PBX.~~

~~Utility - any corporation, company, association, joint stock association, partnership, person, their lessees, trustees or receivers appointed by any court whatsoever, owning, controlling, operating or managing any telephone plant within the state of Washington for the purpose of furnishing telephone service to the public for hire and subject to the jurisdiction of the commission.~~)) The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

"Access charge" means a rate charged by a local exchange carrier to an interexchange carrier for the origination, transport, or termination of a call to or from a customer of the local exchange carrier. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

"Access line" means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

"Affiliate" means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

"Ancillary services" means all local service features excluding basic service.

"Applicant" means any person applying to a telecommunications company for new service or reconnection of discontinued service.

"Average busy hour" means a time-consistent hour of the day during which a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Basic service" means service that includes the following:

- Single-party service;
- Voice grade access to the public switched network;
- Support for local use;
- Dual tone multifrequency signaling (touch-tone);
- Access to emergency services (E911);
- Access to operator services;
- Access to interexchange services;
- Access to directory assistance; and
- Toll limitation services.

"Business" means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"Business office" means an office or service center provided and maintained by a company.

"Business service" means service other than residential service.

"Busy season" means an annual, recurring, and reasonably predictable three-month period of the year when a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Call aggregator" means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

"Call detail" has the meaning found in WAC 480-120-201.

"Category of service" means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intraLATA and interLATA primary interexchange carrier freeze status is part of the local category.

"Central office" means a company facility that houses the switching and trunking equipment serving a defined area.

"Centrex" means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

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"Class A company" means a local exchange company with two percent or more of the access lines within the state of Washington.

"Class B company" means a local exchange company with less than two percent of the access lines within the state of Washington.

"Commercial mobile radio service (CMRS)" means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

"Commission (agency)" in a context meaning a state agency, means the Washington utilities and transportation commission.

"Company" means any telecommunications company as defined in RCW 80.04.010.

"Competitively classified company" means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

"Customer" means a person to whom the company is currently providing service.

"Customer premises equipment (CPE)" is equipment located on the customer side of the SNI (other than a carrier) and used to originate, route, or terminate telecommunications.

"Customer proprietary network information (CPNI)" has the meaning found in WAC 480-120-201.

"Discontinue; discontinuation; discontinued" means the termination of service to a customer.

"Drop facilities" means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

"Due date" means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

"Emergency response facility" means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

"Exchange" means a geographic area established by a company for telecommunications service within that area.

"Extended area service (EAS)" means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

"Facility or facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

"Force majeure" means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

"Interexchange" means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

"Interexchange company" means a company, or division thereof, that provides long distance (toll) service.

"Interoffice facilities" means facilities connecting two or more telephone switching centers.

"InterLATA" is a term used to describe services, revenues, functions, etc., that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

"IntraLATA" is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

"Local access and transport area (LATA)" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Local calling area" means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

"Local exchange company (LEC)" means a company providing local exchange telecommunications service.

"Major outages" means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand subscribers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

"Missed commitment" means orders for exchange access lines for which the company does not provide service by the due date.

"Order date" means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs, price lists, or commission rules. Except as provided in WAC 480-120-061 and 480-120-104, when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.

When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff or price list. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff or price list, a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff or price list.

"Pay phone" or **"pay telephone"** means any telephone made available to the public on a fee-per-call basis independent of any other commercial transaction. A pay phone or

pay telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

"Pay phone services" means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

"Pay phone service provider (PSP)" means any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

"Payment agency" means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

"Person" means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

"Prior obligation" means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

"Private account information" means customer proprietary network information that is associated with an identifiable individual.

"Proprietary" means owned by a particular person.

"Provision" means supplying telecommunications service to a customer.

"Public access line (PAL)" means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

"Public safety answering point (PSAP)" means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

"Residential service" means basic service to a household.

"Restricted basic service" means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

"Results of operations" means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

"Service interruption" means a loss of or impairment of service that is not due to, and is not, a major outage.

"Service provider" means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

"Special circuit" means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

"Standard network interface (SNI)" means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

"Station" means a telephone instrument installed for the use of a subscriber to provide toll and exchange service.

"Subscriber list information (SLI)" means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

"Support structure" means the trench, pole, or conduit used to provide a path for placement of drop facilities.

"Telecommunications-related products and services" means:

(a) The offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used; or

(b) Services offered over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information; or

(c) Equipment employed on the premises of a person to originate, route, or terminate telecommunications.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

"Telemarketing" means contacting a person by telephone in an attempt to sell one or more products or services.

"Toll restriction" or **"toll restricted"** means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

"Traffic" means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

"Trouble report" means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

"Trunk" means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

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AMENDATORY SECTION (Amending Order R-422, Docket No. UT-940049, filed 9/22/94, effective 10/23/94)

WAC 480-120-061 ((~~Refusal of~~)) Refusing service. (((~~(1) The telecommunications company may refuse to connect with or render service to an applicant for service when such service will adversely affect the service to other existing customers, or where the applicant has not complied with state, county, or municipal codes and/or regulations concerning the rendition of such service.~~

~~(2) A telecommunications company may refuse to serve an applicant for service or a subscriber if, in its judgment, the installation is considered hazardous or of such nature that satisfactory service cannot be given.~~

~~(3) A telecommunications company shall not be required to connect with or render service to an applicant unless and until it can secure all necessary rights of way, easements, and permits.~~

~~(4) A telecommunications company may deny service to an applicant or subscriber because of an overdue, unpaid prior obligation to the same telecommunications company for the same class of service at the same or different location until the obligation is paid or arrangements satisfactory to the telecommunications company are made: Provided, That an overdue or unpaid obligation to an information provider shall not be grounds for denial of service. A nontelecommunication company applicant for service shall only on an initial occurrence be entitled as a matter of right to arrange to pay an overdue, unpaid prior obligation over not less than six monthly billing periods. Any amount owed to a local exchange company or an interexchange carrier at the time a customer's local service is disconnected for nonpayment is considered a prior obligation. Any amount owed to an interexchange carrier at the time the telecommunications company toll restricts a customer's service for nonpayment is considered a prior obligation. If an applicant or subscriber defaults on a payment agreement such default shall constitute grounds for discontinuance or toll restriction of service under the provisions of WAC 480-120-081. A telecommunications company may offer a payment agreement at any time if deemed to be appropriate by the company.~~

~~(5) A telecommunications company may deny service to an applicant or subscriber for service at an address where a former subscriber is known to reside and has an overdue, unpaid prior obligation to the same telecommunications company for the same class of telecommunications service at that address until the obligation is paid or satisfactory arrangements are made.~~

~~(6) A telecommunications company may deny service until any proper deposit is paid in full, or in part, or an alternative service option as defined in WAC 480-120-056 has been selected by the applicant or subscriber.~~

~~(7) A telecommunications company may deny installation or continuation of service to any applicant or subscriber who fails to provide accurate and verifiable information necessary to establish the identity of the applicant or subscriber until verifiable information is provided. Telecommunications companies must provide a means for applicants or subscribers to provide identification. At a minimum business offices and payment agencies required under WAC 480-120-510 must provide this service at no charge to the applicant or subscriber.~~

~~(8) A telecommunications company may deny installation or continuation of service to any applicant or subscriber who is shown to have obtained or retained service from the company by fraudulent means, including but not limited to false statements of credit references or employment; false statement of premises address; use of an alias or false name with intent to deceive; rotation of service among roommates or persons living together for the purpose of avoiding the debts of one or more of said persons, or any other similar fraudulent devices.~~

~~(9) A local exchange company shall deny service to a nonregistered telecommunications company that intends to use the service requested to provide telecommunications for hire, sale, or resale to the general public within the state of Washington. Any telecommunications company requesting service from a local exchange company shall state in writing whether the service is intended to be used for intrastate telecommunications for hire, sale, or resale to the general public.~~)) (1) A company may refuse to connect with, or provide service to, an applicant under the following conditions:

(a) When service will adversely affect the service to existing customers.

(b) When the installation is considered hazardous.

(c) When the applicant has not complied with commission rules, company tariff or price list, and state, county, or municipal codes concerning the provision of telecommunications service such as building and electrical codes.

(d) When the company is unable to substantiate the identity of the individual requesting service.

(i) Companies must allow the applicant to substantiate identity with one piece of identification chosen from a list, provided by the company, of at least four sources of identification. The list must include a current driver's license or other picture identification.

(ii) Company business offices and payment agencies, required under WAC 480-120-132 and 480-120-162, must provide a means for applicants to provide identification at no charge to the applicant.

(e) When the applicant has previously received service from the company by providing false information, including false statements of credit references or employment, false statement of premises address, or use of an alias or false name with intent to deceive, until the applicant corrects the false information to the satisfaction of the company.

(f) When the applicant owes an overdue, unpaid prior obligation to the company for the same class of service, until the obligation is paid or satisfactory arrangements are made.

(g) When the applicant requests service at an address where a former customer is known to reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address and the company determines, based on objective evidence, that the applicant has cooperated with the prior customer with the intent to avoid payment. However, a company may not deny service if a former customer with an overdue, unpaid prior obligation has permanently vacated the address.

(h) When all necessary rights of way, easements, and permits have not been secured. The company is responsible

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for securing all necessary public rights of way, easements, and permits, including rights of way on every highway as defined in RCW 36.75.010(11) or created under RCW 36.75.070 or 36.75.080. The applicant is responsible for securing all necessary rights of way or easements on private property, including private roads or driveways as defined in RCW 36.75.010(10). A private road or driveway is one that has been ascertained by the company not to be public.

(2) A company may not withhold or refuse to release a telephone number to a customer who is transferring service to another telecommunications company within the same rate center where local number portability has been implemented.

(3) A telecommunications company must deny service to a nonregistered telecommunications company that intends to use the service requested to provide telecommunications for hire, sale, or resale to the general public within the state of Washington. Any telecommunications company requesting service from another telecommunications company must state in writing whether the service is intended to be used for intrastate telecommunications for hire, sale, or resale to the general public. If the service is intended for hire, sale, or resale on an intrastate basis, the company must certify in writing, in the same manner as required by RCW 9A.72.085, that it is properly registered with the commission to provide the service.

PART II. ESTABLISHING SERVICE AND CREDIT

NEW SECTION

WAC 480-120-102 Service offered. (1) Classes of service. The classes of service are business and residential. Each local exchange company (LEC) must file with the commission, as part of its tariff or price list, a description of the classes and types of service available to customers in each class. LECs must record for each access line whether local exchange service is residential or business class.

(2) Types of service. LECs must offer, at a minimum, flat-rate local exchange service. In addition, companies may offer service alternatives, such as measured service.

(3) Grade of service. Local exchange service offered by companies must be only one-party service.

NEW SECTION

WAC 480-120-103 Application for service. (1) When contacted by an applicant, or when a company contacts a person, a company must:

(a) Accept and process applications when an applicant for service for a particular location has met all tariff or price list requirements and applicable commission rules;

(b) Establish the due date as the date requested by the applicant but is not required to establish a due date that is fewer than seven business days after the order date. If the company establishes a due date other than the date requested by the applicant, it must inform the applicant of the specific date when service will be provided or state that an estimated due date will be provided within seven business days as required by subsection (2) of this section; and

(c) Maintain a record in writing, or in electronic format, of each application for service, including requests for a change of service.

(2) If the company does not provide the applicant with a due date for installation or activation at the time of application as required in subsection (1)(b) of this section, the company must state the reason for the delay. Within seven business days of the date of the application, the company must provide the applicant with an estimated due date for installation or activation. The standards imposed by WAC 480-120-105 and 480-120-112 are not altered by this subsection.

(3) When the company informs the customer that installation of new service orders requires on-premises access by the company, the company must offer the customer an opportunity for an installation appointment that falls within a four-hour period.

(4) When the application for service requires a service extension as defined in WAC 480-120-071, the requirement of subsection (1)(b) of this section does not apply and, for the purpose of determining when an extension must be completed, the order date is the application date or six weeks prior to the date the customer makes the required initial payment, whichever is later.

When a service extension is required, the company must inform the customer within six weeks of a request for service that it will construct the extension and also request payment from the customer according to WAC 480-120-071, or inform the customer in writing that it will request an exemption from the commission pursuant to WAC 480-120-071(7).

In the event a company informs the customer it will request an exemption, the company must submit the request to the commission within four weeks of informing the customer of its decision. A copy of the exemption request must be mailed to the customer not later than the date the request is filed.

NEW SECTION

WAC 480-120-104 Information to consumers. (1) Except for services provided under contract pursuant to WAC 480-80-241 (Filing contracts for services classified as competitive), each company must provide an applicant for initial service with a confirming notice or welcome letter, either in writing or with permission of the customer, electronically. The confirming notice or welcome letter must be provided to the applicant or customer no later than fifteen days after installation of service and must provide, at a minimum:

(a) Contact information for the appropriate business office, including a toll-free telephone number, a TTY number, mailing address, repair number, electronic address if applicable, and business office hours, that the customer can contact if they have questions;

(b) Confirmation of the services being provided to the customer by the company, and the rate for each service. If the service is provided under a banded rate schedule, the current rate, including the minimum and maximum at which the customer's rate may be shifted; and

(c) If the application is for local exchange service, the LEC must either provide information required in WAC 480-120-251 (6)(a) through (f) or must inform the customer that

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additional information pertaining to local exchange service may be found in the consumer information guide of the local telephone directory as required in WAC 480-120-251.

(2) Except for services provided under contract pursuant to WAC 480-80-241 (Filing contracts for services classified as competitive), each company must provide each customer a confirming notice, either in writing or, with permission of the customer, electronically, within fifteen days of initiating a material change in service which results in the addition of a service, a change from one rate schedule to another, or a change in terms or conditions of an existing service. The confirming notice must provide at a minimum, the following information in clear and conspicuous language:

(a) Contact information for the appropriate business office, including a toll-free telephone number, a TTY number, and business office hours, that customers can contact if they have questions; and

(b) The changes in the service(s), including, if applicable, the rate for each service.

(3) When a LEC is acting as an executing carrier under WAC 480-120-147, it must make the following information available upon request:

(a) The name of the intraLATA and interLATA interexchange company to which the customer's account is currently subscribed; and

(b) A minimum of six months' account history, when available, including the date of the changes and the name of the interexchange company.

(4) When an applicant or customer contacts the LEC to select or change an interexchange company, the LEC must notify the carrier of the customer's selection or recommend that the customer contact the chosen interexchange company to confirm that an account has been or is being established by the interexchange carrier for the applicant.

NEW SECTION

WAC 480-120-105 Company performance standards for installation or activation of access lines. (1) Except as provided in subsection (2) of this section, when an application is made consistent with WAC 480-120-103 (Application for service), the following standards for installation or activation of service apply:

(a) The local exchange company (LEC) must complete, within five business days after the order date, or by a later date requested by a customer, ninety percent of all orders of up to the initial five access lines received during each month;

(b) The LEC must complete ninety-nine percent of all orders of up to the initial five access lines received during each calendar quarter within ninety days after the order date, or by a later date requested by a customer; and

(c) The LEC must complete one hundred percent of all orders for access lines within one hundred eighty days after the order date, or by a later date requested by a customer.

(2) For purposes of determining the amount of penalties that shall apply if a LEC fails to complete the percent of orders required by subsection (1)(a), (b), and (c) of this section, each order that the LEC fails to complete in excess of the highest number of uncompleted orders that would not have triggered a violation shall be a separate violation. For example, using the ninety-nine percent completion rate under subsection (1)(b) of this section, if the LEC received one hundred orders in a quarter, and it completed only ninety-four of those orders, it would be deemed to have committed five separate violations, because it completed five less than required by the section. Violations of subsection (1)(a), (b), and (c) of this section will be determined separately, and each order is subject to all three parts.

(3) The timelines set forth in subsection (1)(a) of this section do not apply when force majeure prevents the installation or activation of service; and the timelines set forth in subsection (1) of this section do not apply when customer-provided special equipment is necessary; when a later installation or activation is permitted under WAC 480-120-071; or when the commission has granted an exemption from the requirement for installation or activation of a particular order under WAC 480-120-015. These orders will be excluded from both the numerator and denominator in calculating the percentage of orders completed.

(4) Unless the commission orders otherwise, subsection (1)(a) and (b) do not apply to LECs that are competitively classified under RCW 80.36.320 and do not offer local exchange service by tariff.

NEW SECTION

WAC 480-120-112 Company performance for orders for nonbasic services. (1) Except as provided in subsection (2) of this section, the local exchange company (LEC) must complete orders for all nonbasic services within one hundred eighty days of the order date or by a later date requested by a customer.

(2) The timeline set forth in subsection (1) of this section does not apply when a later installation or activation is permitted under WAC 480-120-071 (Extending service), or when the commission has granted an exemption from the requirement for installation or activation of a particular order under WAC 480-120-015.

NEW SECTION

WAC 480-120-122 Establishing credit—Residential services. (1) This section applies only to the provision of residential services. A local exchange company (LEC) may require an applicant or customer of residential basic service to pay a local service deposit only in accordance with (a) through (e) of this subsection. For a LEC that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering.

(a) If the applicant or customer has received two or more delinquency notices for basic service during the last twelve month period with that company or another company;

(b) If the applicant or customer has had basic service discontinued by any telecommunications company;

(c) If the applicant or customer has an unpaid, overdue basic service balance owing to any telecommunications company;

(d) If the applicant's or customer's service is being restored following a discontinuation for nonpayment or

acquiring service through deceptive means under WAC 480-120-172; or

(e) If the applicant or customer has been disconnected for taking service under deceptive means as described in WAC 480-120-172.

(2) A LEC may, if provided for in its tariff or price list, require an applicant or customer of ancillary services to demonstrate satisfactory credit by reasonable means or pay a deposit consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit for ancillary services.

(3) An interexchange company may, if provided for in its tariff or price list, require an applicant or customer of interexchange services to demonstrate satisfactory credit by reasonable means or pay a deposit consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit for interexchange services.

(4) When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(5) When an applicant or customer is required to pay a basic service deposit or an interexchange deposit, but is unable to pay the entire amount in advance of connection or continuation of service, the following will apply:

(a) The customer may pay fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; or

(b) Where technology permits, the applicant or customer must be allowed the option of accepting toll-restricted basic service in lieu of payment of the deposit. A company must not charge for toll restriction when it is used as an alternative to a deposit.

A company must remove toll restriction unless the customer requests to retain it when a customer makes full payment of the requested interexchange carrier deposit or pays fifty percent of the requested deposit and enters into payment arrangements as provided for in (a) of this subsection.

(6) A company may require an applicant or customer to pay a deposit equal to two months' charges for ancillary service before providing or continuing ancillary services.

(7) A company may require an applicant or customer to pay a deposit if it finds that service was provided initially without a deposit based on incorrect information and the customer otherwise would have been required to pay a deposit.

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice to the customer listing the reason(s) for the request, the date the deposit must be paid, and the actions the company may take if the deposit is not paid.

(b) Except for circumstances described in subsection (8) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery, if the notice is delivered in person to the customer.

(8)(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay unbilled toll charges or pay a new or additional deposit amount when the customer's toll charges exceed thirty dollars, or exceed customary use over the previous six months by twenty dollars or by twenty percent, whichever is greater. A company may toll-restrict a customer's services if the customer is unable pay the toll or deposit amount.

(b) When a customer has exceeded the toll levels outlined above in this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in toll restriction of the customer's service. The company must give the customer the option to pay one of the following:

(i) All outstanding toll charges specified in the notice; or

(ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or

(iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.

(c) When an applicant does not have a customary utilization amount from a previous service, the company may request that the applicant estimate the greatest monthly toll amount the applicant expects to use. If the company asks for an estimate, it must explain that if the customer's toll charges exceed the amounts in (a) of this subsection, the company may toll restrict or require a deposit as permitted in this subsection.

NEW SECTION

WAC 480-120-123 Establishing credit—Business services. (1) As set forth in this section, a company may require a business applicant or customer to demonstrate satisfactory credit by reasonable means appropriate under the circumstances.

(2) **Amount of deposit.** When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(3) **Deposit payment.** Companies may withhold regulated services until the deposit amount associated with such services is paid in full.

(4) **Deposit requirement notice.**

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice of the reasons for the request in writing to the customer, state the date the deposit

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must be paid, and the actions the company may take if the deposit is not paid.

(b) Except for circumstances described in subsection (5) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery if the notice is delivered in person to the customer.

(5) **Deposit request for high toll.**

(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay a new or additional deposit amount to advanced toll charges when the customer's toll charges exceed the amount currently held as an interexchange deposit, or exceed customary use over the previous six months by twenty dollars or by twenty percent, whichever is greater. A company may toll restrict a customer's services if the customer is unable pay the toll or deposit amount.

(b) When a customer has exceeded the toll levels outlined in (a) of this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in toll restriction of the customer's service. The customer must be given the option to pay one of the following:

(i) All outstanding toll charges specified in the notice;

(ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or

(iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.

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NEW SECTION

WAC 480-120-124 Guarantee in lieu of deposit. When a residential applicant or customer cannot establish credit or cannot pay a deposit or deposit extended payments, the applicant or customer may furnish a guarantor who will secure payment of bills for service requested in a specified amount not to exceed the amount of required deposit. The company may require that the guarantor:

(1) Reside in the state of Washington;

(2) Currently have service with the company requesting the deposit; and

(3) Have an established satisfactory payment history for each class of service being guaranteed.

NEW SECTION

WAC 480-120-128 Deposit administration. (1) **Transfer of deposit.** A company must transfer a customer's deposit, less any outstanding balance, from the account at one service address to another service address, when a customer moves to a new address, is required to pay a deposit, and continues to receive service from that company.

(2) **Interest on deposits.** Companies that collect customer deposits must pay interest on those deposits calculated:

(a) For each calendar year, at the rate for the one-year Treasury Constant Maturity calculated by the U.S. Treasury, as published in the Federal Reserve's Statistical Release H.15 on January 15 of that year. If January 15 falls on a nonbusiness day, the company will use the rate posted on the next following business day; and

(b) From the date of deposit to the date of refund or when applied directly to the customer's account.

(3) **Refunding deposits for residential services.** Companies must refund deposits, plus accrued interest, less any outstanding balance, to a customer when:

(a) A customer terminates service or services for which a deposit is being held.

A company is not required to refund an amount held on deposit when a customer requests a discontinuation of service or services but requests to establish similar service with a company for which the current deposit holder also provides billing and collection service. The new provider must have authority with the commission to collect deposits; or

(b) The customer has paid for service for twelve consecutive months in a prompt and satisfactory manner as evidenced by the following:

(i) The company has not issued a discontinuation notice against the customer's account for nonpayment during the last twelve months; and

(ii) The company has sent no more than two delinquency notices to the customer in the last twelve months.

(c) A company may apply a deposit refund to a customer's account or, upon customer request, must provide the refund in the form of a check issued and mailed to the customer no later than thirty days after satisfactory payment history is established or thirty days after the date the closing bill is issued when service is terminated.

NEW SECTION

WAC 480-120-132 Business offices. Each company must provide business offices or customer service centers that are accessible by telephone or in person. A business office or customer service center that serves more than one exchange must provide toll-free calling from each exchange to the office. Each business office or customer service center must be staffed by qualified personnel who can provide information relating to all services and rates, accept and process applications for service, explain charges on customers' bills, adjust charges made in error, and generally act as representatives of the company.

NEW SECTION

WAC 480-120-133 Response time for calls to business office or repair center during regular business hours. (1) Calls placed to a company's business or repair center during regular business hours must be answered either by a live representative or an automated call answering system.

(2) Companies that use an automated answering system must comply with the following requirements:

(a) Each month, the average time until the automated system answers a call must not exceed thirty seconds; and

(b) The automated system must provide a caller with an option to speak to a live representative within the first sixty seconds of the recorded message, or it must transfer the caller to a live representative within the first sixty seconds.

(i) A company may provide the live representative option by directing the caller to take an affirmative action (e.g., select an entry on the telephone) or by default (e.g., be transferred when the caller does not select an option on the telephone).

(ii) The recorded message must clearly describe the method a caller must use to reach a live representative.

(c) Each month, the average time until a live representative answers a call must not exceed sixty seconds from the time a caller selects the appropriate option to speak to a live representative.

(3) Companies that do not use an automated answering system must answer at least ninety-nine percent of call attempts, each month, within thirty seconds.

NEW SECTION

WAC 480-120-146 Changing service providers from one local exchange company to another. When a customer changes service providers from one local exchange company (LEC) to another, the LEC providing existing service to the customer must not discontinue service until it receives confirmation of activation of new service from the new service provider. The LEC providing new service must supply prompt notice of activation. The requirements of this section do not apply if the customer submitted the cancellation order directly to the LEC providing existing service.

NEW SECTION

WAC 480-120-147 Changes in local exchange and intrastate toll services. (1) **Verification of orders.** A local exchange or intrastate toll carrier that requests on behalf of a customer that the customer's carrier be changed, and that seeks to provide retail services to the customer (submitting carrier), may not submit a change-order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the procedures in (a) through (c) of this subsection:

(a) The company has obtained the customer's written or electronic authorization to submit the order (letter of agency). The letter of agency must be a separate electronic form, located on a separate screen or web page, or a separate written document (or easily separable document) containing only the authorizing language described in (a)(i) through (vi) of this subsection, having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency, whether written or electronic, must be signed and dated by the customer of the telephone line(s) requesting the preferred carrier change. The letter of agency shall not be combined on the same document or on the same screen or web page with inducements of any kind; however, it may be combined with checks that contain only the required letter of agency language as prescribed in (a)(i) through (vi) of this subsection, and the necessary information to make the check a negotiable instrument. The check may not contain any promotional language or material. It must contain, in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a preferred carrier change by signing the check. Letter-of-agency language must be placed near the signature line on the back of the check. Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the customer. If any portion of a letter of agency is translated into another language, then all portions must be translated into that language, as well as any promotional materials, oral descriptions or instructions provided with the letter of agency. The letter of agency must confirm the following information from the customer:

(i) The customer billing name, billing telephone number and billing address and each telephone number to be covered by the change order;

(ii) The decision to change;

(iii) The customer's understanding of the change fee;

(iv) That the customer designates (name of carrier) to act as the customer's agent for the preferred carrier change;

(v) That the customer understands that only one telecommunications carrier may be designated as the customer's interstate preferred carrier; that only one telecommunications carrier may be designated as the customer's interLATA preferred carrier; and that only one telecommunications carrier may be designated as the customer's local exchange provider, for any one telephone number. The letter of agency must contain a separate statement regarding the customer's choice for each preferred carrier, although a separate letter of agency for each choice is not necessary; and

(vi) Letters of agency may not suggest or require that a customer take some action in order to retain the current preferred carrier.

(b) The submitting carrier has obtained the customer's authorization, as described in (a) of this subsection, electronically, by use of an automated, electronic telephone menu system. This authorization must be placed from the telephone number(s) for which the preferred carrier is to be changed and must confirm the information required in (a)(i) through (vi) of this subsection.

Telecommunications companies electing to confirm the preferred carrier change electronically must establish one or more toll free telephone numbers exclusively for that purpose.

Calls to the number(s) must connect a customer to a voice response unit, or similar device, that records the required information regarding the change, including recording the originating automatic number identification (ANI).

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the change order that confirms and includes appropriate verification data (e.g., the customer's date of birth). The independent third party must not be owned, managed, controlled or directed by the carrier or the carrier's marketing agent; and must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent. The content of the verification must include clear and unambiguous confirma-

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tion that the customer has authorized a preferred carrier change.

(2) Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll) that carrier must obtain separate authorization, and separate verification, from the customer for each service sold, although the authorizations may be made within the same solicitation.

(3) The documentation regarding a customer's authorization for a preferred carrier change must be retained by the submitting carrier, at a minimum, for two years to serve as verification of the customer's authorization to change his or her telecommunications company. The documentation must be made available to the customer and to the commission upon request and at no charge. Documentation includes, but is not limited to, entire third-party-verification conversations and, for written verifications, the entire verification document.

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(4) **Implementing order changes.** An executing carrier may not verify directly with the customer the submission of a change in a customer's selection of a provider received from a submitting carrier. The executing carrier must comply promptly, without any unreasonable delay, with a requested change that is complete and received from a submitting carrier. An executing carrier is any telecommunications carrier that affects a request that a customer's carrier be changed.

This section does not prohibit any company from investigating and responding to any customer-initiated inquiry or complaint.

(5) **Preferred carrier freezes.** A preferred carrier freeze prevents a change in a customer's preferred carrier selection unless the customer gives the carrier from whom the freeze was requested express consent. Express consent means direct, written, electronic, or oral direction by the customer. All local exchange companies (LECs) must offer preferred carrier freezes. Such freezes must be offered on a nondiscriminatory basis to all customers. Offers or solicitations for such freezes must clearly distinguish among telecommunications services subject to a freeze (e.g., local exchange, intraLATA toll, and interLATA toll). The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested. Separate authorizations may be contained within a single document.

(a) All LECs must notify all customers of the availability of a preferred carrier freeze, no later than the customer's first telephone bill, and once per year must notify all local exchange service customers of such availability on an individual customer basis (e.g., bill insert, bill message, or direct mailing).

(b) All carrier-provided solicitation and other materials regarding freezes must include an explanation, in clear and neutral language, of what a preferred carrier freeze is, and what services may be subject to a freeze; a description of the specific procedures to lift a preferred carrier freeze; an explanation that the customer will be unable to make a change in carrier selection unless he or she lifts the freeze; and an explanation of any charges incurred for implementing or lifting a preferred carrier freeze.

(c) No local exchange carrier may implement a preferred carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with the procedures outlined for confirming a change in preferred carrier, as described in subsections (1) and (2) of this section.

(d) All LECs must offer customers, at a minimum, the following procedures for lifting a preferred carrier freeze:

(i) A customer's written or electronic authorization stating the customer's intent to lift the freeze;

(ii) A customer's oral authorization to lift the freeze. This option must include a mechanism that allows a submitting carrier to conduct a three-way conference call with the executing carrier and the customer in order to lift the freeze. When engaged in oral authorization to lift a freeze, the executing carrier must confirm appropriate verification data (e.g., the customer's date of birth), and the customer's intent to lift the freeze.

(e) A LEC may not change a customer's preferred carrier if the customer has a freeze in place, unless the customer has lifted the freeze in accordance with this subsection.

(6) **Remedies.** In addition to any other penalties provided by law, a submitting carrier that requests a change in a customer's carrier without proper verification as described in this rule shall receive no payment for service provided as a result of the unauthorized change and shall promptly refund any amounts collected as a result of the unauthorized change. The customer may be charged, after receipt of the refund, for such service at a rate no greater than what would have been charged by its authorized telecommunications company, and any such payment shall be remitted to the customer's authorized telecommunications company.

(7) **Exceptions.** Companies transferring customers as a result of a merger, purchase of the company, or purchase of a specific customer base are exempt from subsections (1) through (6) of this section if the companies comply with the following conditions and procedures:

(a) The acquiring company must provide a notice to each affected customer at least thirty days before the date of transfer. Such notice must include the following information:

(i) The date on which the acquiring company will become the customer's new provider;

(ii) The rates, terms, and conditions of the service(s) to be provided upon transfer, and the means by which the acquiring company will notify the customer of any change(s) to those rates, terms, and conditions;

(iii) That the acquiring company will be responsible for any carrier change charges associated with the transfer;

(iv) The customer's right to select a different company to provide the service(s);

(v) That the customer will be transferred even if the customer has selected a "freeze" on his/her carrier choices, unless the customer chooses another carrier before the transfer date;

(vi) That, if the customer has a "freeze" on carrier choices, the freeze will be lifted at the time of transfer and the customer must "refreeze" carrier choices;

(vii) How the customer may make a complaint prior to or during the transfer; and

(viii) The toll-free customer service telephone number of the acquiring carrier.

(b) The acquiring company must provide a notice to the commission at least thirty days before the date of the transfer. Such notice must include the following information:

(i) The names of the parties to the transaction;

(ii) The types of services affected;

(iii) The date of the transfer; and

(iv) That the company has provided advance notice to affected customers, including a copy of such notice.

(c) If after filing notice with the commission any material changes develop, the acquiring company must file written notice of those changes with the commission no more than ten days after the transfer date announced in the prior notice. The commission may, at that time, require the company to provide additional notice to affected customers regarding such changes.

NEW SECTION

WAC 480-120-148 Canceling registration. A company canceling its registration as a telecommunications company must notify the commission in writing and, as applicable, comply with the requirements of WAC 480-120-083 (Cessation of telecommunications services). It remains subject to commission jurisdiction with respect to its provision of telecommunications service during the time it was registered, and it must file an annual report and pay regulatory fees for the period during which it was registered.

PART III. PAYMENTS AND DISPUTES

NEW SECTION

WAC 480-120-161 Form of bills. (1) **Bill frequency.** Companies must offer customers, at a minimum, the opportunity to receive billings on a monthly interval, unless subsection (11) of this section applies.

(2) **Length of time for payment of a bill.** Bill due dates must reflect a date which at a minimum allows a customer fifteen days from the date of mailing for payment.

(a) Upon showing of good cause, a customer may request and the company must allow the customer to pay by a date that is not the normally designated payment date on their bill. Good cause may include, but not be limited to, adjustment of the billing cycle to parallel receipt of income.

(i) A company may not assess late payment fees for the period between the regularly scheduled due date and the customer-chosen due date so long as the customer makes payment in full by the customer-chosen due date.

(ii) A company may refuse to establish a preferred payment date that would extend the payment date beyond the next normally scheduled payment or due date.

(b) If a company is delayed in billing a customer, the company must offer arrangements upon customer request or upon indication that a payment arrangement is necessary, that are equal to the length of time the bill is delayed beyond the regularly scheduled billing interval (e.g., if the bill includes two months delayed charges, the customer must be allowed to pay the charges over two months).

Companies may not charge a customer late payment fees on the delayed charges during the extended payment period.

(3) **Form of bill.** With the consent of the customer, a company may provide regular billings in electronic form if the bill meets all the requirements of this rule. The company must maintain a record of the customer's request, and the customer may change from electronic to printed billing upon request.

(4) **Bill organization.** Telephone bills must be clearly organized, and must comply with the following requirements:

(a) Bills may only include charges for services that have been requested by the customer or other individuals authorized to request such services on behalf of the customer, and that have been provided by the company;

(b) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill;

(c) Where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider; and

(d) The telephone bill must clearly and conspicuously identify any change in service provider, including identification of charges from any new service provider.

For purposes of this subsection, "new service provider" means a service provider that did not bill the subscriber for service during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the subscriber that will result in periodic charges on the subscriber's bill, unless the service is subsequently canceled.

For purposes of this subsection, "clearly and conspicuously" means notice that would be apparent to the reasonable customer.

(5) **Descriptions of billed charges.**

(a) The bill must include a brief, clear, nonmisleading, plain language description of each service for which a charge is included. The bill must be sufficiently clear in presentation and specific enough in content so that the customer can determine that the billed charges accurately reflect the service actually requested and received, including individual toll calls and services charged on a per-occurrence basis.

(b) The bill must identify and set out separately, as a component of the charges for the specific service, any access or other charges imposed by order of or at the direction of the Federal Communications Commission (FCC).

(c) The bill must clearly delineate the amount or the percentage rate and basis of any tax assessed by a local jurisdiction.

(6) **Charges for which service can be discontinued.** Where a bill contains charges for basic service, in addition to other charges, the bill must distinguish between charges for which nonpayment will result in loss of basic service. The bill must include telephone numbers by which subscribers may inquire or dispute any charges on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's

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complaints on the carrier's behalf. Where the subscriber does not receive a paper copy of the customer's telephone bill, but instead accesses that bill only by e-mail or internet, the carrier may comply with this requirement by providing on the bill an e-mail or web site address. Each carrier must make a business address available upon request from a consumer.

(7) **Itemized statement.** A company must provide an itemized statement of all charges when requested by a customer, including, but not limited to, the following:

(a) Rates for individual services;

(b) Calculations of time or distance charges for calls, and calculations of any credit or other account adjustment; and

(c) When itemizing the charges of information providers, the name, address, telephone number, and toll-free number, if any, of the providers.

(8) **Methods of payment.**

(a) Companies must, at a minimum, allow the following methods of payment: Cash, certified funds (e.g., cashier check or money order), and personal checks.

(b) Upon written notice to a customer, companies may refuse to accept personal checks when that customer has tendered two or more nonsufficient-funds checks within the last twelve months.

(9) **Billing companies.** A company may bill regulated telecommunications charges only for companies properly registered to provide service within the state of Washington or for billing agents. The company must, in its contractual relationship with the billing agent, require the billing agent to certify that it will submit charges only on behalf of properly registered companies; and that it will, upon request of the company, provide a current list of all companies for which it bills, including the name and telephone number of each company. The company must provide a copy of this list to the commission for its review upon request.

(10) **Crediting customer payments.** Unless otherwise specified by the customer, payments that are less than the total bill balance must be credited first to basic service, with any remainder credited to any other charges on the bill.

For purposes of this subsection, basic service includes associated fees and surcharges such as FCC access charges. Basic service does not include ancillary services such as caller identification and custom calling features.

(11) **Exemptions from this rule.** Prepaid calling card services (PPCS) are exempt from subsections (1) through (10) of this section.

NEW SECTION

WAC 480-120-162 Cash and urgent payments. (1) Each local exchange company (LEC) must establish and maintain payment agencies for receipt of cash and urgent payments. For purposes of this section, a payment agency may be a business office of the company that accepts customer payments. An urgent payment is a payment that the company requires upon threat of discontinuation of service. Each LEC must use the following criteria when determining the number of payment agencies required:

(a) Exchanges serving over seventy-five thousand access lines must have a minimum of one payment agency within the exchange for every fifty thousand access lines.

(b) Exchanges serving twenty-five thousand to seventy-five thousand access lines must have a minimum of one payment agency within the exchange.

(c) LECs that do not have exchanges that meet the criteria in (a) or (b) of this subsection must have at least one payment agency.

(2) The payment agency must clearly post and maintain regular business hours and may be supported by the same personnel as the business office or customer service center. It must not assess a charge from the applicant or customer for processing a transaction. Companies may not contract with a payment agent that charges a fee, surcharge, or any other similar charge to customers for the provided services and transactions required by subsection (1) of this section. Companies may contract with additional payment agents to process required transactions and may permit those additional agents to charge customers not more than $1.00 for processing a transaction.

(3) A LEC may request a waiver of subsection (1) of this section. At a minimum, as a condition for waiver, the petitioner must demonstrate that applicants and customers have a reasonable opportunity to make cash and urgent payments.

(4) At least thirty days before a planned closure of any payment agency, business office, or customer service center that accepts cash and urgent payments and does not charge a fee for processing bill payments, a LEC must provide the commission, in writing, the exchange(s) and communities affected by the closing, the date of the closing, a list of other methods and locations available for making cash and urgent payments, and a list of other methods and locations for obtaining business office and customer service center services.

A LEC may not close a payment location under this subsection until alternatives for making cash and urgent payments have been provided to affected customers.

(5) When a LEC is made aware of the fact that a payment agency that does not charge a fee for processing bill payments has either closed without company knowledge or is refusing to accept company payments, it must provide alternatives for making cash and urgent payments until a replacement station has been established. The LEC must establish a replacement station within the same geographic area within sixty days. If it is unable to do so, it must advise the commission of its efforts and progress to date every thirty days thereafter until a replacement is established.

NEW SECTION

WAC 480-120-163 Refunding an overcharge. A company must refund overcharges to the customer with interest, retroactive to the time of the overcharge, up to a maximum of two years, as set forth in RCW 80.04.230 and 80.04.240. This rule does not limit other remedies available to customers.

NEW SECTION

WAC 480-120-164 Pro rata credits. Every telecommunications company must provide pro rata credits to customers of a service whenever that service is billed on a monthly basis and is not available for more than a total of twenty-four hours in a billing cycle. The minimum amount of pro rata credit a company must provide is the monthly cost of service divided by thirty, then multiplied by the number of days or portions of days during which service was not provided.

For example:

(Cost of Service)

_____ X (Number of days or portions of days without service) = Pro Rata Credit

(Thirty)

Pro rata credits are not required when force majeure, customer premises equipment, or inside wiring is the proximate cause for the unavailability of a service. If a company provides a credit amount for unavailable service that is equal to or greater than the credit amount required by this rule, the amount of credit required by this rule need not be provided.

NEW SECTION

WAC 480-120-165 Customer complaints. (1) Each company must have adequate personnel available during regular business days to address customer complaints.

(2) When a company receives an oral or written complaint from an applicant or customer regarding its service or regarding another company's service for which it provides billing, collection, or responses to inquiries, the company must acknowledge the complaint as follows:

(a) Provide the name of the company's contact to the complainant;

(b) Investigate the complaint promptly;

(c) Report the results of the investigation to the complainant;

(d) Take corrective action, if warranted, as soon as appropriate under the circumstances;

(e) Inform the complainant that the decision may be appealed to a supervisor at the company; and

(f) Inform the complainant, if still dissatisfied after speaking to a supervisor, of the right to file a complaint with the commission and provide the commission address and toll-free telephone number.

(2) When a company receives a complaint from an applicant or customer regarding another company's service for which it provides only billing service, the company must provide the complainant a toll-free number to reach the appropriate office for the other company that is authorized to investigate and take corrective action to resolve the dispute or complaint.

(3) The company must insure that records and information about complaints and disputes are used only for the purposes of resolving the complaint or dispute and improving service and practices.

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 480-120-166 Commission-referred complaints. (1) Each company must keep a record of all complaints concerning service or rates for at least three years and, on request, make them readily available for commission review. The records must contain complainant's name and address, date and the nature of the complaint, action taken, and final result.

(2) Each company must have personnel available during regular business days to respond to commission staff.

(3) Applicants, customers, or their authorized representatives, may file with the commission an informal complaint as described in WAC 480-09-150 or a formal complaint against a company when there are alleged violations of statutes, administrative rules, or tariffs as provided by WAC 480-09-420 and 480-09-500.

(4) When the commission staff refers an informal complaint to a company, the company must:

(a) Stop any pending action involving the issues raised in the complaint provided any amounts not in dispute are paid when due (e.g., if the complaint involves a disconnect threat or collection action, the disconnect or collection must be stopped);

(b) Thoroughly investigate all issues raised in the complaint and provide a complete report of the results of its investigation to the commission, including, if applicable, information that demonstrates that the company's action was in compliance with commission rules; and

(c) Take corrective action, if warranted, as soon as appropriate under the circumstances.

(5) Commission staff will ask the customer filing the informal complaint whether the customer wishes to speak directly to the company during the course of the complaint, and will relay the customer's preference to the company at the time staff opens the complaint.

(6) The company must report the results of its investigation of service-affecting informal complaints to commission staff within two business days from the date commission staff passes the complaint to the company. Service-affecting complaints include, but are not limited to, nonfunctioning or impaired services (i.e., disconnected services or those not functioning properly).

(7) The company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes.

(8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission

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staff for additional information on pending informal complaints within three business days.

(9) The company must keep commission staff informed when relevant changes occur in what has been previously communicated to the commission and when there is final resolution of the informal complaint.

(10) An informal complaint opened with the company by commission staff may not be considered closed until commission staff informs the company that the complaint is closed.

(11) The company must provide information requested by staff regarding any informal complaint in accordance with subsections (6) and (7) of this section until such time as staff informs the company that the complaint is closed.

NEW SECTION

WAC 480-120-167 Company responsibility. When a customer informs the commission that the customer has identified a problem with service or billing or other matters and the customer has been told by two or more companies that the problem is not the responding company's responsibility but another company's responsibility, commission staff will inform the companies.

Once the commission has contacted the companies, the companies must confer with each other within three business days and determine which company will take the lead responsibility to resolve the customer's problem. The company accepting lead responsibility must contact the commission and begin resolution of the problem on the first business day following the three business days allotted by this subsection for a conference between the companies.

Companies must confer, allocate responsibility between the companies, and the company with lead responsibility must contact the commission, as required by this section. After conferring, if the companies cannot resolve the matter and neither one will accept the lead, each company must contact the commission and report the status of the dispute within five days of the date commission staff contacted the companies. The report must contain detailed explanations of the company's position.

PART IV. DISCONTINUING AND RESTORING SERVICE

NEW SECTION

WAC 480-120-171 Discontinuing service—Customer requested. (1) This section applies to residential, business, and resale services discontinued at the customer's request. The customer must notify the company of the date the customer wishes to discontinue service. If the customer moves from the service address and fails to request discontinuation of service, the customer must pay for service taken at the service address until the company can confirm that the customer has vacated the premises or a new party has taken responsibility for the service.

(2) A company must stop a customer's monthly recurring or minimum charges effective on the requested discontinuation date. The customer may be held responsible for use charges incurred after the requested discontinuation date when the company can prove that the calls were made or authorized by the customer of record. This section does not preclude a company from collecting minimum service commitment penalties when a customer disconnects service prior to fulfilling the tariff, price list, or contract commitment.

(3) The company must discontinue service as follows:

(a) For services that do not require a field visit, the company must discontinue service not later than one business day from the date requested by the customer; and

(b) For services that require a premises visit to complete the request, the company must disconnect service no later than two business days from the date requested by the customer.

(4) When a customer directs the local exchange company (LEC) to discontinue service, the LEC must either notify the customer's presubscribed interLATA and intraLATA toll carriers of the discontinuation or inform the customer that it is the customer's obligation to contact those carriers directly.

NEW SECTION

WAC 480-120-172 Discontinuing service—Company initiated. (1) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it finds the customer has performed a deceptive practice by:

(a) Tampering with the company's property;

(b) Using service through an illegal connection;

(c) Unlawfully using service or using service for unlawful purposes; or

(d) Obtaining service in another false or deceptive manner.

(2)(a) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it determines the customer has:

(i) Vacated the premises without informing the company;

(ii) Paid a delinquent balance in response to a delinquency notice as described in subsection (7) of this section with a check or electronic payment that is subsequently dishonored by the bank or other financial institution; or

(iii) Failed to keep payment arrangements agreed upon in response to a delinquency notice as described in subsection (7) of this section.

(b) The company must restore service once the customer has corrected the reason for discontinuance as described in subsection (2)(a) of this section.

(c) The company may require a deposit from a customer that it has disconnected due to the reasons described in subsection (2)(a) of this section.

(3) A company may discontinue service after providing proper notice, or may issue a discontinuation notice, if, and only if, in one or more of the following circumstances:

(a) The company determines the customer has violated a rule, statute, service agreement, filed tariff, or price list;

(b) The company determines the customer has used customer-owned equipment that adversely affects the company's service to its other customers;

(c) The company determines the customer has not paid regulated charges or has not paid a deposit as provided in the tariff or price list of the company or another company with which it has a billing and collection agreement, except for nonpayment of charges incurred from information delivery services as provided for in WAC 480-120-254 or disputed third party-billed charges;

(d) The company is unable to substantiate the identity of the individual requesting service:

(i) Companies must allow the applicant to substantiate identity with one piece of identification chosen from a list, provided by the company, of at least four sources of identification. The list must include a current driver's license or other picture identification;

(ii) Company business offices and payment agencies, required under WAC 480-120-132 and 480-120-162, must provide a means for applicants to provide identification at no charge to the applicant;

(e) The company determines the customer has received service from the company by providing false information, including false statements of credit references or employment, false statement of premises address, use of an alias or false name with intent to deceive, or rotation of service among roommates or persons living together for the purpose of avoiding the debts of one or more persons;

(f) The company determines the customer is receiving service at an address where a former customer is known to reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address and there is evidence that the applicant lived at the address while the overdue, unpaid prior obligation was incurred and helped incur the obligations. However, a company may not deny service if a former customer with an overdue, unpaid prior obligation has permanently vacated the address.

(4) Except as provided in subsections (1), (2), and (3) of this section, a company may discontinue or restrict services only under the following circumstances:

(a) A company may discontinue basic service only for nonpayment of basic service charges;

(b) A company may discontinue ancillary services only for nonpayment of ancillary charges or if the company properly discontinues basic service;

(c) A company may discontinue interexchange access only for nonpayment of interexchange charges or if the company properly discontinues basic service:

(i) At its discretion, the company may permit access to toll-free numbers while a customer's interexchange access service is discontinued or restricted;

(ii) The company may not charge fees for toll restriction when it has discontinued or restricted the customer's interexchange access service under this section;

(d) Companies may not shift a rate plan as a discontinuation method.

(5) When a company discontinues service to a customer, it must also discontinue billing for service as of the date of the discontinuation.

(6) **Medical emergencies.**

(a) When a local exchange company (LEC) has cause to discontinue residential basic service or has discontinued service, it must postpone total service discontinuation or reinstate toll-restricted basic service that permits both making and receiving calls and access to E911 for a grace period of five business days after receiving either oral or written notice of the existence of a medical emergency, as described in (b) of this subsection. The LEC must reinstate service during the same day if the customer contacts the LEC prior to the close of the business day and requests a same-day reconnection. Otherwise, the LEC must restore service by 12:00 p.m. the next business day. When service is reinstated, the LEC cannot require payment of a reconnection charge or deposit before reinstating service but may bill the charges at a later date.

(b) The LEC may require that the customer submit written certification from a qualified medical professional, within five business days, stating that the discontinuation of basic service or restricted basic service would endanger the physical health of a resident of the household. "Qualified medical professional" means a licensed physician, nurse practitioner, or physician's assistant authorized to diagnose and treat the medical condition without supervision of a physician. Nothing in this subsection precludes a company from accepting other forms of certification, but the maximum the company can require is written certification. If the company requires written certification, it may not require more than the following information:

(i) The address of the residence;

(ii) An explanation of how discontinuation of basic service or restricted basic service would endanger the physical health of the resident;

(iii) A statement of how long the condition is expected to last; and

(iv) The title, signature, and telephone number of the person certifying the condition.

(c) The medical certification is valid only for the length of time the medical professional certifies the resident's health would be endangered, but no longer than ninety days unless renewed.

(d) A medical emergency does not excuse a customer from paying delinquent and ongoing charges. The company may require that, within the five-day grace period, the customer pay a minimum of twenty-five percent of the delinquent basic service balance or ten dollars, whichever is greater, and enter into an agreement to pay the remaining delinquent basic service balance within ninety days, and agree to pay subsequent bills when due.

Nothing in this subsection precludes the company from agreeing to an alternate payment plan, but the company must not require the customer to pay more than this section prescribes and must send a notice to the customer confirming the payment arrangements within two business days.

(e) The company may discontinue basic service or restrict basic service without further notice if, within the five-day grace period, the customer fails to provide an acceptable medical certificate or pay the amount required under (d) of this subsection. The company may discontinue basic service or restrict basic service, without further notice, if the customer fails to abide by the terms of the payment agreement.

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(f) The company must ensure that the records of medical emergencies are used or disclosed only for the purposes provided for in this section.

(7) **Discontinuation notice requirements.** The company must provide the customer notice before discontinuing service except as described in subsection (1) of this section, as follows:

(a) Each company must provide a written discontinuation notice to the customer either by first class mail, personal delivery to the customer's service address, or electronically delivered when the company has the technical capability and the customer consents to this delivery method. A company must provide delivered notice by handing the notice to a person of apparent competence in the residence; to a person employed at the place of business of the customer if it is a business account; or attached to the primary door of the residential unit or business office where service is provided if no person is available to receive notice. A company must include the following information, at a minimum, in a discontinuation notice:

(i) A discontinuation date that is not less than eight business days after the date the notice is mailed, transmitted electronically, or personally delivered;

(ii) The amount(s) owing for the service(s) that is subject to discontinuation or restriction;

(iii) A statement that clearly indicates the amount a customer must pay to maintain basic service or restricted basic service, regardless of the full amount owed by the customer;

(iv) Instructions on how to correct the problem to avoid the discontinuation;

(v) Information about any discontinuation or restoration charges that may be assessed;

(vi) Information about how a customer can avoid disconnection under the medical emergency rules described in subsection (6) of this section; and

(vii) The company's name, address, toll-free number, and TTY number where the customer may contact the company to discuss the pending discontinuation of service.

(b) If the company discovers that the information provided on the notice failed to meet the requirements of (a) of this subsection, or if it discovers it provided incorrect information on the notice, the company must restore service and issue a second notice with accurate information as described in this section.

(c) If the company has not discontinued service within ten business days of the first day the discontinuation may be implemented, the discontinuation notice is void, unless the customer and the company have entered into a mutually acceptable payment agreement with payment dates that exceed the ten-day period. Upon a void notice, the company must provide a new discontinuation notice to the customer if it intends to discontinue service at a later date.

(8) In addition to the notice required in subsection (7) of this section, a company must attempt to make personal contact with a customer prior to discontinuing service. Any of the following methods will satisfy the personal contact requirement:

(a) **Delivered notice.** A company must provide delivered notice handing the notice to a person of apparent competence in the residence; to a person employed at the place of business of the customer if it is a business account; or attached to the primary door of the residential unit or business office where service is provided if no person is available to receive notice. The notice must state a scheduled discontinuation date that is not earlier than 5:00 p.m. of the next business day after the date of delivery;

(b) **Electronically issued notice.** If the company has the technical capability to provide electronic notice and the customer has agreed to receive notice in electronic form, the notice sent by the company must state a scheduled discontinuation date that is not earlier than 5:00 p.m. of the second business day after the date of delivery;

(c) **Mailed notice.** The notice mailed by the company may not include a scheduled discontinuation date that is earlier than 5:00 p.m. of the third business day after the date of mailing. The date of mailing is not the first day of the notice period; or

(d) **Telephone notice.** The company must attempt at least two times to contact the customer during regular business hours. If the company is unable to reach the customer on the first attempt, the company must attempt to contact the customer using any business or message number provided by the customer as a contact number. The company must keep a log or record of the calls for a minimum of ninety calendar days showing the telephone number called, the time of the call, and details of the results of each attempted call.

(e) A company need not attempt personal contact as provided for in (a) through (d) of this subsection when the company has had cause, in any two previous billing periods during a consecutive twelve-month period, to attempt such contact and the company has notified the customer in writing that such contact will not be attempted in the future before effecting a discontinuation of services.

(9) Except in case of danger to life or property, companies may not discontinue service on days that it is not fully staffed to discuss discontinuation and reestablish service to the customer on the same or the following day.

(10) When the company has reasonable grounds to believe that service is to other than the party of record, the company must take reasonable efforts to inform the occupants at the service address of the impending discontinuation. Upon request of one or more service users, the company must allow a minimum period of five business days to permit the service user to arrange for continued service.

The company is not required to allow the additional five days when a thorough investigation indicates there is deceptive activity at the service address.

(11) LECs must provide notice of pending local service discontinuation to the secretary, Washington state department of social and health services, and to the customer, where it provides service to a facility with resident patients including, but not limited to, hospitals, medical clinics, or nursing homes. Upon request from the secretary or a designee, the company must allow a delay in discontinuation of no less than five business days from the date of notice so that the department may take whatever steps are necessary in its view to protect the interests of patients living within the facilities.

PERMANENT

(12) **Remedy and appeals.** The company must not discontinue or restrict service while a customer is pursuing any remedy or appeal provided for by these rules, if the customer pays any amounts not in dispute when due and the customer corrects any conditions posing a danger to health, safety, or property. The company must inform the customer of these provisions when the customer is referred to a company's supervisor or the commission.

During a dispute a company may, upon authorization from commission staff, discontinue service when a customer's toll charges substantially exceed the amount of any deposit or customary use and it appears the customer may incur excessive, uncollectible toll charges while an appeal is being pursued. A customer whose service is subject to discontinuation may maintain service pending resolution of any dispute upon payment of outstanding toll charges subject to refund if the dispute is resolved in the customer's favor.

(13) **Payment at a payment agency.** Payment of any past-due amounts to a designated payment agency of the company constitutes payment to the company when the customer informs the company of the payment and the company verifies the payment.

NEW SECTION

WAC 480-120-173 Restoring service after discontinuation. (1) A company must restore a discontinued service when:

(a) The causes of discontinuation not related to a delinquent balance have been removed or corrected. In the case of deceptive practices as described in WAC 480-120-172 (1)(a), this means the customer has corrected the deceptive practice and has paid the estimated amount of service that was taken through deceptive means, all costs resulting from the deceptive use, any applicable deposit, and any delinquent balance owed to the company by that customer for the same class of service. A company may require a deposit from a customer that has obtained service in a deceptive manner as described in WAC 480-120-172 (1)(a). A company is not required to allow six-month arrangements on a delinquent balance as provided for in WAC 480-120-061(7) when it can demonstrate that a customer obtained service through deceptive means in order to avoid payment of a delinquent amount owed to that company;

(b) Payment or satisfactory arrangements for payment of all proper charges due from the applicant, including any proper deposit and reconnection fee, have been made. Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first half of a deposit is paid as provided for in WAC 480-120-122; or

(c) The commission staff directs restoration pending resolution of any dispute between the company and the applicant or customer over the propriety of discontinuation.

(2) After the customer notifies the company that the causes for discontinuation have been corrected, and the company has verified the correction, the company must restore service(s) within the following periods:

(a) Service(s) that do not require a premises visit for reconnection must be restored within one business day; and

(b) Service(s) that requires a premises visit for reconnection must be restored within two business days. Companies must offer customers a four-hour window during which the company will arrive to complete the restoration.

(c) For purposes of this section Saturdays are considered business days.

(3) A company may refuse to restore service to a customer who has been discontinued twice for deceptive practices as described in WAC 480-120-172 (1)(a) for a period of five years from the date of the second disconnection, subject to petition by the customer to the commission for an order requiring restoration of service based on good cause.

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NEW SECTION

WAC 480-120-174 Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility. (1) Local exchange companies (LECs) must restore service for any customer who has had basic service discontinued for nonpayment under WAC 480-120-172 (Discontinuing service—Company initiated) if the customer was not a participant in either Washington telephone assistance program (WTAP) or the federal enhanced tribal lifeline program at the time service was discontinued and if the customer is eligible to participate in WTAP or the federal enhanced tribal lifeline program at the time the restoration of service is requested. To have service restored under this section, a customer must establish eligibility for either WTAP or the federal enhanced tribal lifeline program, agree to continuing participation in WTAP or the federal enhanced tribal lifeline program, agree to pay unpaid basic service and ancillary service amounts due to the LEC at the monthly rate of no more than one and one-half times the telephone assistance rate required to be paid by WTAP participants as ordered by the commission under WAC 480-122-020, agree to toll restriction, or ancillary service restriction, or both, if the company requires it, until the unpaid amounts are paid. Companies must not charge for toll restriction when restoring service under this section.

(2) In the event a customer receiving service under this section fails to make a timely payment for either monthly basic service or for unpaid basic service or ancillary service, the company may discontinue service pursuant to WAC 480-120-172.

(3) Nothing in this rule precludes the company from entering into separate payment arrangements with any customer for unpaid toll charges.

PART VII. TELECOMMUNICATIONS SERVICES

NEW SECTION

WAC 480-120-251 Directory service. (1) A local exchange company (LEC) must ensure that a telephone directory is regularly published for each local exchange it serves, listing the name, address (unless omission is requested), and primary telephone number for each customer who can be called in that local exchange and for whom subscriber list information has been provided.

(2) Any residential customer may request from the LEC a dual-name primary directory listing that contains, in addition to the customer's surname, the customer's given name or initials (or combination thereof) and either one other person with the same surname who resides at the same address or a second name, other than surname, by which the customer is also known, including the married name of a person whose spouse is deceased.

(3) A LEC must provide each customer a copy of the directory for the customer's local exchange area. If the directory provided for in subsection (1) of this section does not include the published listing of all exchanges within the customer's local calling area, the LEC must, upon request, provide at no charge a copy of the directory or directories that contain the published listing for the entire local calling area.

(4) Telephone directories published at the direction of a LEC must be revised at least once every fifteen months, except when it is known that impending service changes require rescheduling of directory revision dates. To keep directories correct and up to date, companies may revise the directories more often than specified.

(5) Each LEC that publishes a directory, or contracts for the publication of a directory, must print an informational listing (LEC name and telephone number) when one is requested by any other LEC providing service in the area covered by the directory. The LEC to whom the request is made may impose reasonable requirements on the timing and format of informational listings, provided that these requirements do not discriminate between LECs.

(6) Telephone directories published at the direction of the LEC must include a consumer information guide that details the rights and responsibilities of its customer. The guide must describe the:

(a) Process for establishing credit and determining the need and amount for deposits;

(b) Procedure by which a bill becomes delinquent;

(c) Steps that must be taken by the company to disconnect service;

(d) Washington telephone assistance program (WTAP);

(e) Federal enhanced tribal lifeline program, if applicable; and

(f) Right of the customer to pursue any dispute with the company, including the appropriate procedures within the company and then to the commission by informal or formal complaint.

NEW SECTION

WAC 480-120-252 Intercept services. (1) Directory error. In the event of an error in the listed number of any customer, the customer's local exchange company (LEC) must, until a new directory is published, intercept all calls to the incorrectly listed number to give the calling party the correct number of the called party, provided it is permitted by existing central office equipment and the incorrectly listed number is not a number currently assigned to another customer. In the event of an error or omission of a customer's white page listing, the company must maintain the customer's correct name and telephone number in the files of its directory assistance operator or, if applicable, provide the corrected information to its directory assistance contractor. A company or its contractor must furnish the correct name and telephone number to a calling party upon request. The company may not charge a customer for intercept services under these circumstances.

(2) Company-directed telephone number change. When a company must change a customer's telephone number, for any reason after a directory is published, and the change is made at the LEC's direction, the LEC must, at no charge, intercept all calls to the former number, if existing central office equipment will permit, for the shorter of thirty days or until a new directory is published that reflects the customer's new number. During that period, the company must provide a calling party the new number for that customer unless the customer has requested that such referral not be made.

(3) Number changes related to changes in service. When a company must change a telephone number to complete a move, change, addition, or deletion of service, except as provided for in this subsection, the LEC must intercept all calls to the former number at no charge, if existing central office equipment will permit, for a minimum period of thirty days or until a new directory is published. The company must provide a calling party the new number for that customer unless the customer has requested that such referral not be made.

Companies are not required to provide intercept service at no charge when the change is requested by a customer at the customer's existing address for reasons other than harassing or misdirected calls.

(4) A company may provide and may bill for intercept services, other than those described in subsections (1) through (3) of this section, that are requested by the customer.

(5) When the company schedules additions or changes to plant or records that necessitate a large group of number changes that are not addressed by a specific commission order, the company must give a minimum of six months' notice to all customers then of record and so affected even though the additions or changes may coincide with a new directory being issued.

NEW SECTION

WAC 480-120-253 Automatic dialing-announcing device (ADAD). (1) An automatic dialing and announcing device (ADAD) is a device that automatically dials telephone numbers and plays a recorded message once a connection is made.

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(2) "Commercial solicitation" means an unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(3) This rule regulates the use of ADADs for purposes other than commercial solicitation. RCW 80.36.400 prohibits the use of an ADAD for purposes of commercial solicitation intended to be received by telephone customers within the state.

(4) This rule does not apply to the use of ADADs by government agencies to deliver messages in emergency situations.

(5) Except for emergency notification as provided for in subsection (6) of this section, an ADAD may be used for calls to telephone customers within the state only if:

(a) The recorded message states the nature of the call, identifies the individual, business, group, or organization for whom the call is being made, and telephone number to which a return call can be placed; and

(b) It automatically disconnects the telephone connection within two seconds after the called party hangs up the receiver.

(c) The ADAD does not dial unlisted telephone numbers (except as provided in this subsection), designated public service emergency telephone numbers as listed in published telephone directories, or any telephone number before 8:00 a.m. or after 9:00 p.m. An ADAD may dial an unlisted number if the ADAD is being used to deliver the name, telephone number, or brief message of a calling party to a called party when the called party's line was busy or did not answer.

(6) An emergency ADAD may be connected to the telephone network and used only if:

(a) The ADAD contains sensors that will react only to a steady tone of at least four seconds duration, broadcasts only on frequencies allocated by the FCC for emergency services, and is designed to prevent accidental triggering of emergency calls;

(b) The ADAD provides some audible tone or message that alerts the user that the device has been activated and will automatically dial the preprogrammed emergency number unless manually deactivated within thirty to forty-five seconds;

(c) The ADAD provides for disconnection within two seconds when the called party performs a predetermined function;

(d) The ADAD satisfies applicable state safety requirements; and

(e) The user registers the instrument with, and receives written approval for, its use from the emergency service entity to which an automatic call would be directed, secures from such entity an approved telephone number or numbers to be programmed into the instrument, and does not program the instrument to dial unlisted numbers, law enforcement numbers, or E911 emergency response numbers.

(7) Before any ADAD may be operated while connected to the telephone network, the potential ADAD user, unless it is a facilities-based LEC using its own facilities, must notify, in writing, the LEC whose facilities will be used to originate calls. The notice must include the intended use of the ADAD equipment, the calendar days and clock hours during which the ADADs will be used, an estimate of the expected traffic volume in terms of message attempts per hour and average length of completed message, and written certification that the equipment can effectively preclude calls to unlisted telephone numbers, designated public service emergency numbers, or any number or series of numbers on a list of telephone customers that may be in the future designated by tariff, regulation, or statute, as customers who are not to receive ADAD calls.

(a) The ADAD user must notify the LEC in writing within thirty days of any changes in the ADAD operation that would result in either an increase or decrease in traffic volume.

(b) For new applications for ADADs, the LEC must review the statement of intended use of ADAD equipment to determine whether there is a reasonable probability that use of the equipment will overload its facilities and may refuse to provide connections for the ADADs or may provide them subject to conditions necessary to prevent an overload.

(8) A LEC may suspend or terminate service to an ADAD user if the LEC determines that the volume of calling originated by the ADAD is degrading the service furnished to others. The LEC must provide at least five days' notice before suspending or terminating service, unless the ADAD creates an overload in the LEC's switching office, in which case it may terminate service immediately, with no prior notice.

(9) If a LEC learns that a customer is using an ADAD in violation of the provisions of this rule, the LEC must suspend or terminate the service of any ADAD user five days after the ADAD user receives a termination notice or immediately, with no prior notice, if use of the ADAD creates overloading in a LEC's switching office.

(10) Each LEC must maintain records of any ADAD equipment a user reports to the LEC as being connected to its facilities. If requested by the commission, the LEC must provide the name of the individual business, group, or organization using the ADAD, their address, and the telephone number or numbers associated with the ADAD.

NEW SECTION

WAC 480-120-254 Telephone solicitation. (1) Local exchange companies (LECs) must notify customers of their rights under RCW 80.36.390 with respect to telephone solicitation.

(2) For purposes of this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or nonprofit company to a residential customer for the purpose of encouraging that person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

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(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

(3) Each LEC must provide notice by annual bill inserts mailed to its residential customers or by conspicuous publication of the notice in the consumer information pages of its directories that clearly informs customers, at a minimum, of at least the following rights under the law:

(a) Within the first thirty seconds, solicitors must identify themselves, the company or organization on whose behalf the call is being made, and the purpose of the call;

(b) Under Washington law residential customers have the right to keep telephone solicitors from calling back. If, at any time during the conversation, the customer requests to not be called again and to have the customer's name and telephone number removed from the calling list used by the company or organization making the telephone solicitation, the then:

The company or organization must not allow a solicitor to call the customer on its behalf for at least one year; and

(c) Companies. The company or organizations must not sell or give the customer's name and or telephone number to another company or organization; and

(d) The office of the attorney general is authorized to enforce this law. In addition, individuals may sue the solicitor for a minimum of one hundred dollars per violation. If the lawsuit is successful, the individual may also recover court and attorney's fees.

(i) To file a complaint, or request more information on the law, the customer may write to the Consumer Protection Division of the Attorney General's Office at 900 Fourth Ave., Suite 2000, Seattle, Washington 98164-1012 or by email at protect@atg.wa.gov. Consumers may also call the division weekdays between 9:00 a.m. and 4:00 p.m. at 1-800-551-4636.

(ii) When the customer files a complaint, the customer should include the name and address of the individual, business, group, or organization, the time the calls were received, the nature of the calls, and any additional information available.

NEW SECTION

WAC 480-120-255 Information delivery services. (1) For purposes of this section:

"Information-delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix.

"Information provider" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information-delivery service.

"Interactive program" means a program that allows a caller, once connected to the information provider's announcement machine, to access additional information by using the caller's telephone.

(2) Local exchange companies (LECs) offering access to information-delivery services must provide each residential customer the opportunity to block access to all information delivery services offered by that company. Companies must fulfill an initial request for blocking free of charge. Companies may charge a tariffed or price listed fee for subsequent blocking requests (i.e., if a customer has unblocked his or her access).

(3) The LEC must inform residential customers of the blocking service through a single-topic bill insert and publication of a notice in a conspicuous location in the consumer information pages of the local white pages telephone directory. The LEC must include in the notice and bill insert the residential customers' rights under the law, the definition of "information delivery services" as defined in subsection (1) of this section, and a statement that these services often are called "900" numbers. The LEC must include notice that customers have the right under Washington law to request free blocking of access to information-delivery services on their residential telephone lines, that blocking will prevent access to information-delivery services from their residential telephone line, that customers may request free blocking of access to information-delivery services on their residential telephone lines by calling the LEC at a specified telephone number, that the Washington utilities and transportation commission is authorized under RCW 80.36.500 to enforce this law, and that customers may contact the commission for further information. The LEC must include the commission's address, toll-free telephone number, and website:

Washington Utilities and Transportation Commission
Consumer Affairs Section
1300 South Evergreen Park Drive, SW
P.O. Box 47250
Olympia, WA 98504-7250
1-800-562-6150
www.wutc.wa.gov

(4) Any company that provides billing, customer service, or collection services for an information provider must require, as a part of its contract for that service, that the information provider include in any advertising or promotion a prominent statement of the cost to the customer of the information service.

NEW SECTION

WAC 480-120-256 Caller identification service. (1) The company that provides caller identification service must provide its retail customers the capability of blocking the delivery of their numbers, names, or locations both on a per call basis and on a per line basis. The company must not charge a monthly fee or per call fee for caller identification blocking. The company must not charge a nonrecurring fee for caller identification blocking:

(a) When the service is requested at the time an access line is connected;

(b) The first time the service is added to an access line; or

(c) The first time the service is removed from an access line.

(2) At least ninety days before offering caller identification services the company must send notice to its customers. The notice must explain caller identification per call blocking, caller identification line blocking, a customer's right to have the numbers blocked one-time free of charge, and an

explanation that call blocking does not apply to the delivery of caller numbers, name, or locations to a 911 or enhanced 911 service, other emergency service, or a customer-originated trace. The notice must include an explanation that call blocking will not work on all services, including, but not limited to, 800 and 900 numbers, long distance, and primary rate interface service.

For purposes of this section, "primary rate interface services" means an ISDN service that uses a digital rate of one thousand five hundred forty-four Mbits per second, whether used like business trunks for digital PBXs with up to twenty-four circuits at a rate of sixty-four kbits per second per circuit, or used as a single circuit at the DS1 rate. A company may offer caller identification service if the company complies with this section.

NEW SECTION

WAC 480-120-257 Emergency services. (1) At least once every twenty-four hours, each local exchange company and each interexchange company owning, operating, or maintaining any portion of any dedicated 911 circuit must manually test, for continuity, the portion of the 911 circuit which it owns, operates, or maintains. This section does not apply to any dedicated 911 circuit, or portion thereof, if either (a), (b), or (c) of this subsection is satisfied:

(a) The circuit is carried by a transmission system (e.g., T-1 carrier) that is equipped with one or more alarms to detect loss of signal continuity;

(b) The circuit is equipped with one or more alarms to detect loss of signal continuity; or

(c) The circuit is automatically tested for signal continuity at least once every twenty-four hours.

(2) Any dedicated 911 circuit found to be defective must be immediately reported to the primary public safety answering point (PSAP) manager, and repairs must be undertaken promptly and pursued diligently by the company that has responsibility for operating or maintaining the circuit, or both. Companies are not required to repair any portion of any dedicated 911 circuit that they do not own, operate, or maintain.

(3) Each company must ensure that all dedicated 911 circuits and associated electronic equipment serving governmental emergency response agencies are clearly identified in the central office and the remote switch.

NEW SECTION

WAC 480-120-261 Operator services. (1) An operator service provider must protect the confidentiality of all communications it carries, processes, or transmits unless otherwise authorized by law.

(2) Each operator service provider must develop procedures its employees must follow to provide operator assistance to customers, ensure that when automated operator services are provided by it, customers can access a live operator, ensure that call timing for operator-assisted calls provided by its operators is accurately recorded, and ensure that its operators receiving 0- and E911 calls are capable of routing calls in a manner that will allow access to the proper local emergency service agency and connecting calls twenty-four hours a day.

NEW SECTION

WAC 480-120-262 Operator service providers (OSPs). (1) Only for the purpose of this section:

"Consumer" means the party paying for a call using operator services. For collect calls, a consumer is both the originating party and the party who receives the call.

"Customer" means the call aggregator or pay phone service provider (PSP) contracting with an operator service provider (OSP) for service, such as hotel, motel, hospital, correctional facility, prison, campus, or similar entity.

"Operator service provider (OSP)" means any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.

"Operator services" means any telecommunications service provided to a call aggregator location that includes automated or live assistance to customers in billing or completing (or both) telephone calls, other than those billed to the number from which the call originated or those completed through an access code used to bill a customer's account previously established with the company.

This section applies to OSPs providing operator services from pay phones and other call aggregator locations. Each OSP must maintain a current list of the customers it serves in Washington and the locations and telephone numbers where the service is provided.

(2) **Posted disclosure.** OSPs must post clearly, legibly, and unobstructed, on or near the front of the pay phone the presubscribed OSP's name, address, and toll-free number, as registered with the commission. This information must be updated within thirty days after a change of OSPs. OSPs must post a notice to consumers that they can access other long distance companies and, in contrasting colors, the commission compliance number for consumer complaints and the following information:

> "If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(3) **Oral disclosure of rates.** This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones or "smart" phones. When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) **Oral rate disclosure message required.** Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark rate in (f) of this subsection, the oral rate disclosure message must comply with the requirements of (b) of this subsection. In all other instances, the oral

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rate disclosure message must comply with the requirements of (c) of this subsection.

(b) **Rate disclosure method when charges do not exceed benchmark.** The oral rate disclosure message must state that the consumer may receive a rate quote and explain the method of obtaining the quote. The method of obtaining the quote may be by pressing a specific key or keys, but no more than two keys, or by staying on the line. If the consumer follows the directions to obtain the rate quote, the OSP must state all rates and charges that will apply if the consumer completes the call.

(c) **Rate disclosure method when rates exceed benchmark.** The oral rate disclosure message must state all rates and charges that will apply if the consumer completes the call.

(d) **Charge must not exceed rate quote.** If the OSP provides a rate quote pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed the quoted rate. If a consumer complains to the commission that the charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

(e) **Completion of call.** Following the consumer's response to any of the above, the OSP must provide oral information advising that the consumer may complete the call by entering the consumer's calling card number.

(f) **Benchmark rates.** An OSP's charges for a particular call exceed the benchmark rate if the sum of all charges, other than taxes and fees required by law to be assessed directly on the consumer, would exceed, for any duration of the call, the sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For example, an OSP's charges would exceed the benchmark rate if any of these conditions were true:

(i) Charges for a one-minute call exceeded one dollar;

(ii) Charges for a five-minute call exceeded three dollars; or

(iii) Charges for a ten-minute call exceeded five dollars and fifty cents.

(4) **Access.** Pay phones must provide access to the services identified in WAC 480-120-263(3).

(5) **Branding.** The OSP must identify audibly and distinctly the OSP providing the service at the beginning of every call, including an announcement to the called party on collect calls. The OSP must ensure that the call begins no later than immediately following the prompt to enter billing information on automated calls and on live and automated operator calls, when the call is initially routed to the operator. The OSP must state the name of the company as registered with the commission (or its registered "doing business as" name) whenever referring to the OSP. When not necessary to identify clearly the OSP, the company may omit terms such as "company," "communications," "incorporated," or "of the Northwest."

(6) **Billing.** The OSP must provide to the billing company applicable call detail necessary for billing purposes and an address and toll-free number for consumer inquiries. The OSP must ensure that consumers are not billed for calls that are not completed. For billing purposes calls must be itemized, identified, and rated from the point of origination to the point of termination. An OSP may not transfer a call to another company unless the call can be billed from the point of origin. The OSP must provide specific call detail upon request, in accordance with WAC 480-120-161 (Form of bills). Charges billed to a credit card need not conform to the call detail requirements of that section.

(7) **Operational capabilities.** The OSP must answer at least ninety percent of all calls within ten seconds of the time the call reaches the company's switch. The OSP must maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, the OSP must determine what caused the blockage and take immediate steps to correct the problem. The OSP must reoriginate calls to another company upon request and without charge when technically able to accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the OSP must provide dialing instructions for the consumer's preferred company.

(8) **Emergency calls.** For purposes of emergency calls, every OSP must be able to transfer the caller into the appropriate E911 system and to the public safety answering point (PSAP) serving the location of the caller with a single keystroke from the operator's console, to include automatic identification of the exact location and address from which the call is being made. The OSP must be able to stay on the line with the emergency call until the PSAP representative advises the operator that they are no longer required to stay on the call. The OSP must provide a toll-free number for direct access to PSAPs should additional information be needed when responding to a call for assistance from a phone using the provider's services. That emergency contact information must not be considered proprietary.

(9) **Fraud protection.**

(a) A company may not bill a call aggregator for:

(i) Charges billed to a line for originating calls using company access codes, toll-free access codes, or originating calls that otherwise reach an operator position if the originating line subscribed to outgoing call screening or pay phone specific ANI coding digits and the call was placed after the effective date of the outgoing call screening or pay phone specific ANI coding digits order; or

(ii) Collect or third-number-billed calls if the line serving the call that was billed had subscribed to incoming call screening (also termed "billed number screening") and if the call was placed after the effective date of the call screening service order.

(b) The access line provider must remove from the call aggregator's bill any calls billed through the access line provider in violation of this subsection. If investigation by the access line provider determines that the pertinent call screening or pay phone specific ANI coding digits was operational when the call was made, the access line provider may return the charges for the call to the company as not billable.

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(c) Any call billed directly by an OSP, or through a billing method other than the access line provider, which is billed in violation of this subsection, must be removed from the call aggregator's bill. The company providing the service may request an investigation by the access line provider. If the access line provider determines that call screening or pay phone specific ANI coding digits (which would have prevented the call) was subscribed to by the call aggregator and was not operational at the time the call was placed, the OSP must bill the access line provider for the call.

(10) **Suspension.** The commission may suspend the registration of any company providing operator services if the company fails to meet minimum service levels or to provide disclosure to consumers of protection available under chapter 80.36 RCW and pertinent rules.

Except as required by federal law, no provider of pay phone access line service may provide service to any OSP whose registration is suspended.

NEW SECTION

WAC 480-120-263 Pay phone service providers (PSPs). (1) A local exchange company (LEC) within the state of Washington must allow pay phone service providers (PSPs) to connect pay phones to its network, and a LEC must file a tariff or price list with the commission to include the rates and conditions applicable to providing service to pay phones via its network.

(2) **Registration and application of rules.**

(a) PSPs operating a pay phone within the state of Washington must register by:

(i) Submitting a master business application to the master license service, department of licensing; and

(ii) Obtaining a unified business identifier (UBI) number. A PSP that already has a UBI number need not reapply.

(b) Except where pay phone services or PSPs are specifically referenced, the rules of general applicability to public service companies or telecommunications companies do not apply to pay phone services. This does not exempt PSPs from rules applicable to complaints and disputes (WAC 480-120-165), or remedies or sanctions for violations of rules applicable to PSP operations.

(3) **Access.** At no charge to the calling party, pay phones must provide access to:

(a) Dial tone;

(b) Emergency services by dialing 911 without the use of a coin or entering charge codes;

(c) Operator;

(d) Telecommunications relay service calls for the hearing-impaired;

(e) All available toll-free services; and

(f) All available interexchange companies, including the LEC.

(4) **Disclosure.** PSPs must post clearly and legibly, in an unobstructed location on or near the front of the pay phone:

(a) The rate for local calls, including any restrictions on the length of calls in thirty point or larger type print or a different and contrasting color;

(b) Notice that directory assistance charges may apply, and to ask the operator for rates;

(c) Notice that the pay phone does not make change, if applicable;

(d) The emergency number (E911);

(e) The name, address, phone number, and unified business identifier (UBI) number of the owner or operator;

(f) A toll-free number to obtain assistance if the pay phone malfunctions, and procedures for obtaining a refund;

(g) The name, address, and toll-free number of all presubscribed operator service providers (OSPs), as registered with the commission. This information must be updated within thirty days of a change in the OSP. Refer to WAC 480-120-262 for OSP definition and rules;

(h) Notice to callers that they can access other long distance companies;

(i) The phone number of the pay phone, including area code. When the pay phone is in an area that has had an area code change, the area code change must be reflected on the pay phone within thirty days of the area code conversion; and

(j) In contrasting colors, the commission compliance number for customer complaints, to include the following information:

> "If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(5) **Operation and functionality.** A PSP must order a separate public access line (PAL) for each pay phone installed. The commission may waive this requirement if a company demonstrates that technology accomplishes the same result as a one-to-one ratio by means other than through a PAL, that the service provided to customers is fully equivalent, and that all emergency calling requirements are met. This PAL must pass the appropriate screening codes to the connecting company to indicate that the call is originating from a pay phone. In addition:

(a) The pay phone, if coin operated, must return coins to the caller in the case of an incomplete call and must be capable of receiving nickels, dimes, and quarters.

(b) Pay phone keypads must include both numbers and letters.

(c) Where enhanced 911 is operational, the address displayed to the public safety answering point (PSAP) must be that of the phone instrument if different from the public access line demarcation point and the phone number must be that of the pay phone. To comply with this subsection, PSPs must provide an emergency response location (ERL) to the LEC supplying the PAL within two working days of establishing the location, or changed location, of the phone instrument. The ERL must provide sufficient information to aid emergency personnel in the rapid location of the phone instrument, e.g., building floor number, compass quadrant (e.g., northeast corner), and room number.

(d) Extension telephones may be connected to a PAL only for the purpose of monitoring emergency use. The pay phone must be clearly labeled to indicate that "911 calls are monitored locally." An extension phone must be activated

PERMANENT

only when 911 is dialed from the pay phone, and must be equipped with a "push to talk" switch or other mechanism to prevent inadvertent interruption of the caller's conversation with the PSAP.

(e) Cordless and tabletop pay phones may be connected to the telephone network only when the bill is presented to the user before leaving the premise where the bill was incurred, unless the customer requests that the call be alternatively billed.

(f) Pay phones may not restrict the number of digits or letters that can be dialed.

(g) Pay phones may provide credit-only service, or coin and credit service.

(h) Pay phones must provide two-way service, and no charge may be imposed by the PSP for incoming calls. Exceptions to two-way service are allowed under the following circumstances:

(i) Service provided to hospitals and libraries where a telephone ring might cause undue disturbance;

(ii) Service provided within a building on the premises of a private business establishment, at the discretion of the business owner. For purposes of this section, premises where people have access to public transportation such as airports, bus and train stations are not considered private business establishments; and

(iii) Service at locations where local governing jurisdictions or law enforcement find that incoming calls may be related to criminal or illicit activities and have provided proper notice under subsection (6) of this section. Each pay phone restricted to one-way service must be clearly marked on or near the front of the pay phone with information detailed in subsection (6) of this section.

(6) **Restrictions.** A PSP may only limit the operational capabilities of a pay phone when a local governing jurisdiction or other governmental agency submits a notice to the commission using prescribed forms a minimum of ten days prior to the restriction. Restrictions may include, but are not limited to, blocking incoming calls, limiting touch-tone capabilities, and coin restriction during certain hours. The notice must be signed by an agent of the local governing jurisdiction in which the pay phone is located who has authority to submit the request, and must state the jurisdiction's reasons for the restriction. A copy of the notice must also be served on the PSP no later than ten days prior to the restriction.

The requestor must post a notice prominently visible at the pay phone(s) ten days prior to the proposed restriction. The notice must explain what is proposed and how to file an objection with the governing agency.

Once the restriction is in place, the PSP must post on or near each restricted pay phone, in legible and prominent type, a description of each limitation in effect, the times when the restrictions will be in effect, and the name and toll-free number of the governmental agency recommending the restriction.

(7) **Telephone directories.** The provider of the PAL must furnish without charge one current telephone directory each year for each PAL. The PSP must ensure that a current directory is available at every pay phone.

(8) **Malfunctions and rule violations.** The PSP must correct, within five days, malfunctions of the pay phone or rule violations reported to the repair or refund number or the commission.

NEW SECTION

WAC 480-120-265 Local calling areas. (1) Customers must make requests for expanded local calling areas under RCW 80.04.110 (the commission's complaint statute).

(2) The commission will order expansion of local calling areas only for compelling reasons. The commission will generally rely on long distance competition, local competition, and optional calling plans that assess additional charges only to participating customers, to meet customer demand for alternate or expanded calling.

In evaluating requests for expanded local calling, the commission will consider whether the local calling area is adequate to allow customers to call and receive calls from community medical facilities, police and fire departments, city or town government, elementary and secondary schools, libraries, and a commercial center.

The commission will consider the overall community-of-interest of the entire exchange, and may consider other pertinent factors such as customer calling patterns, the availability and feasibility of optional calling plans, and the level of local and long distance competition.

PART VIII. FINANCIAL RECORDS AND REPORTING RULES

NEW SECTION

WAC 480-120-301 Accounting requirements for competitively classified companies. Competitively classified companies must keep accounts using generally accepted accounting principles (GAAP), or any other accounting method acceptable to the commission. In addition, the accounts must allow for identification of revenues for Washington intrastate operations subject to commission jurisdiction.

NEW SECTION

WAC 480-120-302 Accounting requirements for companies not classified as competitive. (1)(a) Companies with two percent or more of state access lines and companies with less than two percent of state access lines are classified as follows:

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Class	Number of Access Lines as of December 31 from prior year's annual report
A	2% or more of state access lines
B	Less that 2% of state access lines

For example:

Company X access lines as of 12/31/98	33,823
Divided by	
Total state access lines as of 12/31/98	3,382,320
Equals company access lines as a percentage of total access lines.	1%

Therefore, company X is a Class B company.

(b) As long as a company can show it serves less than two percent of the total access lines listed in (a) of this subsection, it may compare future years to the year listed in the example above, as a safe harbor option.

(c) If a company has more than two percent of the total access lines listed in (a) of this subsection, but believes that it has less than two percent of a subsequent year to that listed in the example above, it may use the more recent "total state access lines" as of that subsequent year in order to calculate a different threshold, as long as it provides all relevant information in a letter of certification to the commission concurrent with its election. For purposes of this rule the raw data may be requested from the commission's record center in order for the company seeking the data to generate its own calculation subsequent, and pursuant, to this rule.

(2)(a) For accounting purposes, companies not classified as competitive must use the *Uniform System of Accounts (USOA) for Class A and Class B Telephone Companies* published by the Federal Communications Commission (FCC) and designated as Title 47, Code of Federal Regulations, Part 32, (47 CFR 32, or Part 32). The effective date for Part 32 is stated in WAC 480-120-999. Companies not classified as competitive wishing to adopt changes to the USOA made by the FCC after the date specified in WAC 480-120-999, must petition for and receive commission approval. The petition must include the effect of each change for each account and subaccount on an annual basis for the most recent calendar year ending December 31. If the petition is complete and accurate the commission may choose to grant such approval through its consent agenda.

(b) Class B companies may use Class A accounting, but Class A companies shall not be permitted to use Class B accounting.

(3) The commission modifies Part 32 as follows:

(a) Any reference in Part 32 to "Commission," "Federal Communications Commission," or "Common Carrier Bureau" means the Washington utilities and transportation commission.

(b) Companies not classified as competitive must keep subsidiary records to reflect Washington intrastate differences when the commission imposes accounting or ratemaking treatment different from the accounting methods required in subsection (2) of this section. Companies not classified as competitive must maintain subsidiary accounting records for:

(i) Residential basic service revenues;

(ii) Business basic service revenues;

(iii) Access revenues for each universal service rate element;

(iv) Special access revenues; and

(v) Switched access revenues.

(c) Part 32 section 24, compensated absences, is supplemented as follows:

(i) Companies not classified as competitive must record a liability and charge the appropriate expense accounts for sick leave in the year in which the sick leave is used by employees.

(ii) Companies not classified as competitive must keep records for:

(A) Compensated absences that are actually paid; and

(B) Compensated absences that are deductible for federal income tax purposes.

(d) Companies not classified as competitive that have multistate operations must keep accounting records that provide Washington results of operations. The methods used to determine Washington results of operations must be acceptable to the commission.

(e) Part 32 section 32.11(a) is replaced by subsection (1) of this section.

(f) Part 32 section 32.11 (d) and (e) are replaced by subsection (1) of this section.

(g) The commission does not require Part 32 section 32.2000 (b)(4). This rule does not supersede any accounting requirements specified in a commission order, nor will it be construed to limit the commission's ability to request additional information on a company specific basis. This rule does not dictate intrastate ratemaking.

(h) Any reference in Part 32 to "Class A" or "Class B" means the classification as set out in subsection (1) of this section.

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NEW SECTION

WAC 480-120-303 Reporting requirements for competitively classified companies. The commission will distribute an annual report form including a regulatory fee form. A competitively classified company must:

(1) Complete both forms, file them with the commission, and pay its regulatory fee, no later than May 1st of each year;

(2) Provide total number of access lines as required on the annual report form;

(3) Provide income statement and balance sheet for total company; and

(4) Provide revenues for Washington and Washington intrastate operations subject to commission jurisdiction.

NEW SECTION

WAC 480-120-304 Reporting requirements for companies not classified as competitive. (1) Annual reports for companies not classified as competitive. The commission will distribute an annual report form as specified in (c)(i), (ii), and (iii) of this subsection, and a regulatory fee form. A company not classified as competitive must:

(a) Complete both forms, file them with the commission, and pay its regulatory fee, no later than May 1 of each year;

(b) Provide total number of access lines as required on the annual report form; and

(c) Provide income statement and balance sheet for total company and results of operations for Washington and Washington intrastate.

(i) Class A companies that the FCC classified as Tier 1 telecommunications companies in Docket No. 86-182 must file annual report forms adopted by the FCC.

(ii) All other Class A companies must file annual reports on the form prescribed by the commission.

(iii) Class B companies must file annual reports as prescribed by RCW 80.04.530(2).

(2) Quarterly reports for companies not classified as competitive:

(a) All Class A companies must file results of operations quarterly.

(b) Each report will show monthly and twelve-months-ended data for each month of the quarter reported.

(c) The reports are due ninety days after the close of the period being reported, except for the fourth-quarter report which is due no later than May 1 of the following year.

(3) Methods used to determine Washington intrastate results of operations must be acceptable to the commission.

(4) This rule does not supersede any reporting requirements specified in a commission rule or order, or limit the commission's authority to request additional information.

NEW SECTION

WAC 480-120-305 Streamlined filing requirements for Class B telecommunications company rate increases. (1) A Class B company, as defined in WAC 480-120-302(1), may use the streamlined treatment described in this section for seeking a general rate increase, as an alternative to the requirements in WAC 480-09-330.

(2) **General information required.** A Class B company seeking streamlined treatment for a proposed general rate increase must submit the following information at the time of filing or prior to its first notice to customers, whichever occurs first:

(a) A copy of its customer notice as specified in subsection (6) of this section.

(b) A results-of-operations statement, on a commission basis, demonstrating that the company is not presently exceeding a reasonable level of earnings. If the company is exceeding a reasonable level of earnings, the proposed increase must be reduced accordingly.

(c) All supporting documentation used to develop the results-of-operations statement, including supporting documentation for all adjustments.

(d) The results-of-operations statement filed under this subsection must include Washington intrastate results of operations. If a company cannot provide Washington intrastate results of operations with reasonable accuracy, the commission may consider the total Washington results of operations including the interstate jurisdiction.

(3) **Adjustments provided for in the results of operations.**

(a) The results-of-operations statement must provide restating actual adjustments and proforma adjustments in accordance with (b) of this subsection.

(b) Before the achieved return is calculated a company must adjust the booked results of operations for restating actual and proforma adjustments, including the following:

(i) Nonoperating items;

(ii) Extraordinary items;

(iii) Nonregulated operating items; and

(iv) All other items that materially distort the test period.

(4) **Rate of return.** The authorized overall rate-of-return (for purposes of this section only) is eleven and twenty-five one-hundredths percent.

(5) **Rate design.** A Class B company filing pursuant to this section must clearly describe the basis for allocating any revenue requirement change proposed by customer class (e.g., residential, business, and interexchange).

(6) **Customer notice.** The company must notify customers consistent with the manner outlined in WAC 480-120-194, and must include the following information:

(a) The proposed increase expressed in (i) total dollars and average percentage terms, and (ii) the average monthly increases the customers in each category or subcategory of service might reasonably expect;

(b) The name and mailing address of the commission and public counsel;

(c) A statement that customers may contact the commission or public counsel with respect to the proposed rate change; and

(d) The date, time, and place of the public meeting, if known.

(7) **Public meeting(s).** The commission will ordinarily hold at least one public meeting in the area affected by the rate increase within forty-five days after the date of filing.

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(8) **Final action.** The commission will ordinarily take final action on a filing under this section within ninety days after the date of filing.

(9) The commission may decline to apply the procedures outlined in this section if it has reason to believe that:

(a) The quality of the company's service is not consistent with its public service obligations; or

(b) A more extensive review is required of the company's results of operations or proposed rate design.

(10) Nothing in this rule will be construed to prevent any company, the commission, any customer, or any other party from using any other procedures that are otherwise permitted by law.

NEW SECTION

WAC 480-120-311 Access charge and universal service reporting. (1) **Intrastate mechanism reporting.**

(a) Until legislation creating a new universal service fund is adopted and effective and commission rules to implement the legislation are adopted and effective, each Class A company in the state of Washington and the Washington Exchange Carrier Association, must provide annually:

(i) The actual demand units for the previous calendar year for each switched access tariff rate element (or category of switched access tariff rate elements, both originating and terminating) it has on file with the commission.

(ii) Primary toll carriers (PTCs) must file, in addition to the information required in (a)(i) of this subsection, the annual imputed demand units for the previous calendar year that the company would have had to purchase from itself if it had been an unaffiliated toll carrier using feature group D switched access service (including intraLATA and interLATA, both originating and terminating demand units). For purposes of this subsection, a PTC means a local exchange company offering interexchange service(s) to retail customers using feature group C switched access service for the origination or termination of any such service(s).

(b) The report containing the information required in (a) of this subsection must be filed by July 1 of each year.

(c) Each company providing information required by this section must include complete work papers and sufficient data for the commission to review the accuracy of the report.

(2) **Annual state certification requirements for interstate (federal) mechanism.** Each eligible telecommunications carrier (ETC) in Washington receiving federal high-cost universal service support funds must provide the following to the commission not later than August 31 of each year:

(a) A certification that, during the calendar year preceding the year in which certification is made, the ETC provided the supported services required by 47 U.S.C. § 214(e) and described in the commission order granting it ETC status;

(b) A certification that, during the calendar year preceding the year in which certification is made, the ETC advertised the availability of supported services and the charges for them as required by 47 U.S.C. § 214(e) and as described in the commission order granting it ETC status;

(c) A certification that funds received by it from the federal high-cost universal service support fund will be used only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended;

(d) The amount of all federal high-cost universal service fund support received for the calendar year preceding the year in which the filing must be made (this includes, but is not limited to, High Cost Loop Support or "HCL", Local Switching Support or "LSS", Long Term Support or "LTS", Interstate Access Support or "IAS", and Interstate Common Line Support or "ICLS");

(e) The loop counts on which federal high-cost universal service support was based for support received during the calendar year preceding the year in which the filing must be made;

(f) The certifications required in (a) through (e) of this subsection must be made in the same manner as required by RCW 9A.72.085.

NEW SECTION

WAC 480-120-321 Expenditures for political or legislative activities. (1) The commission will not allow either direct or indirect expenditures for political or legislative activities for rate-making purposes.

(2) For purposes of this rule political or legislative activities include, but are not limited to:

(a) Encouraging support or opposition to ballot measures, legislation, candidates for a public office, or current public office holders;

(b) Soliciting support for or contributing to political action committees;

(c) Gathering data for mailing lists that are generated for the purposes of encouraging support for or opposition to ballot measures, legislation, candidates for public office, or current office holders, or encouraging support for or contributions to political action committees;

(d) Soliciting contributions or recruiting volunteers to assist in the activities set forth in (a) through (c) of this subsection.

(3) Political or legislative activities do not include activities directly related to appearances before regulatory or local governmental bodies necessary for the utility's operations.

NEW SECTION

WAC 480-120-322 Retaining and preserving records and reports. (1) Companies must keep all records and reports required by these rules or commission order for three years unless otherwise specified in subsection (2) of this section. No records may be destroyed before the expiration of three years or the time specified in subsection (2) of this section, whichever is applicable.

(2) Companies must adhere to the retention requirements of Title 47, Code of Federal Regulations, Part 42, Preservation of Records of Communication Common Carriers published by the Federal Communications Commission. The effective date is stated in WAC 480-120-999.

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NEW SECTION

WAC 480-120-323 Washington Exchange Carrier Association (WECA). (1) The Washington Exchange Carrier Association (WECA) may:

(a) File petitions with the commission;

(b) Publish and file tariffs with the commission; and

(c) Represent before the commission those members that so authorize. WECA's rules of procedure are on file with the commission under Docket No. UT-920373, and may be obtained by contacting the commission's records center.

(2) Subject to all the procedural requirements and protections associated with company filings before the commission, WECA must submit to the commission:

(a) All initial WECA tariffs; and

(b) All changes to the tariffs.

(3) A member of WECA may file directly with the commission:

(a) Tariffs, price lists, and contracts;

(b) Revenue requirement computations;

(c) Revenue objectives;

(d) Universal service support cost calculations;

(e) Total service long run incremental cost studies;

(f) Competitive classification petition;

(g) Other reports; or

(h) Any other item it or the commission deems necessary.

(4) The commission has the authority to supervise the activities of WECA. However, such supervision will not compromise the independent evaluation by the commission of any filing or proposal that must be submitted to the commission for approval.

(5) To the extent that WECA is involved in the collection and redistribution of funds under commission orders authorizing certain revenue sharing arrangements under common tariff, it must maintain, provide, and report to the commission annual financial reports, by July 1 of each year, relating to the arrangements. Annual financial reports must include:

(a) Actual fund collections and distributions to each member company;

(b) The basis upon which the collection and distribution is made;

(c) Board membership;

(d) Special committee membership; and

(e) The status and description of any open WECA docket proceedings.

(6) Each local exchange company in the state of Washington has the option of using WECA as its filing agent, tariff bureau, or both. Companies using WECA collectively may file intrastate rates, tariffs, or service proposals.

(7) Nothing in this section will be construed as amending or modifying WECA's current methods of administration. WECA's access charge pooling administration plan is on file with the commission and may be obtained by contacting the commission's records center and requesting the "Ninth Supplemental Order in Docket UT-971140 with Attachment" dated June 28, 2000.

PART IX. SAFETY AND STANDARDS RULES

NEW SECTION

WAC 480-120-401 Network performance standards. (1) All companies must meet the applicable network performance standards set forth in this section. The standards applied to each service quality measurement are the minimum acceptable quality of service under normal operating conditions. All performance standards apply to each central office individually and must be measured at or below that level. The performance standards do not apply to abnormal conditions, including, but not limited to work stoppage directly affecting provision of service in the state of Washington, holidays, force majeure, or major outages caused by persons or entities other than the local exchange company (LEC) or its agents.

(2) **Switches.** End-office switches, in conjunction with remote switches where deployed, must meet the following standards:

(a) **Dial service.** For each switch, companies must meet the following minimum standards during the switch's average busy-hour of the average busy season:

(i) Dial tone must be provided within three seconds on at least ninety-eight percent of calls placed; and

(ii) Ninety-eight percent of calls placed must not encounter an intraswitch blocking condition within the central office, or blocking in host-remote, or interoffice local trunks.

(b) **Intercept.** Central office dial equipment must provide adequate access to an operator or to a recorded announcement intercept to all vacant codes and numbers. Less than one percent of intercepted calls may encounter busy or no-circuit-available conditions during the average busy-hour, of the busy-season.

(3) **Interoffice facilities.** Blocking performance during average busy-hour for ninety-nine percent of trunk groups for any month must be less than one-half of one percent for intertoll and intertandem facilities and less than one percent for local and EAS interoffice trunk facilities. The blocking standard for E911 dedicated interoffice trunk facilities must be less than one percent during average busy-hour of the average busy season. Two consecutive months is the maximum that a single trunk group may be below the applicable standard.

(4) **Outside plant.**

(a) **Local loops.** Each LEC must design, construct, and maintain subscriber loops to the standard network interface or demarcation point as follows:

(i) For voice grade, local exchange service loops must meet all performance characteristics specified in Section 4 of the Institute of Electrical and Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics. Information about this standard regarding the version adopted and where to obtain it is set forth in WAC 480-120-999.

(ii) For voice grade service, the circuit noise level on customer loops measured at the customer network interface must be equal to or less than 20.0 dBrnC, except that digitized loops and loops in excess of 18,000 feet must have a

noise level objective of less than 25.0 dBrnC, and noise levels must not exceed 30 dBrnC.

(b) **Special circuits.** Off-premise station circuit loss must not exceed 5.0 dB at 1004 Hz when measured between the customer switch demarcation and the customer station demarcation. LECs with over fifty thousand access lines must maintain design criteria for special circuits. Companies must make channel performance criteria available to customers upon request.

(c) **Digital services.** LECs must meet the availability objectives for digital private line circuit performance specified in the American National Standards for Telecommunications, "Network Performance Parameters for Dedicated Digital Services - Specifications." Information about this standard regarding the version adopted and where to obtain it is set forth in WAC 480-120-999. Upon request of a customer, a LEC may provide to that customer digital services that do not meet the performance standards set forth in (b) of this subsection.

(5) **Service to interexchange carriers.** LECs must provide service to interexchange carriers at the grade of service ordered by the interexchange carrier. At a minimum, each interexchange carrier must order sufficient facilities from each LEC such that no more than two percent of all calls are blocked at the LEC's switch.

(6) Companies must monitor the network performance of the equipment they own, operate, or share at frequent intervals so that adequate facilities can be designed, engineered and placed in service when needed to meet the standards of this section.

(7) Each Class A LEC must arrange and design incoming trunks to the primary repair service center so that traffic overflows during service interruptions can be redirected or forwarded to an alternate repair or maintenance service center location.

NEW SECTION

WAC 480-120-402 Safety. The plant and all facilities of utilities shall be constructed and installed in conformity with good engineering practice and comply with the minimum standards as set out in the current National Electric Safety Code in effect on January 1, 1991. All instrumentalities and equipment shall be installed and maintained with due consideration to the safety of the subscribers, employees and general public. Hazardous conditions endangering persons, property, or the continuity of service when found, reported or known to exist, shall be expeditiously corrected.

NEW SECTION

WAC 480-120-411 Network maintenance. (1) Each local exchange company (LEC) must:

(a) Provide adequate maintenance to ensure that all facilities are in safe and serviceable condition;

(b) Correct immediately hazardous conditions endangering persons, property, or the continuity of service when found, reported, or known to exist;

(c) Promptly repair or replace broken, damaged, or deteriorated equipment, when found to be no longer capable of providing adequate service; and

(d) Correct promptly transmission problems on any channel when located or identified, including noise induction, cross-talk, or other poor transmission characteristics.

(2) Each LEC must install and maintain test apparatus at appropriate locations to determine the operating characteristics of network systems and provide sufficient portable power systems to support up to the largest remote subscriber carrier site. For the safe and continuous operation of underground cables, each LEC must establish air pressurization policies and an air pressurization alarm-monitoring program where appropriate.

(3) Central offices equipped with automatic start generators must have three hours' reserve battery capacity. Central offices without automatic start generators must have a minimum of five hours' reserve battery capacity. Central offices without permanently installed emergency power facilities must have access to readily connectable mobile power units with enough power capacity to carry the load and that can be delivered within one half of the expected battery reserve time.

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NEW SECTION

WAC 480-120-412 Major outages. (1) All companies must make reasonable provisions to minimize the effects of major outages, including those caused by force majeure, and inform and train pertinent employees to prevent or minimize interruption or impairment of service.

(2) **Notice to commission and public safety answering point (PSAP).** When a company receives notice of or detects a major outage, it must notify the commission and any PSAP serving the affected area as soon as possible.

(3) **Notice to county and state emergency agencies and coordination of efforts.** When a major outage affects any emergency response facility, a company must notify immediately the county E911 coordinator and the state emergency management authorities, and provide periodic updates on the status of the outage. The company must coordinate service restoration with the state emergency management authorities if it requests it, and, if requested to do so by the commission, report daily to it the progress of restoration efforts until the company achieves full network recovery.

(4) **Major outages repair priorities.**

(a) Outages affecting PSAPs and emergency response agencies must receive attention first and be repaired as soon as possible.

(b) Companies must restore other services within twelve hours unless conditions beyond a company's reasonable ability to control prevent service restoration within twelve hours.

(c) Companies must restore outages to their facilities affecting intercompany trunk and toll trunk service within four hours after the problem is reported unless conditions beyond a company's reasonable ability to control prevent service restoration within four hours. If the problem is not corrected within four hours, the company must keep all other

affected companies advised of the status of restoration efforts on a twice-daily basis.

(5) **Information to public.** Unless heightened security concerns exist, during major outage recovery efforts all companies must implement procedures to disseminate information to the public, public officials, and news media. All companies must provide a statement about the major outage that includes the time, the cause, the general location and approximate number of affected access lines, and the anticipated duration.

(6) **Notice of intentional outage.** When a company intends to interrupt service to such an extent that it will cause a major outage, it must make a reasonable effort to notify all customers who will have their telephone service affected and the state emergency management authorities not less than seven days in advance if circumstances permit or as soon as it plans to interrupt service if circumstances do not permit seven days' advance notice. A notice is not required for planned service interruptions that have a duration of less than five minutes and occur between the hours of 12:00 a.m. and 5:00 a.m.

(7) **Records.** All companies must keep a record of each major outage and a statement about the interruption that includes the time, the cause, the location and number of affected access lines, and the duration.

PERMANENT

NEW SECTION

WAC 480-120-414 Emergency operation. (1) All companies must maintain, revise, and provide to the commission the following:

(a) The titles and telephone numbers of the company's disaster services coordinator and alternates; and

(b) Upon request of the commission, the company's current plans for emergency operation, including current plans for recovery of service to governmental disaster recovery response agencies within the state of Washington.

(2) For coordination of disaster response and recovery operations, each company must maintain on file with the Washington state emergency management division the titles and telephone numbers of the managers of the company's:

(a) Local network operations center;

(b) Regional network operations center; or

(c) Emergency operations center.

NEW SECTION

WAC 480-120-436 Responsibility for drop facilities and support structure. (1) **Initial provision of service to a premise with no existing drop facilities.** Companies are responsible for designating the route of the drop facility and the type of support structure.

(a) Provision of drop facilities. The company is responsible for all work and materials associated with drop facilities.

(b) Provision of support structure. The company may require the applicant to provide a support structure that meets company standards. Once the company provides service, the company is responsible for maintenance and repair of the existing drop facilities and support structure as provided for in WAC 480-120-437.

(c) Nothing in this rule prohibits the company from offering the applicant an alternative to pay the company a tariffed or price listed rate for provision of the support structure.

(2) **Requests for initial service or additional service at a premise where all existing pairs within a drop facility are not in use.** A company is responsible for all work and materials associated with the drop facilities and if applicable the support structure so long as the total number of lines requested by the customer does not exceed the original capacity of the drop facility.

Any work or materials associated with repair of abandoned or defective pairs is considered maintenance and repair under WAC 480-120-437.

(3) **Requests for additional service to premises where all existing pairs within a drop facility are not in use or where the total number of lines requested by a customer exceeds the original capacity of the existing drop facility.**

(a) The company is responsible for all costs, including the costs of work and materials, associated with placement of additional drop facilities.

(b) The company may require the applicant to provide a support structure for placement of the new drop facility.

(c) A company must use an existing support structure for placement of the new drop facility when:

(i) The support structure it is large enough to support placement of the new facility; and

(ii) It follows a path which remains suitable to the company; and

(iii) The customer makes the support structure accessible to the company (e.g., uncovers the entry to the conduit and removes any items that would impede the use of the conduit, such as tree roots).

NEW SECTION

WAC 480-120-437 Responsibility for maintenance and repair of facilities and support structures. (1)(a) Companies are responsible for all work, materials, and costs associated with reinforcing existing distribution plant, and repairing and maintaining existing distribution and drop facilities and support structures up to and including the standard network interface (SNI).

(b) The customer is responsible for maintaining facilities on the customer's side of the SNI.

(2) A company, in its sole discretion, may determine to replace or reinforce any existing facilities or support structures for which it is responsible for maintenance or repair. If the company decides to replace existing facilities or support structures, all the work and materials associated with the installation of facilities and support structures is considered repair and maintenance, and not new construction.

(3) With respect to cost, subsection (1)(a) of this section does not apply when damage has been caused by a customer or third party, in which case, the company may charge that individual the cost of repair, maintenance, or replacement of company facilities and, if applicable, support structure.

Nothing in this subsection is intended to limit the company's ability to recover damages as otherwise permitted by law.

NEW SECTION

WAC 480-120-438 Trouble report standard. Trouble reports by central office must not exceed four trouble reports per one hundred access lines per month for two consecutive months, or per month for four months in any one twelve-month period. This standard does not apply to trouble reports related to customer premise equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company.

NEW SECTION

WAC 480-120-439 Service quality performance reports. (1) **Class A companies.** Class A companies must report monthly the information required in subsections (3), (4), and (6) through (10) of this section. Companies must report within thirty days after the end of the month in which the activity reported on takes place (e.g., a report concerning missed appointments in December must be reported by January 30).

(2) **Class B companies.** Class B companies need not report to the commission as required by subsection (1) of this section. However, these companies must retain, for at least three years from the date they are created, all records that would be relevant, in the event of a complaint or investigation, to a determination of the company's compliance with the service quality standards established by WAC 480-120-105, 480-120-107, 480-120-112, 480-120-132, 480-120-401, 480-120-411, and 480-120-440.

(3) **Missed appointment report.** The missed appointment report must state the number of appointments missed, the total number of appointments made, and the number of appointments excluded under (b), (c), or (d) of this subsection. The report must state installation and repair appointments separately.

(a) A LEC is deemed to have kept an appointment when the necessary work in advance of dispatch has been completed and the technician arrives within the appointment period, even if the technician then determines the order cannot be completed until a later date. If the inability to install or repair during a kept appointment leads to establishment of another appointment, it is a new appointment for purposes of determining under this subsection whether it is kept or not.

(b) When a LEC notifies the customer at least twenty-four hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, then the appointment that was canceled is not a missed appointment for purposes of this subsection. A company-initiated changed appointment date is not a change to the order date for purposes of determining compliance with WAC 480-120-105 and 480-120-112.

(c) A LEC does not miss an appointment for purposes of this subsection when the customer initiates a request for a new appointment.

(d) A LEC does not miss an appointment for purposes of this subsection when it is unable to meet its obligations due to force majeure, work stoppages directly affecting provision of service in the state of Washington, or other events beyond the LEC's control.

(4) **Installation or activation of basic service report.** The report must state the total number of orders taken, by central office, in each month for all orders of up to the initial five access lines as required by WAC 480-120-105. The report must include orders with due dates later than five days as requested by a customer. The installation or activation of basic service report must state, by central office, of the total orders taken for the month, the number of orders that the company was unable to complete within five business days after the order date or by a later date as requested by the customer.

(a) A separate report must be filed each calendar quarter that states the total number of orders taken, by central office, in that quarter for all orders of up to the initial five access lines as required by WAC 480-120-105. The installation or activation of basic service ninety-day report must state, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date.

(b) A separate report must be filed each six months that states the total number of orders taken, by central office, in the last six months for all orders of up to the initial five access lines as required by WAC 480-120-105. The installation or activation of basic service one hundred eighty day report must state, of the total orders taken for six months, the number of orders that the company was unable to complete within one hundred eighty days.

Orders for which customer-provided special equipment is necessary; when a later installation or activation is permitted under WAC 480-120-071; when a technician arrives at the customer's premises at the appointed time and prepared to install service and the customer is not available to provide access; or when the commission has granted an exemption under WAC 480-120-015 from the requirement for installation or activation of a particular order, may be excluded from the total number of orders taken and from the total number of uncompleted orders for the month.

For calculation of the report of orders installed or activated within five business days in a month, orders that could not be installed or activated within five days in that month due to force majeure may be excluded from the total number of orders taken and from the total number of uncompleted orders for the month if the company supplies documentation of the effect of force majeure upon the order.

(5) **Major outages report.** Notwithstanding subsections (1) and (2) of this section, any company experiencing a major outage that lasts more than forty-eight hours must provide a major outage report to the commission within ten business days of the major outage. The major outages report must include a description of each major outage and a statement that includes the time, the cause, the location and number of affected access lines, and the duration of the interruption or impairment. When applicable, the report must include a description of preventive actions to be taken to avoid future

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outages. This reporting requirement does not include company-initiated major outages that are in accordance with the contract provisions between the company and its customers or other planned interruptions that are part of the normal operational and maintenance requirements of the company.

The commission staff may request oral reports from companies concerning major outages at any time and companies must provide the requested information.

(6) **Summary trouble reports.** Each month companies must submit a report reflecting the standard established in WAC 480-120-438. The report must include the number of reports by central office and the number of lines served by the central office. In addition, the report must include an explanation of causes for each central office that exceeds the service quality standard established in WAC 480-120-438. The reports, including repeated reports, must be presented as a ratio per one hundred lines in service. The reports caused by customer-provided equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company should not be included in this report.

(7) **Switching report.** Any company experiencing switching problems in excess of the standard established in WAC 480-120-401 (2)(a), must report the problems to the commission. The report must identify the location of every switch that is performing below the standard.

(8) **Interoffice, intercompany and interexchange trunk blocking report.** Companies that experience trunk blocking in excess of the standard in WAC 480-120-401 (3) and (5) must report each trunk group that does not meet the performance standards. For each trunk group not meeting the performance standards, the report must include the peak percent blocking level experienced during the preceding month, the number of trunks in the trunk group, the busy hour when peak blockage occurs, and whether the problem concerns a standard in WAC 480-120-401 (3) or (5). The report must include an explanation of steps being taken to relieve blockage on any trunk groups that do not meet the standard for two consecutive months.

(9) **Repair report.**

(a) For service-interruption repairs subject to the requirements of WAC 480-120-440, companies must report the number of service interruptions reported each month, the number repaired within forty-eight hours, and the number repaired more than forty-eight hours after the initial report. In addition, a company must report the number of interruptions that are exempt from the repair interval standards as provided for in WAC 480-120-440.

(b) For service-impairment repairs subject to the requirements of WAC 480-120-440, companies must report the number of service impairments reported each month, the number repaired within seventy-two hours, and the number repaired more than seventy-two hours after the initial report. In addition, a company must report the number of impairments that are exempt from the repair interval standard as provided for in WAC 480-120-440.

(10) **Business office and repair answering system reports.** When requested, companies must report compliance with the standard required in WAC 480-120-133. If requested, companies must provide the same reports to the commission that company managers receive concerning average speed of answer, transfers to live representatives, station busies, and unanswered calls.

(11) The commission may choose to investigate matters to protect the public interest, and may request further information from companies that details geographic area and type of service, and such other information as the commission requests.

(12) If consistent with the purposes of this section, the commission may, by order, approve for a company an alternative measurement or reporting format for any of the reports required by this section, based on evidence that:

(a) The company cannot reasonably provide the measurement or reports as required;

(b) The alternative measurement or reporting format will provide a reasonably accurate measurement of the company's performance relative to the substantive performance standard; and

(c) The ability of the commission and other parties to enforce compliance with substantive performance standard will not be significantly impaired by the use of the alternative measurement or reporting format.

(13) Subsection (12) of this section does not preclude application for an exception under WAC 480-120-015.

NEW SECTION

WAC 480-120-440 Repair standards for service interruptions and impairments, excluding major outages. (1) A company must repair all out-of-service interruptions within forty-eight hours, unless the company is unable to make the repair because it is physically obstructed from doing so or because of force majeure, in which case the repair must be made as soon as practicable. The forty-eight hour requirement does not apply to out-of-service interruptions that are part of a major outage under WAC 480-120-412.

For purposes of this section an out-of-service interruption is defined as a condition that prevents the use of the telephone exchange line for purposes of originating or receiving a call and does not include trouble reported for nonregulated services such as voice messaging, inside wiring, or customer premises equipment.

(2) A company must repair all other regulated service interruptions within seventy-two hours, unless the company is unable to make the repair because it is physically obstructed from doing so or because of force majeure, in which case the repair must be made as soon as practicable. The seventy-two hour requirement does not apply to out-of-service interruptions that are part of a major outage under WAC 480-120-412.

(3) The forty-eight-hour and seventy-two-hour standards do not apply during company work stoppages directly affecting provision of service in the state of Washington.

(4) When the company informs the customer that repair requires on-premises access by the company with the customer present, the company must offer the customer an opportunity for an installation appointment that falls within a four-hour period.

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(5) A company is considered to have met its obligations under this rule if it conducts tests during the prescribed period that indicates that the customer's service is operating within industry standards. The company must make all test information available to the commission upon request.

(6) A company is considered to have met its obligations under this rule if it conducts tests during the prescribed period which demonstrate that the reported problem may only be cleared from within the customer's premises and the company is either unable to reach the customer to arrange access or is refused access by the customer. The company must make all test information and customer contact logs available to the commission upon request.

(7) For the purposes of this section, Sundays and legal holidays are not considered working days and are therefore excluded from the forty-eight-hour and seventy-two-hour periods.

(8) In instances when repair requires construction work, the forty-eight-hour and seventy-two-hour periods begin when a company has received appropriate authorization from the applicable governing body associated with the repair (e.g., utility location services are completed and, if applicable, a permit is granted). A company must contact the appropriate authorities to request applicable utility location services and permits when the company determines that a repair situation requires construction work to correct. Upon receiving any repair report that requires construction work, a company must contact the appropriate authorities as soon as practicable to request utility location services and permits, if applicable.

(9) When a company plans a service interruption, it must make reasonable efforts to notify customers that it determines service will be affected not less than seven days in advance or, if seven days' notice is not possible, as soon as the interrupted service is planned. A notice is not required for planned service interruptions that have a duration of less than five minutes and occur between the hours of 12:00 a.m. and 5:00 a.m.

NEW SECTION

WAC 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies. "Private branch exchange (PBX)" means customer premises equipment installed on the subscriber's premises that functions as a switch, permitting the subscriber to receive incoming calls, to dial any other telephone on the premises, to access a tie trunk leading to another PBX or to access an outside trunk to the public switched telephone network.

"Data base management system (DBMS)" means a data base used by local exchange companies (LECs) to provide automatic location information (ALI) to public safety answering points (PSAPs).

"Emergency location identification number (ELIN)" means a telephone number that is used to route the call to a PSAP and is used to retrieve the automatic location information (ALI) for a PSAP.

"Emergency response location (ERL)" means a location to which a 911 emergency response team may be dispatched.

(1) Local exchange companies (LECs) must provide enhanced 9-1-1 (E911) services including:

(a) For single line service, the ability for customers to dial 911 with the call and caller's ELIN transmitted to the E911 selective router serving the location associated with the ERL for that line;

(b) For multiline customers, the ability for customers to dial 911 with common signal protocols available which permit the call and caller's ELIN to be transmitted to the E911 selective router serving the location associated with the ERL for that line;

(c) For pay phones served by pay phone access lines (PALs) the ability for customers to dial 911 with the call and the ELIN transmitted to the E911 selective router serving the location of the ERL for that line. The ELIN must be that of the pay phone.

(2)(a) LECs that provide or make available E911 data base management, whether directly or through contract, must provide to all PBX owners or their agents (including LECs) a simple, internet-based method to maintain customer records in the E911 data base, and the LEC may provide an option of a secure dial up access method for the PBX owner or agent to maintain customer records in the E911 data base. The method must use a generally accepted national format for customer record information.

(b) LECs that provide or make available E911 data base management, whether directly or through contract, must provide or make available to all other LECs a simple, internet-based method to maintain customer records in the E911 data base for their non-PBX customers, and the LEC may provide an option of a secure dial up access or direct data link method for LECs to maintain customer records in the E911 data base. Methods for maintaining station location information that are not internet-based may be offered in addition to the required internet-based method.

(c) LECs that provide pay phone access lines must maintain customer record information, including ELIN and ERL information, for those access lines using a method required by (b) of this subsection. Records must be forwarded to the data base manager within one business day of a record's posting to the company records system.

(d) For single line services, PBX main station lines, and pay phone lines, LECs must transmit updated location information records to the data base management system (DBMS) within one business day of those records being posted to the company record system.

Records that do not post to the DBMS because of address errors must be corrected within two working days unless modifications are necessary to the audit tables of the master street address guide, in which case the record must be resubmitted within one business day of notification that the master street address guide has been updated.

(e) E911 data base errors and inquiries, including selective routing errors, reported by county E911 data base coordinators or PSAPs must be resolved by the LEC or its agent administering the data base within five working days of receipt.

(3) LECs choosing to provide E911 services including selective routing, data base management and transmission of the call to a PSAP must file with the commission tariffs and

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supporting cost studies or price lists, whichever applies, that specify the charges and terms for E911 services.

(4)(a) PBX customers who choose to maintain their own E911 data base, or contract that maintenance to a third party, must be permitted to do so if the customer maintains the data in a generally accepted national format for customer record information.

(b) PBX customers who choose to not use LEC data base management may transmit, or have a third-party transmit, customer record information to their LEC's national data service gateway at no additional charge.

NEW SECTION

WAC 480-120-451 Local exchange carrier contact number for use by public safety answering points (PSAPs). All local exchange carriers (LECs) must provide a telephone number, which may include a number for a paging device, that public safety answering points (PSAPs) may use to reach a company representative with questions related to the accuracy of station location records. LECs must accept calls to the provided number at all times. LECs that provide a number for the paging device must respond within three minutes of the page.

All LECs must provide an E911 data base maintenance contact who is available during business day hours to the county E911 data base coordinators in those counties in which they provide service.

NEW SECTION

WAC 480-120-452 Reverse search by enhanced 9-1-1 (E911) public safety answering point (PSAP) of ALI/DMS data base—When permitted. (1) A public safety answering point (PSAP) may make a reverse search of information in the automatic location identification (ALI/DMS) data base when, in the judgment of the PSAP representative, an immediate response to the location of the caller or to the location of another telephone number reported by the caller is necessary because of an apparent emergency.

(2) Absent a judicial order, reverse search must not be used for criminal or legal investigations or other nonemergency purposes.

PART X. ADOPTION BY REFERENCE

NEW SECTION

WAC 480-120-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) American National Standards for Telecommunications - *"Network Performance Parameters for Dedicated Digital Services - Specifications"* (ANSI T1.510-1999) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999.

(b) This publication is referenced in WAC 480-120-401.

(c) The American National Standards for Telecommunications *"Network Performance Parameters for Dedicated Digital Services - Specifications"* is a copyrighted document. Copies are available from the publisher and third-party vendors.

(2) *The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics* (ANSI/IEEE Std 820-1984) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect on March 22, 1984, and reaffirmed September 16, 1992.

(b) This publication is referenced in WAC 480-120-401.

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from the publishers.

(3) *The National Electrical Safety Code* is published by the IEEE.

(a) The commission adopts the version in effect in 1997.

(b) This publication is referenced in WAC 480-120-402.

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from the publishers and from third-party vendors.

(4) *Title 47 Code of Federal Regulations*, cited as 47 CFR, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 1998.

(b) This publication is referenced in WAC 480-120-302 and 480-120-322.

(c) Copies of Title 47 Code of Federal Regulations are available from the Government Printing Office and from third-party vendors.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-120-029	Accounting requirements for competitively classified companies.
WAC 480-120-031	Accounting.
WAC 480-120-032	Expenditures for political or legislative activities.
WAC 480-120-033	Reporting requirements for competitively classified companies.
WAC 480-120-041	Availability of information.
WAC 480-120-042	Directory service.
WAC 480-120-043	Notice to the public of tariff changes.

WAC 480-120-045	Local calling areas.
WAC 480-120-046	Service offered.
WAC 480-120-051	Availability of service—Application for and installation of service.
WAC 480-120-056	Establishment of credit.
WAC 480-120-081	Discontinuance of service.
WAC 480-120-087	Telephone solicitation.
WAC 480-120-088	Automatic dialing-announcing devices.
WAC 480-120-089	Information delivery services.
WAC 480-120-101	Complaints and disputes.
WAC 480-120-106	Form of bills.
WAC 480-120-116	Refund for overcharge.
WAC 480-120-121	Responsibility for delinquent accounts.
WAC 480-120-126	Safety.
WAC 480-120-131	Reports of accidents.
WAC 480-120-136	Retention and preservation of records and reports.
WAC 480-120-138	Pay phone service providers (PSPs).
WAC 480-120-139	Changes in local exchange and intrastate toll services.
WAC 480-120-141	Operator service providers (OSPs).
WAC 480-120-340	911 Obligations of local exchange companies.
WAC 480-120-350	Reverse search by E-911 PSAP of ALI/DMS data base—When permitted.
WAC 480-120-500	Telecommunications service quality—General requirements.
WAC 480-120-505	Operator services.
WAC 480-120-510	Business offices.
WAC 480-120-515	Network performance standards applicable to local exchange companies.
WAC 480-120-520	Major outages and service interruptions.
WAC 480-120-525	Network maintenance.
WAC 480-120-530	Emergency services.
WAC 480-120-531	Emergency operation.
WAC 480-120-535	Service quality performance reports.
WAC 480-120-541	Access charges.
WAC 480-120-542	Collective consideration of Washington intrastate rate, tariff, or service proposals.
WAC 480-120-543	Caller identification service.
WAC 480-120-544	Mandatory cost changes for telecommunications companies.
WAC 480-120-545	Severability.

WSR 03-02-014
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Division of Vocational Rehabilitation)

[Filed December 20, 2002, 3:49 p.m., effective February 3, 2003]

PERMANENT

Date of Adoption: December 19, 2002.

Purpose: To repeal old rehabilitation rules and adopt new chapter 388-891 WAC to comply with the August 1998 amendments to the Rehabilitation Act of 1973, the United States Department of Education regulations including 34 C.F.R. Part 361 State Vocational Rehabilitation Services Program, 34 C.F.R. Part 363 State Supported Employment Services Program, chapter 74.29 RCW for rehabilitation services for individuals with disabilities, chapter 43.19 RCW for purchasing and loaning equipment, RCW 43.43.832 for background check requirements for in-home or relative child care providers, and RCW 4.24.550, 71.09.340, 9A.44.130 and chapter 26.44 RCW regarding sex offenders.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-890-0005 What is the purpose of this chapter?, 388-890-0010 What definitions apply to this chapter?, 388-890-0015 What is informed choice?, 388-890-0020 How does DVR support the informed choice process?, 388-890-0025 What decisions can I make using informed choice?, 388-890-0030 What if I don't know how to use the informed choice decision making process?, 388-890-0035 Who is eligible to receive VR services?, 388-890-0040 How does DVR determine whether VR services will enable me to work?, 388-890-0045 Am I eligible for VR services if I receive Social Security disability benefits?, 388-890-0050 What criteria are not considered in the eligibility decision?, 388-890-0055 What information does DVR use to make an eligibility decision?, 388-890-0060 After I submit my application to DVR, how long does it take DVR to make an eligibility decision?, 388-890-0065 What happens if DVR determines that I am not eligible?, 388-890-0070 If I am not eligible for DVR services, can DVR help me find other services and programs to meet my needs?, 388-890-0071 If I am eligible for or ineligible for VR services, how will I be notified?, 388-890-0075 Who can apply for vocational rehabilitation services?, 388-890-0080 Can I receive VR services if I am not a United

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Statutory Authority for Adoption: RCW 74.29.020, 74.08.090.

Other Authority: August 1998 amendments to the Rehabilitation Act of 1973, 34 C.F.R. Part 361 and 34 C.F.R. Part 363, chapters 74.29, 43.19 RCW, RCW 43.43.832, 4.24.550, 71.09.340, 9A.44.130, and chapter 26.44 RCW.

Adopted under notice filed as WSR 02-20-043 on September 25, 2002.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 388-891-0010 definition of competitive employment is changed to clarify the intent of 34 C.F.R. 361.5(11). In subsection (1), the phrase "in a job that is available to all qualified workers" was deleted.

2. WAC 388-891-0110(1) is changed to more clearly identify the types of qualified processionals who may conduct assessments. After "... you must participate in an assessment conducted by a ..." the following phrase was inserted "licensed psychiatrist, psychologist, counselor, certified sex offender treatment provider, or other."

3. WAC 388-891-0325 is changed to clarify the services and conditions under which DVR is responsible to pay and the services and conditions under which the customer is responsible to pay. At the beginning of the first sentence following the rule caption, the following phrase was inserted "Except for the services outlined in WAC 388-891-310."

4. All of the proposed rules having the term "DVR services" are changed to the term "VR services" for clarity. WAC 388-891-0600 lists VR services by name (not a change). WAC 388-891-0605 through 388-891-0790 describe each VR service (not a change).

5. WAC 388-891-0755 is changed to clarify the transition services DVR provides to high school students in compliance with WAC 388-891-0300(5) and 388-891-0310 according to 34 C.F.R. 361.5(10) and 34 C.F.R. 361.53 (c)(1). The rule caption is changed to read **"What are transition services?"** The entire text of the proposed rule was deleted and replaced with:

"(1) Transition services are work-related activities you begin while you are in high school that are coordinated with VR services to help you prepare for and go to work in the community after you leave high school.

(2) Transition services may include any of the VR services listed under WAC 388-891-0600."

This revision does not change the effect of the rule as proposed.

6. WAC 388-891-0770 (4)(b) is changed to clarify that moving violations related to driving a vehicle must be disclosed in a driving record. After "A copy of your driving record," the following phrase was inserted "disclosing any moving violations and."

7. WAC 388-891-0770 (4)(d) is changed to clarify the rationale for requiring a customer to sign a written agreement concerning how he or she will pay for maintenance and repair of a vehicle provided by DVR. At the end of proposed subsection (d), the semicolon was deleted and the following was added:", as this is a requirement for subsequent ownership of the vehicle."

8. WAC 388-891-1020 is changed to clarify the intent of 34 C.F.R. 361.42(3). A period was inserted after the phrase "... DVR presumes you are an eligible individual" and the rest of this proposed rule was deleted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 131, 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 13, Amended 0, Repealed 191.

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 144, Amended 0, Repealed 191.

Effective Date of Rule: February 3, 2003.

December 19, 2002

Bonita H. Jacques

for Brian H. Lindgren, Manager

Rules and Policies Assistance Unit

Chapter 388-891 WAC

VOCATIONAL REHABILITATION SERVICES FOR INDIVIDUALS WITH DISABILITIES

PURPOSE

NEW SECTION

WAC 388-891-0005 What is the purpose of this chapter? This chapter explains the types of vocational rehabilitation services (referred to as **"VR services"** in this chapter) available to individuals who are eligible through the department of social and health services (DSHS), division of vocational rehabilitation (DVR).

VR services are offered to assist individuals with disabilities to prepare for, get, and keep jobs that are consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. This chapter is consistent with the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1998 and codified in 34 Code of Federal Regulations, Parts 361 and 363 and with state laws and DSHS requirements.

DEFINITIONS

NEW SECTION

WAC 388-891-0010 What definitions apply to this chapter? "Competitive employment" means:

(1) Part-time or full-time work;

(2) Work that is performed in an integrated setting;

(3) Work for which an individual is paid at or above the minimum wage; and

(4) Work for which an individual earns the same wages and benefits as other employees doing similar work who are not disabled.

"Employment outcome" means competitive employment, supported employment, self-employment, telecommuting, business ownership, or any other type of employment in an integrated setting that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

"Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

"Extreme medical risk" means medical conditions that are likely to result in substantial physical or mental impairments or death if services, including mental health services, are not provided quickly.

"Family member" means a person who is your relative or legal guardian; or someone who lives in the same household as you and has a substantial interest in your well being.

"Individual with a disability" means an individual:

(1) Who has a physical or mental impairment;

(2) Whose impairment results in a substantial impediment (medical, psychological, vocational, educational, communication, and others) hindering her or his ability to achieve an employment outcome; and

(3) Who can achieve an employment outcome as a result of receiving VR services.

"Integrated setting" means:

(1) The setting in which you receive a VR service is integrated if it is a setting commonly found in the community (such as a store, office or school) where you come into contact with nondisabled people while you are receiving the service. The nondisabled people you come into contact with are not the same people providing VR services to you.

(2) The setting in which you work is integrated if it is a setting commonly found in the community where you come into contact with nondisabled people as you do your work. The amount of contact you have with nondisabled people is the same as what a nondisabled person in the same type of job would experience.

"Most recent tax year" means the most recent calendar year for which you filed or were required to file an income tax return with the United States Internal Revenue Service (IRS).

"Physical, mental or sensory impairment" means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Representative" means any person chosen by an applicant or eligible individual, including a parent, family member or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

"Substantial impediment to employment" means the limitations you experience as a result of a physical, mental or sensory impairment that hinder your ability to prepare for, find, or keep a job that matches your abilities and capabilities.

PROTECTION AND USE OF CONFIDENTIAL INFORMATION

NEW SECTION

WAC 388-891-0100 What personal information about me does DVR keep on file? DVR keeps a case service record while you are receiving services and for three years after your case is closed. The case service record includes, but is not limited to:

(1) The DVR application form or written request for VR services.

(2) Documentation explaining the need for the trial work experience or extended evaluation, if conducted, and the written plan for conducting the trial work experience or extended evaluation, and documentation of progress reviews.

(3) Documentation and records that support the determination of eligibility or ineligibility.

(4) Documentation supporting the severity of disability and priority category determination.

(5) Financial statement and/or related records.

(6) Plan for employment, amendments to the plan, if amended, and information supporting the decisions documented on the plan.

(7) Documentation describing how you used informed choice to make decisions throughout the process, including assessment services, selection of an employment outcome, VR services, service provider, type of setting and how to get VR services.

(8) If VR services are provided in a setting that is not integrated, documentation of the reason(s) for using a nonintegrated setting;

(9) If you achieve a competitive employment outcome, documentation to show:

(a) Your wages and benefits;

(b) That the job you have is:

(i) Described in your plan for employment;

(ii) Consistent with your strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and

(iii) In an integrated setting.

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(c) That the services provided to you in your plan for employment helped you become employed;

(d) That you have been employed for at least ninety days and that you no longer need vocational rehabilitation services;

(e) That you and your VR counselor agree that your employment is satisfactory and that you are performing well; and

(f) That you have been informed, through appropriate modes of communication about the availability of post-employment services.

(10) If you are referred to another state or federal program for services to prepare for, find or keep a job, documentation of the referral, the reason(s) for the referral, and the name of the program(s) to which you are referred.

(11) Documentation of case closure, including:

(a) Reasons for closing the case service record;

(b) How you were involved in the decision to close the case; and

(c) A copy of the closure letter that explains the reason(s) for case closure and your rights if you disagree with the decision.

(12) Documentation of the results of mediation or fair hearings, if held;

(13) Documentation of annual reviews after your case service record is closed as outlined in WAC 388-891-1330 if:

(a) You choose extended employment in a nonintegrated setting;

(b) You achieve a supported employment outcome in an integrated setting for which you are paid in accordance with section 14(c) of the Fair Labor Standards Act; or

(c) DVR determines you are ineligible because you are too severely disabled to benefit from VR services.

(14) Other documentation that relates to your participation in VR services, including your progress, throughout the VR process.

NEW SECTION

WAC 388-891-0110 What happens if DVR receives information that indicates I have a previous history of behavior involving violent or predatory acts? (1) If a VR counselor receives information or records that reasonably lead the VR counselor to believe you have a previous history of violent or predatory behavior, you must participate in an assessment conducted by a licensed psychiatrist, psychologist, counselor, certified sex offender treatment provider, or other qualified professional prior to developing a plan for employment. The assessment is for the purpose of determining the level of risk you present to yourself or others in an employment situation.

(2) The VR counselor must consider the results and recommendations of the assessment in developing the plan for employment, including any restrictions relating to employment outcome or employment setting.

(3) If the results of the assessment indicate a potential risk to a service provider or employer, the individual must consent to release information about the behavior to a potential service provider or potential employer prior to referral for services.

NEW SECTION

WAC 388-891-0120 Can I ask DVR to change incorrect information in my case service record? You may ask DVR to correct information in your case service record that you believe is incorrect. DVR corrects the information, unless DVR disagrees that the information is incorrect. If there is a disagreement about the accuracy of the information, you may provide a written document explaining the information you believe incorrect. DVR puts the document in your case service record.

NEW SECTION

WAC 388-891-0130 Can DVR share personal information in my record with others? (1) DVR shares personal information with others only if:

(a) Another organization or program involved in your VR services needs the information to serve you effectively;

(b) You request information in the case service record be shared with another organization for its program purposes;

(c) You select an employment outcome in a field that customarily requires a criminal history background check as a condition of employment; and

(d) You sign a written consent giving DVR permission to release, exchange, or obtain the information.

(2) DVR may release personal information without your written consent only under the following conditions:

(a) If required by federal or state law;

(b) To a law enforcement agency to investigate criminal acts, unless prohibited by federal or state law;

(c) If given an order signed by a judge, magistrate, or authorized court official;

(d) If DVR reasonably believes you are a danger to yourself or others;

(e) To the DSHS division of child support; or

(f) To an organization, agency or person(s) conducting an audit, evaluation or research.

NEW SECTION

WAC 388-891-0135 How does DVR protect personal information about drug, alcohol, HIV/AIDS and sexually transmitted diseases? (1) DVR uses special protections when you share personal information about drug or alcohol abuse or about HIV/AIDS and sexually transmitted diseases.

(2) DVR asks for your specific permission to copy information of this nature before sharing it with a service provider or organization that is helping you reach your employment goals.

(3) Information about drug and alcohol abuse must be handled in accordance with RCW 70.96A.150 and applicable federal and state laws and regulations.

(4) Information about HIV/AIDS or other sexually transmitted diseases must be handled in accordance with RCW

70.24.105 and applicable federal and state laws and regulations.

NEW SECTION

WAC 388-891-0140 Can I obtain copies of information in my case service record? (1) You may review or obtain copies of information contained in your case service record by submitting a written request to DVR. DVR provides access to or provides copies of records upon request, except in the following circumstances:

(a) If DVR believes the medical, psychological, or other records in your case service record may be harmful to give to you, DVR only releases the records to a third party that you choose, such as your representative, parent, legal guardian or a qualified medical professional.

(b) If DVR receives personal information about you from another agency or service provider, DVR may only share the records as authorized by the agency or service provider that provided the information.

(c) If a representative has been appointed by a court to represent you, the information must be released to the representative.

(2) DVR provides access or gives you copies of records within ten business days of receiving your written request. If DVR cannot fulfill your request within ten business days, DVR will send you a written notice of the reason(s) the request cannot be met and the date you are granted access or the date the requested information will be provided.

NEW SECTION

WAC 388-891-0150 How does DVR protect personal information that is released for audit, evaluation or research? DVR may release personal information for audit, evaluation or research if the results would improve the quality of life or VR services for people with disabilities. Before any personal information is shared, the organization, agency, or individual must agree to the following conditions:

(1) The information must only be used by people directly involved in the audit, evaluation or research;

(2) The information must only be used for the reasons approved by DVR in advance;

(3) The information must be kept secure and confidential;

(4) The information must not be shared with any other parties, including you or your representative; and

(5) The final product or report must not contain any personal information that would identify you without your written consent.

CUSTOMER RIGHTS

NEW SECTION

WAC 388-891-0200 Can a guardian or another representative act on my behalf with DVR? (1) You may select someone to act as your representative, as appropriate, during the VR program.

(2) If you have a legal guardian or a court-appointed representative, he or she must act as your representative.

(a) A legal guardian or court-appointed representative must provide DVR with documentation of guardianship.

(b) Your legal guardian or court-appointed representative must sign the application and other documents that require your signature.

NEW SECTION

WAC 388-891-0205 How do I ask for an exception to a rule in this chapter? (1) A request for exception to a rule in this chapter is submitted to the DVR director or designee in writing, and must include:

(a) A description of the exception being requested;

(b) The reason you are asking for the exception; and

(c) The duration of the exception, if applicable.

(2) An exception requesting a medical service that is otherwise not provided by DVR may only be requested on a trial basis or for a short duration to be specified in the request.

NEW SECTION

WAC 388-891-0210 What happens after I submit a request for an exception? (1) After receiving your request for an exception, the DVR director or designee decides whether to approve the request based on:

(a) The impact of the exception on accountability, efficiency, choice, satisfaction, and quality of services;

(b) The degree to which your request varies from the WAC; and

(c) Whether the rule or condition is a federal regulation that cannot be waived.

(2) The DVR director or designee responds to the request for an exception within ten working days of receiving the request.

(a) If the request is approved, the DVR director or designee provides a written approval that includes:

(i) The specific WAC for which an exception is approved;

(ii) Any conditions of approval; and

(iii) Duration of the exception.

(b) If the request is denied, the DVR director or designee will provide a written explanation of the reasons for the denial.

NEW SECTION

WAC 388-891-0215 What if a DVR counselor makes a decision about my VR services that I don't agree with? (1) If a DVR counselor makes a decision that affects the VR services provided to you that you don't agree with, you may try to resolve the disagreement by any one of the following or a combination of the following:

(a) Seek assistance from the client assistance program, talk to the VR counselor, talk to the VR supervisor, or talk to the DVR director or his or her designee;

(b) Request mediation; and/or

(c) Request a fair hearing.

PERMANENT

(2) You may request a fair hearing and/or mediation while you continue to work with the DVR counselor, VR supervisor or DVR director or designee to resolve the disagreement. If you reach agreement prior to the date of the scheduled mediation or fair hearing, the request may be withdrawn.

NEW SECTION

WAC 388-891-0220 What is the client assistance program (CAP)? The client assistance program (CAP) is a program independent of DVR that offers information and advocacy about your rights as a DVR customer and offers assistance to help you receive services. You may ask for help or information from CAP at any time during the rehabilitation process by asking a DVR staff person for information about how to contact CAP or by calling CAP toll free at 1-800-544-2121 voice/TTY. A CAP representative may represent you with DVR if a disagreement occurs that you cannot resolve on your own. CAP attempts to resolve disagreements informally through discussions with the DVR employee(s) involved as a first step. If informal efforts are not successful, CAP may represent you in mediation and/or a fair hearing. CAP services are available at no cost to you.

PERMANENT

NEW SECTION

WAC 388-891-0225 What is mediation? (1) Mediation is a process in which a trained mediator conducts a meeting with you and a representative from DVR, usually your DVR counselor to help you settle a disagreement.

(a) The mediator does not work for DVR.

(b) The mediator does not make decisions about your case.

(c) Mediation is voluntary for all parties.

(2) During mediation:

(a) Each party presents information or evidence;

(b) The mediator reviews and explains the laws that apply; and

(c) The mediator helps you and the VR representative reach an agreement, if possible.

(3) You may ask someone to represent you during the mediation, including a CAP representative, however, you must be present.

(4) Agreements you and DVR reach through mediation are not legally binding.

NEW SECTION

WAC 388-891-0230 When can I ask for mediation? You may ask for mediation any time you disagree with a decision DVR makes that affects the VR services that DVR provides to you. Mediation is not used to deny or delay your right to a fair hearing. You may request both mediation and a fair hearing at the same time. If an agreement is reached during mediation, the fair hearing is cancelled.

NEW SECTION

WAC 388-891-0235 Who arranges and pays for mediation? DVR schedules mediation in a timely manner at a location that is convenient to all parties. DVR pays for costs related to mediation, except costs related to a representative or attorney you ask to attend. DVR may pay for VR services you require to participate in mediation, such as transportation or child care.

NEW SECTION

WAC 388-891-0240 Is information discussed during mediation confidential? Discussions during mediation are confidential and may not be used in a later fair hearing or civil proceeding, if one is held. Before beginning a mediation session, all parties must sign a statement of confidentiality.

NEW SECTION

WAC 388-891-0245 If the mediation session results in an agreement, do I receive a written statement of the results? If you and the DVR representative reach an agreement during mediation:

(1) The agreement is documented in writing;

(2) You and the DVR representative sign the written agreement; and

(3) DVR provides you with a copy of the agreement.

NEW SECTION

WAC 388-891-0250 What is a fair hearing? A fair hearing is a review process outlined under the Administrative Procedure Act, chapter 34.05 RCW and chapter 388-02 WAC that is conducted by an administrative law judge who works for the office of administrative hearings. During a fair hearing, both you and DVR may present information, witnesses, and/or documents to support your position. You may ask someone to represent you, such as an attorney, a friend, a relative, a representative from the client assistance program, or someone else you choose. The administrative law judge makes a decision after hearing all of the information presented; reviewing any documents submitted, and reviewing relevant laws and regulations.

NEW SECTION

WAC 388-891-0255 How do I request a fair hearing? (1) To ask for a fair hearing, send a written request to the office of administrative hearings. You must include the following information in your written request:

(a) Your name, address, and telephone number;

(b) The name of the DSHS program that the fair hearing involves (such as DVR);

(c) A written statement describing the decision and the reasons you disagree; and

(d) Any other information or documents that relate to the matter.

(2) You must submit your request for a fair hearing within twenty days of the date the VR counselor makes the decision with which you disagree.

(3) You may ask any DVR employee for instructions or assistance to submit a request for a fair hearing.

NEW SECTION

WAC 388-891-0260 After I submit a request for a fair hearing, when is it held? The office of administrative hearings holds a fair hearing within sixty days of receipt of your written request for a hearing, unless you or DVR ask for a later hearing date and the office of administrative hearings determines there is a reasonable cause for the delay.

NEW SECTION

WAC 388-891-0265 What is a pre-hearing meeting? After you submit a request for a fair hearing, DVR offers you a pre-hearing meeting. The pre-hearing meeting can be conducted in person, by telephone, or by another method agreeable to all parties. The purpose of the pre-hearing meeting is to:

(1) Clarify the decision with which you disagree;

(2) Exchange copies of laws, rules or other information to be presented in the fair hearing;

(3) Explain how the fair hearing is conducted; and

(4) Settle the disagreement, if possible.

NEW SECTION

WAC 388-891-0270 Do I receive a written fair hearing decision? The office of administrative hearings sends you a written report of the findings and decision within thirty days of the fair hearing.

NEW SECTION

WAC 388-891-0275 Is the fair hearing decision final? (1) The office of administrative hearings decision is final and DVR must implement the decision.

(2) If you do not agree with the office of administrative hearings decision, you may pursue civil action through superior court to review that decision.

NEW SECTION

WAC 388-891-0295 Can DVR suspend, reduce or terminate my services if I request a fair hearing? DVR may not suspend, reduce, or terminate agreed-upon services if you have requested a fair hearing, unless DVR provides evidence that you provided false information, committed fraud or other criminal acts involving VR services.

PAYING FOR VR SERVICES

NEW SECTION

WAC 388-891-0300 Under what conditions does DVR provide and/or pay for vocational rehabilitation services to individuals? DVR provides and pays for VR services if:

(1) You have completed the application requirements;

(2) You have provided documents that verify your identity and legal work status;

(3) DVR authorizes the services before the services begin;

(4) The services are needed to:

(a) Determine your eligibility for services;

(b) Identify your vocational rehabilitation needs; and/or

(c) Help you get and/or keep a job.

(5) The services to be provided, except services listed in WAC 388-891-0310, are not provided to you or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits;

(6) You have completed the financial statement, if required, and have agreed upon what portion, if any, you are required to for your VR services; and

(7) The service provider meets all federal, state, and agency requirements for approval as a DVR service provider.

NEW SECTION

WAC 388-891-0310 What VR services are provided without determining whether services or benefits are available from another program or organization? DVR is not required to determine whether the following services or benefits can be provided to you or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits:

(1) Assessment services to determine eligibility and/or VR needs;

(2) Counseling and guidance, including information and referral;

(3) Independent living services and evaluations provided by DVR staff;

(4) Job placement and job retention services;

(5) Rehabilitation technology services;

(6) Post-employment services when providing the services listed in subsection (1) through (5) above.

NEW SECTION

WAC 388-891-0320 What if looking for services and benefits available from another program would delay or interrupt my progress toward achieving an employment outcome? (1) A DVR counselor may begin providing VR services without conducting a review to determine whether services or benefits can be provided to you or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits if the review would delay or interrupt:

(a) VR services to an individual determined to be at extreme medical risk, based on medical evidence provided by a qualified professional;

(b) An immediate job placement; or

(c) Your progress toward achieving the employment outcome identified on your individual plan for employment.

PERMANENT

(2) If you receive VR services before services or benefits are available from another program, you begin using the services and benefits from the other program when they become available.

NEW SECTION

WAC 388-891-0325 Does DVR pay for a VR service if services and benefits are available from another program or organization, but I don't want to use them? Except for the services outlined in WAC 388-891-0310, DVR does not pay for services or benefits that can be provided to you or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits. If you choose not to apply for and use the services or benefits, you are responsible for the cost of the services.

NEW SECTION

WAC 388-891-0330 Does DVR consider academic awards and scholarships as income? Academic awards and scholarships you earn based on merit are not counted as income for purposes of determining your participation in the cost of services.

NEW SECTION

WAC 388-891-0340 How does DVR determine whether I must pay part of my VR services using my own financial resources? (1) To determine whether you are required to pay a portion of VR services using your own financial resources:

(a) You must complete a DVR financial statement to document your financial status, except for the services outlined in WAC 388-891-0365;

(b) You must provide copies of financial records requested by DVR to establish your financial status.

(2) Depending on your income tax filing status for the most recent tax year, you must provide financial information based on your own individual resources or based on your family resources.

(a) If your income tax status was reported as married filing jointly, married filing separately, or you were listed as a dependent of another person, complete the financial statement based on family resources.

(b) If your income tax status was reported as single, complete the financial statement based on your own financial resources.

(3) If you fail to report your financial status accurately or fail to provide the required information, DVR may deny or suspend services at any time in the rehabilitation process, except the services listed under WAC 388-891-0365.

NEW SECTION

WAC 388-891-0345 Do I have to pay a portion of my VR services if I receive assistance or income support from another public program? If you provide verification that you receive benefits from one of the following programs, you are not required to pay any portion of your VR services.

(1) Department of social and health services (DSHS) income assistance;

(2) Medicaid; or

(3) Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

NEW SECTION

WAC 388-891-0350 What financial information does DVR use to decide if I need to help pay for VR services? (1) You complete a DVR financial statement to disclose the following information used to determine whether you must pay any part of the cost of VR services:

(a) Income from all sources, assets, including but not limited to bank accounts, vehicles, personal property, stocks, bonds, and trusts; and

(b) Living expenses, including household expenses, credit or loan payments, disability-related expenses and other financial obligations.

(2) If the results of the financial statement show that you do not have resources available to help pay for your VR services, DVR provides the services at no cost to you.

(3) If you decline to complete the financial statement or decline to contribute to the cost of VR services, DVR provides only those services listed under WAC 388-891-0365.

NEW SECTION

WAC 388-891-0355 How is the amount I pay for VR services determined? After completing the financial statement, you and a DVR counselor agree how to use the resources identified on the financial statement to help pay for VR services. The costs you agree to pay are documented on the individualized plan for employment (IPE). If your financial status changes, you are required to report the changes to your DVR counselor.

NEW SECTION

WAC 388-891-0360 What personal resources are not counted in the decision about whether I have to help pay for services? DVR does not count the following resources when deciding whether you need to help pay for DVR:

(1) The value of your primary home and furnishings;

(2) The value of items that you keep because of personal attachment, rather than because of monetary value;

(3) The value of one vehicle per household member needed for work, school, or to participate in VR services;

(4) Retirement, insurance, or trust accounts that do not pay a current benefit to you or your family;

(5) If a retirement, insurance or trust account pays a current benefit, only the monthly benefit is counted as income and the balance of the account is excluded;

(6) Awards or scholarships you earn based on merit;

(7) Up to five thousand dollars of your total assets are excluded as exempt;

(8) Equipment or machinery used to produce income;

(9) Livestock used to produce income; and
(10) Disability-related items and/or services.

NEW SECTION

WAC 388-891-0365 What VR program services am I not required to help pay for? You are not required to pay any portion of the following VR services, regardless of your financial status:

(1) Assessment services to determine eligibility or VR needs, including independent living evaluations;

(2) Counseling and guidance services provided by DVR staff;

(3) Information and referral services;

(4) Interpreter and reader services;

(5) Personal assistance services;

(6) Job placement;

(7) Job retention services;

(8) Independent living services provided directly by DVR staff; and

(9) Post-employment services that include any of the services in subsections (1) through (8) above.

NEW SECTION

WAC 388-891-0370 Can I select the services and service provider of my choice? (1) You may select VR services that you need to achieve an employment outcome that is consistent with your strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(2) You may select the service provider of your choice if the service provider meets the following conditions:

(a) DVR pays for services that meet your needs at the least cost possible.

(i) If two or more service providers or programs offer comparable services but differ in cost, and you choose the higher cost service or program, you are responsible for those costs in excess of the lower cost service. You can use resources other than DVR funds to pay the remaining cost.

(ii) DVR may pay for a service or program at a higher cost than another service or program if the costs are reasonably comparable.

(b) The service provider meets all federal, state, and DVR requirements for DVR approval.

INFORMED CHOICE

NEW SECTION

WAC 388-891-0400 What is informed choice? Informed choice is the process by which an individual receiving services from DVR makes decisions about VR goals and the VR services and service providers necessary to reach those goals. The decision-making process takes into account the individual's values, lifestyle, and characteristics, the availability of resources and alternatives, and general economic conditions. Informed choice involves communicating clearly with an individual receiving VR services to assure the individual understands and uses pertinent information in the decision making process. The intent of informed choice is to ensure VR services are provided in a manner that promotes respect for individual dignity, personal responsibility, self-determination, and the pursuit of meaningful careers.

NEW SECTION

WAC 388-891-0410 How does DVR support the informed choice process? DVR supports the informed choice process by providing counseling and guidance, information and support to help you make choices that match your strengths, resources, priorities, concerns, abilities, capabilities, and interests, including:

(1) Explaining what choices you can make throughout the rehabilitation process;

(2) Assisting you to identify and get the information you need to explore the options available; and

(3) Helping you understand and evaluate the options.

NEW SECTION

WAC 388-891-0420 What if I don't know how to use the informed choice decision making process? DVR explains how to use informed choice to make decisions about VR goals and services. If it is difficult for you to make informed choices, DVR can help you understand the options available and choose the one that meets your needs.

NEW SECTION

WAC 388-891-0430 What decisions can I make using informed choice? You have the right to make informed choices about VR goals and services throughout the rehabilitation process, including but not limited to:

(1) What assessment services and/or service provider(s) you will use to get the information necessary for DVR to determine eligibility and/or identify your VR needs;

(2) What to include on your individualized plan for employment (IPE), including:

(a) Type of employment outcome and setting;

(b) VR services needed to achieve the employment outcome;

(c) Service provider(s) that will provide the service and setting in which to receive the services; and

(d) Method(s) of arranging and paying for services, from the methods available to DVR under state law and agency policy.

NEW SECTION

WAC 388-891-0440 What information and assistance will DVR provide to help me make informed choices about VR services and service providers? To help you select the VR services you need to achieve an employment outcome and the service provider(s) to use, DVR will help you get the following information, to the extent the information is available and/or appropriate:

(1) Cost, accessibility, and duration of services;

(2) Consumer satisfaction with those services;

(3) Qualifications of potential service providers;

(4) Type(s) of services offered by each service provider;

PERMANENT

(5) Type of setting in which the services are provided, including whether the setting is integrated or nonintegrated; and

(6) Outcomes achieved by others served by the service provider.

ORDER OF SELECTION

NEW SECTION

WAC 388-891-0500 What happens if DVR cannot serve every eligible person? If DVR cannot serve all eligible individuals, because there are not enough funds or other resources, DVR must:

(1) Establish a statewide waiting list for services;

(2) Implement a process called order of selection that establishes the order in which DVR selects eligible individuals from the waiting list to begin receiving VR services; and

(3) Provide you with information and guidance (which may include counseling and referral for job placement) about other federal or state programs that offer services to help you meet your employment needs, if available.

PERMANENT

NEW SECTION

WAC 388-891-0510 How are individuals selected for services when DVR is operating under an order of selection? When DVR is operating under an order of selection, individuals are selected for services as follows:

(1) At the time you are determined eligible for VR services, a DVR counselor establishes a priority for services category based on the severity of your disability.

(2) As resources become available for DVR to serve additional individuals, DVR selects names from the waiting list in the priority category being served at that time.

(3) The priority categories include:

(a) Priority category 1—Individuals with most severe disabilities;

(b) Priority category 2—Individuals with severe disabilities; and

(c) Priority category 3—Individuals with disabilities.

(4) Within a priority category, the date you applied for VR services determines the order in which you are selected from the waiting list.

NEW SECTION

WAC 388-891-0520 What is the criteria for priority category 1—Individuals with most severe disabilities? DVR determines you are in priority category 1—Individuals with most severe disabilities, if you meet the following criteria:

(1) You require supported employment; and/or

(2) You meet the criteria for an individual with a severe disability as defined in WAC 388-891-0530, you require two or more VR services over an extended period of time (twelve months or more) and you experience serious functional losses in four or more of the following areas in terms of an employment outcome:

(a) Mobility;
(b) Communication;
(c) Self-care;
(d) Self-direction;
(e) Interpersonal skills;
(f) Work tolerance; or
(g) Work skills.

NEW SECTION

WAC 388-891-0530 What is the criteria for priority category 2—Individuals with severe disabilities? DVR determines you are in priority category 2—Individuals with severe disabilities if:

(1) You are receiving disability benefits under Title II or Title XVI of the Social Security Act, but do not meet the criteria for priority category 1; and/or

(2) You meet the eligibility requirements outlined in WAC 388-891-0540, you require two or more VR services over an extended period of time (twelve months or more) and, you experience serious functional losses in one to three of the following areas in terms of an employment outcome:

(a) Mobility;
(b) Communication;
(c) Self-care;
(d) Self-direction;
(e) Interpersonal skills;
(f) Work tolerance; or
(g) Work skills.

NEW SECTION

WAC 388-891-0540 What is the criteria for priority category 3—Individuals with disabilities? DVR determines you are in priority category 3—Individuals with disabilities if you meet the eligibility requirements outlined in WAC 388-891-1000, but you do not meet the criteria for priority category 1 or priority category 2.

VR SERVICES

NEW SECTION

WAC 388-891-0600 What vocational rehabilitation services are available to individuals from DVR? The following VR services are available to individuals from DVR:

(1) Assessment services;
(2) Independent living evaluation and services;
(3) Information and referral services;
(4) Interpreter services;
(5) Job placement services;
(6) Job retention services;
(7) Maintenance services;
(8) Occupational licenses;
(9) Personal assistance services;
(10) Physical and mental restoration services;
(11) Rehabilitation technology services;
(12) Self-employment services;
(13) Services to family members;
(14) Substantial counseling and guidance services;

(15) Tools, equipment, initial stocks and supplies;
(16) Training services;
(17) Transition services;
(18) Translation services;
(19) Transportation services;
(20) Other services; and
(21) Post-employment services.

NEW SECTION

WAC 388-891-0605 What are assessment services? Assessment services, including services provided in a trial work experience or extended evaluation, are provided to obtain information necessary to determine:

(1) Whether you are eligible for VR services;

(2) Severity of disability and priority category; and/or

(3) The employment outcome and VR services to be included in an individualized plan for employment.

NEW SECTION

WAC 388-891-0610 What are independent living services and/or evaluation? Independent living services and/or evaluation includes services provided to:

(1) Identify issues that present problems for you in achieving an employment outcome and services you need to address the issues.

(2) Help you manage the services you need to live independently, get information about benefits available to you and about your rights and responsibilities.

(3) Help you set personal goals, make decisions about life issues and employment, and help your family with issues related to your disability and independence.

(4) Help you manage and balance your life in areas such as budgeting, meal preparation and nutrition, shopping, hygiene, time management, recreation, community resources, and attendant management.

(5) Find out about housing resources and the qualifications, make decisions about the living arrangements and about changing to a more independent living arrangement.

NEW SECTION

WAC 388-891-0615 What are information and referral services? Information and referral services include information and guidance provided to help you explore employment services or benefits available to you from other programs, including other programs within the workforce development system.

NEW SECTION

WAC 388-891-0620 What are interpreter services? Interpreter services include sign language or oral interpretation services for individuals who are deaf or hard of hearing, and tactile interpretation services for individuals who are deaf-blind.

NEW SECTION

WAC 388-891-0625 What are job placement services? Job placement means referral to a specific job that results in a job placement.

NEW SECTION

WAC 388-891-0630 What are job retention services? Job retention means services provided after you have been placed in a job to help you achieve satisfactory performance and keep the job.

NEW SECTION

WAC 388-891-0635 What are maintenance services? Maintenance includes monetary support for expenses such as food, shelter, or clothing that are in excess of your usual living expenses that you need to participate in another VR service. The following examples include, but are not limited to, the ways maintenance may be used:

(1) A uniform or other suitable clothing required to look for or get a job;

(2) Short-term lodging and meals required to participate in assessment or training services not within commuting distance of your home; and

(3) A security deposit or utility hook-ups on housing you need to relocate for a job.

NEW SECTION

WAC 388-891-0640 What are occupational licenses? Occupational licenses are licenses, permits, certificates or bonds showing you meet certain standards or have accomplished certain achievements and/or have paid dues, fees or otherwise qualify to engage in a business, a specific occupation or trade, or other work.

NEW SECTION

WAC 388-891-0645 What are personal assistance services? (1) Personal assistance services include a range of services provided by at least one person to help you perform daily living activities on or off the job that you would perform without assistance if you did not have a disability. Examples include, but are not limited to:

(a) Reader services for individuals who cannot read print because of blindness or other disability. In addition to reading aloud, reader services include transcription of printed information into Braille or sound recordings. Reader services are generally for people who are blind, but may also include individuals unable to read because of serious neurological disorders, specific learning disabilities, or other physical or mental impairments.

(b) Personal attendant services are personal services that an attendant performs for an individual with a disability, including, but not limited to, bathing, feeding, dressing, providing mobility and transportation.

(2) Personal assistance services are only provided in connection with one or more other VR services.

PERMANENT

NEW SECTION

WAC 388-891-0650 What are physical and mental restoration services? (1) Physical and mental restoration services are used to diagnose and treat physical and mental impairments.

(2) DVR provides physical and mental restoration services if your disabling condition is stable or slowly progressive and the service is expected to substantially modify, correct, or improve a physical or mental impairment that is a substantial impediment to employment for you within a reasonable length of time and financial support is not readily available from another source, such as health insurance.

(3) Physical and mental restoration services include:

(a) Corrective surgery or therapy;

(b) Diagnosis and treatment of mental or emotional disorders by qualified personnel who meet state licensing requirements;

(c) Dental treatment if the treatment is directly related to an employment outcome, or in emergency situations involving pain, acute infections, or injury;

(d) Nursing services;

(e) Hospitalization (in-patient or outpatient) in connection with surgery or treatment and clinic services;

(f) Drugs and supplies;

(g) Prosthetic and orthotic devices;

(h) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids;

(i) Podiatry;

(j) Physical therapy;

(k) Occupational therapy;

(l) Speech or hearing therapy;

(m) Mental health services;

(n) Treatment of acute or chronic medical conditions and emergencies that result from providing physical and mental restoration services, or that are related to the condition being treated;

(o) Special services for the treatment of end-stage renal disease; and

(p) Other medical or medically-related rehabilitation services.

NEW SECTION

WAC 388-891-0655 What are the medical treatments DVR does not pay for? DVR does not pay for the following medical treatments:

(1) Maintenance of your general health or fitness, including, but not limited to, vitamins, in-patient hospital based weight loss programs or for-profit weight loss programs, exercise programs, health spas, swim programs and athletic fitness clubs;

(2) Cosmetic procedures, such as facelifts, liposuction, cellulite removal;

(3) Maternity care;

(4) Hysterectomies, elective abortions, sterilization, and contraceptive services as independent procedures;

(5) Drugs not approved by the Federal Drug Administration for general use or by state law;

(6) Life support systems, services, and hospice care;

(7) Transgender services including surgery and medication management;

(8) Homeopathic and herbalist services, Christian Science practitioners or theological healers; and

(9) Treatment that is experimental, obsolete, investigational, or otherwise not established as effective medical treatment.

NEW SECTION

WAC 388-891-0660 What is rehabilitation technology? Rehabilitation technology includes the use of technology, engineering methods and sciences to design, develop, test, evaluate, apply and distribute technology to address problems faced by individuals with disabilities in functional areas such as mobility, communication, hearing, vision and cognition. Rehabilitation technology includes:

(1) Assistive technology devices, equipment, or products used to increase, maintain, or improve the functional capabilities of an individual with a disability including, but not limited to:

(a) Telecommunications devices;

(b) Sensory aids and devices, including hearing aids, telephone amplifiers and other hearing devices, captioned videos, taped text, Brailled and large print materials, electronic formats, graphics, simple language materials, and other special visual aids;

(c) Vehicle modifications; and

(d) Computer and computer-related hardware and software that is provided to address a disability-related limitation.

(2) Services that assist you in the selection, acquisition, or use of an assistive technology device, including services to:

(a) Evaluate your needs in performing activities in your daily environment;

(b) Select, design, fit, customize, adapt, apply, maintain, repair, or replace an assistive technology device;

(c) Coordinate and use other therapies or services with assistive technology devices, such as education and rehabilitation plans and programs;

(d) Train or give technical assistance to professionals, employers, family members or others who provide services to you, hire you, or are involved in your major life activities.

(3) Real time captioning services;

(4) A written policy, plan, guarantee or warranty (initial or extended) that covers the cost to repair or replace an assistive technology device, a piece of equipment, or another assistive technology product if it is lost or damaged.

NEW SECTION

WAC 388-891-0665 Under what conditions does DVR provide vehicle modifications as a rehabilitation technology service? DVR provides vehicle modifications under the following conditions:

(1) DVR does not have a question about your driving safety as outlined in WAC 388-891-0775.

(2) The DVR counselor has determined based on disability-related documentation that your disability is stable or slowly progressive and not likely to impair your driving ability in the future, if you plan to drive the vehicle.

(3) You have provided documentation verifying that you and/or a family member is the registered and/or legal owner of the vehicle.

(4) You have provided a copy of a current driver's license and vehicle license with required endorsements for you and/or family member(s) who will operate the vehicle.

(5) If a used vehicle is to be modified, you have provided documentation of an inspection from a certified or journey level auto mechanic that verifies the vehicle is in good condition and capable of being modified.

(6) DVR has obtained documentation from a specialist in evaluation and modification of vehicles for individuals with disabilities that prescribes and inspects the modification, except prescriptions are not required for:

(a) Placement of a wheelchair lift, ramp, or scooter lift and tie downs for passenger access only;

(b) Replacement of hand controls;

(c) Wheelchair carriers; and

(d) Other minor driving aids.

(7) You have provided documentation of vehicle insurance adequate to cover the cost of replacement for loss or damage, including the cost of the modification.

(8) You have demonstrated or provided documentation that verifies you and/or family member(s) designated as a driver can safely operate the vehicle as modified.

NEW SECTION

WAC 388-891-0670 What types of insurance can DVR pay for? (1) DVR may pay for insurance for assistive technology devices, equipment and products.

(2) DVR does not pay for other types of insurance including, but not limited to, health, vehicle, home, and life insurance.

NEW SECTION

WAC 388-891-0675 What types of assistive technology insurance can DVR pay for? DVR may pay for insurance for assistive technology devices, equipment, and products which covers the cost to repair or replace them if they are lost or damaged if:

(1) The individual with a disability is the holder of the device, equipment or product and is the named insured under the policy; and

(2) The insurer pays for replacement or repair directly to the manufacturer or service provider.

NEW SECTION

WAC 388-891-0680 What types of assistive technology warranties can DVR pay for? (1) DVR may pay for an initial warranty for an assistive technology device, piece of equipment, or product for a specified period of time following the date of purchase if the warranty is available at the time of purchase by the manufacturer. An initial warranty may guarantee repair and/or replacement of parts or the entire device, equipment, or product when the parts and/or workmanship are faulty.

(2) DVR may pay for an initial warranty or for a warranty that extends beyond the period of coverage of an initial warranty for an assistive technology device, piece of equipment, or product if:

(a) The individual with a disability is the holder of the device, equipment, or product;

(b) The manufacturer provides a written guarantee for the materials and workmanship of the device, equipment, or product; and

(c) The manufacturer replaces or repairs faulty parts and workmanship or replaces the device, equipment, or product in whole or the manufacturer directly pays a service provider to repair or replace parts and workmanship or the device, equipment, or product in whole.

NEW SECTION

WAC 388-891-0685 What are self-employment services? Self-employment services include consultation and technical assistance to help you establish a small business to become self-employed and equipment, tools, initial stocks and supplies. Before a DVR counselor agrees to an IPE that includes a self-employment outcome, you must complete assessment services, including the development of a business plan that demonstrates that the self-employment you are considering is feasible, sustainable, and results in an employment outcome. DVR does not support hobbies or activities that do not result in an income-producing self-employment outcome.

NEW SECTION

WAC 388-891-0690 What vocational rehabilitation services can DVR provide to my family member(s)? Vocational rehabilitation services may be provided to a family member if the services are necessary for you to achieve an employment outcome. A family member includes a relative or guardian of an applicant or eligible individual or an individual who lives in the same household as the applicant or eligible individual and has a substantial interest in her or his well being.

NEW SECTION

WAC 388-891-0695 What types of child care does DVR provide to my family members? (1) DVR pays for the following types of licensed child care and child care exempt from licensing in conformance with DSHS licensing or certification requirements and background check requirements:

(a) Child day care centers;

(b) Family child day care homes; and

(c) School-age child care centers.

(2) DVR pays for in-home or relative child care including:

(a) Child care provided to your child(ren) in your home by a relative or other person; and

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(b) Child care provided to your child(ren) by a relative outside of your home.

(3) To be authorized as an in-home/relative child care provider for DVR payment, your in-home or relative child care provider must comply with background check requirements outlined in chapter 388-290 WAC.

(4) DVR pays for child care in states bordering Washington if the child care provider meet their state's licensing regulations.

(5) DVR pays the child care provider's usual rates for child care services directly to the child care provider.

NEW SECTION

WAC 388-891-0700 What is substantial counseling and guidance? Substantial counseling and guidance includes intensive counseling and guidance provided by a DVR counselor throughout the rehabilitation process to help you address medical, family or social issues, vocational counseling, or other counseling and guidance that is over and above the usual counseling and guidance relationship. Substantial counseling and guidance services include counseling and guidance to support a self-directed job search.

NEW SECTION

WAC 388-891-0705 What are tools, equipment, initial stocks and supplies? Tools, equipment, initial stocks and supplies are materials and hardware required to carry out the duties of a job.

NEW SECTION

WAC 388-891-0710 What are training services? Training services are designed to help you gain knowledge, skills and abilities needed to achieve an employment outcome. Training services, include, but are not limited to:

(1) On-the-job training;
(2) Post-secondary training;
(3) Technical or vocational training;
(4) Basic education/literacy training;
(5) Community rehabilitation program (CRP) training;
(6) Other miscellaneous training.

NEW SECTION

WAC 388-891-0715 What is on-the-job training? On-the-job training is training an employer provides to you after you are placed in a job to help you learn the skills you need. The employer must sign an agreement to include at a minimum:

(1) Training to be provided, including skills to be learned and training methods;

(2) Duration or number of hours of training to be provided;

(3) How the employer will evaluate and report your progress to DVR;

(4) An agreed-upon fee based on the employer's costs to provide the training; and

(5) Payment criteria.

NEW SECTION

WAC 388-891-0720 What is post-secondary training? Post-secondary training means academic training above the high school level leading to a degree, an academic certificate, or other recognized educational credential. Post-secondary training is provided by a college or university, community college, junior college or technical college.

NEW SECTION

WAC 388-891-0725 What is technical or vocational training? Technical or vocational training includes occupational, vocational or specific job skill training, not leading to an academic degree, provided by a community college, business school, vocational, technical or trade school to prepare for work in a specific occupation.

NEW SECTION

WAC 388-891-0730 What is basic education/literacy training? Basic education/literacy training teaches basic academic skills, including how to read.

NEW SECTION

WAC 388-891-0735 What is community rehabilitation program (CRP) training? Community rehabilitation program (CRP) training is training to prepare an individual for work, such as developing appropriate work habits and behaviors, getting to work on time, dressing appropriately, and/or skills to increase productivity.

NEW SECTION

WAC 388-891-0740 What other training does DVR provide? DVR provides other miscellaneous training services that are not identified in another section, such as high school completion, speech reading or sign language training, cognitive training and tutoring.

NEW SECTION

WAC 388-891-0745 What conditions apply to receiving training services at an institution of higher education? (1) Training at an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) is provided only after you and a DVR counselor have made maximum efforts to get and use available grant funding from other sources to pay for costs related to attendance. Grant funding does not include student loans.

(2) You must provide DVR a copy of your grant funding award or denial form, statement of unmet need and/or student budget, and other related documentation.

(3) If an academic institution charges a fee to cover the cost of a student health clinic and the fee is required as a condition of registration, DVR may pay this fee.

(4) If an academic institution charges a liability fee to cover the costs of a student to register in high-risk courses/

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practicum and the fee is required as a condition of registration, DVR may pay this fee.

NEW SECTION

WAC 388-891-0750 Can I receive training services from a private school, an out-of-state training agency or an out-of-state college? If you choose training services at a private or out-of-state program when an in-state or public program is available and adequate to meet your needs, you are responsible for costs that are in excess of the public or in-state program costs.

NEW SECTION

WAC 388-891-0755 What are transition services? (1) Transition services are work-related activities you begin while you are in high school that are coordinated with VR services to help you prepare for and go to work in the community after you leave high school.

(2) Transition services may include any of the VR services listed under WAC 388-891-0600.

NEW SECTION

WAC 388-891-0760 What are translation services? Translation services include oral and written translation of English into the primary language of an applicant or eligible individual.

NEW SECTION

WAC 388-891-0765 What are transportation services? Transportation services include travel and related expenses necessary for you to participate in VR services, such as a bus pass, reimbursement for gasoline, purchase or repair of a vehicle.

NEW SECTION

WAC 388-891-0770 Under what conditions does DVR provide a vehicle? (1) DVR provides a vehicle as a transportation service only in exceptional circumstances to support another VR service on the IPE and must be approved by the director or his or her designee.

(2) A vehicle issued to you remains the property of DVR until you achieve an employment outcome that requires the vehicle and you maintain the employment for at least ninety days.

(3) The director or his or her designee approves the purchase of a vehicle only if:

(a) A DVR counselor determines, based on disability-related documentation that your disability is stable or slowly progressive, and is not likely to impair your ability to drive in the future;

(b) You and a DVR counselor agree it is a necessary service under your individualized plan for employment (IPE) because:

(i) No other transportation options are available and it is not feasible for you to relocate to live closer to employment or other transportation options; or

(ii) A vehicle is required as a condition of employment.

(c) You do not have a vehicle or your vehicle cannot be modified or repaired to the extent that you can drive it.

(4) Prior to issuing a vehicle to you, you must submit the following documents to DVR and you must agree to provide ongoing verification upon request of a DVR counselor:

(a) A copy of your current, valid driver's license;

(b) A copy of your driving record disclosing any moving violations and indicating no criminal convictions related to driving a vehicle;

(c) A copy of your motor vehicle insurance coverage with the following minimum coverage and conditions:

(i) Liability in the amount of fifty thousand dollars/one hundred thousand dollars/fifty thousand dollars;

(ii) Uninsured motorist in the amount of fifty thousand dollars/one hundred thousand dollars/fifty thousand dollars;

(iii) Personal injury in the amount of one hundred thousand dollars;

(iv) Replacement cost of the vehicle, including special equipment and modifications, if applicable;

(v) DVR is listed as the lien holder; and

(vi) All drivers who use the vehicle are listed on the policy.

(d) You have signed a written agreement with your DVR counselor that outlines how you will pay for vehicle maintenance and repair, as this is a requirement for subsequent ownership of the vehicle;

(e) You have signed an agreement to return the vehicle to DVR upon request as long as DVR owns the vehicle.

(5) Before DVR transfers ownership of a vehicle to you, you must submit documentation to verify:

(a) You are the registered owner of the vehicle;

(b) The vehicle is insured to cover the cost of replacement for loss or damage at the time ownership is transferred.

NEW SECTION

WAC 388-891-0775 What happens if DVR has a question about my driving safety? (1) DVR does not provide services to facilitate your driving or that of a driver using your vehicle if:

(a) Either you or the driver are uninsured; or

(b) DVR is aware of any fact which raises a question regarding driving safety.

(2) Services to facilitate your driving include, but are not limited to, vehicle modifications provided as a rehabilitation technology service, car repairs, gasoline money, driver license, and license tabs.

NEW SECTION

WAC 388-891-0780 What other services does DVR provide? DVR can provide other services not identified in this chapter when the service is needed for you to achieve an employment outcome.

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NEW SECTION

WAC 388-891-0790 What are post-employment services? Post employment services include one or more vocational rehabilitation services provided if:

(1) Your case was closed within the past three years because you achieved an employment outcome;

(2) Your rehabilitation needs are limited in scope and duration;

(3) You need post employment services to maintain, regain or advance in employment that is consistent with your strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

SUPPORTED EMPLOYMENT

NEW SECTION

WAC 388-891-0800 What is supported employment? (1) Supported employment is:

(a) Competitive work; or

(b) Work in an integrated setting while you work toward competitive work consistent with your strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; or

(c) Transitional employment for an individual with a most severe disability due to chronic mental illness.

(2) Supported employment is for an individual with a most severe disability who:

(a) Has not traditionally worked in competitive employment; or

(b) Has worked in competitive employment, but the disability has caused the individual to stop working, or work off and on; and

(c) Needs intensive supported employment services and extended services to work because of the nature and severity of the disability.

NEW SECTION

WAC 388-891-0810 Who is eligible for supported employment? You are eligible for supported employment services if:

(1) You are eligible for vocational rehabilitation services under WAC 388-891-1000;

(2) You have been determined to be an individual with a most severe disability; and

(3) Supported employment is appropriate for you based on a comprehensive assessment of your needs, including an evaluation of your rehabilitation, career and job needs.

NEW SECTION

WAC 388-891-0815 Who decides if I am eligible for supported employment? DVR decides if you are eligible for supported employment services.

NEW SECTION

WAC 388-891-0820 What is competitive work in supported employment? Competitive work, as used in supported employment, is:

(1) Work in the competitive labor market that you perform on a full-time or part-time basis in an integrated setting; and

(2) Work for which you are paid at or above the minimum wage, but not less than the usual wage your employer pays to nondisabled employees who do the same or similar work as you.

NEW SECTION

WAC 388-891-0825 What is an integrated setting in supported employment? An integrated setting in supported employment is a work setting commonly found in the community in which you interact with nondisabled people to the same extent that a nondisabled person in the same type of job interacts with other persons.

NEW SECTION

WAC 388-891-0830 Is my work setting integrated if my interactions at the work site are with nondisabled supported employment service providers? Interactions at your work site between you and a nondisabled supported employment service provider do not meet the requirement for an integrated setting.

NEW SECTION

WAC 388-891-0835 What is transitional employment? Transitional employment is a supported employment work model using a series of consecutive jobs in competitive employment for individuals with the most severe disabilities due to mental illness. In transitional employment, ongoing support services must include continuing sequential job placement until job permanency is achieved.

NEW SECTION

WAC 388-891-0840 What are supported employment services? Supported employment services are:

(1) Ongoing support services as described in WAC 388-891-0845; and

(2) Vocational rehabilitation services listed in WAC 388-891-0600.

NEW SECTION

WAC 388-891-0845 What are ongoing support services? Ongoing support is a type of supported employment service to help you get and keep a job. Ongoing support services include:

(1) An assessment of your employment situation at least twice a month, or under special circumstances and especially at your request, an assessment regarding your employment

situation that takes place away from your worksite at least twice a month to:

(a) Determine what is needed to maintain job stability; and

(b) Coordinate services or provide specific intensive services that are needed at or away from your worksite to help you maintain job stability.

(2) Intensive job skill training for you at your job site by skilled job trainers;

(3) Job development, job placement and job retention services;

(4) Social skills training;

(5) Regular observation or supervision;

(6) Follow-up services such as regular contact with your employer, you, your representatives, and other appropriate individuals to help strengthen and stabilize the job placement;

(7) Facilitation of natural supports at the worksite;

(8) Other services similar to services described in subsection (1) through (7) above; and

(9) Any other vocational rehabilitation service.

NEW SECTION

WAC 388-891-0850 What are extended services? Extended services help you keep your job after DVR stops providing or paying for supported employment services.

NEW SECTION

WAC 388-891-0855 Does DVR provide extended services? DVR does not provide extended services.

NEW SECTION

WAC 388-891-0860 Who provides the extended services I need? Extended services are provided by nonprofit private organizations such as community rehabilitation programs, state and local public agencies, employers, or any other appropriate resources.

NEW SECTION

WAC 388-891-0865 What is natural support? Natural support is a method used to help you keep your job after DVR stops providing supported employment services. Natural support uses the people who you ordinarily come into contact with at work and/or at home to help you with work routines and social interactions at the work site.

NEW SECTION

WAC 388-891-0870 Are supported employment services time-limited? DVR provides supported employment services as part of your individualized plan for employment for a period not to exceed eighteen months, unless under special circumstances you and your DVR counselor jointly agree to extend the time in order to achieve the employment goals in your individualized plan for employment.

NEW SECTION

WAC 388-891-0875 What is required for me to change from supported employment services to extended services? Prior to helping you change from supported employment services to extended services, a DVR counselor must ensure the following:

(1) You have made substantial progress toward meeting the number of work hours per week you want to work as documented on your individualized plan for employment;

(2) You are stabilized in the job; and

(3) Extended services are readily available and can be provided to you without an interruption in services.

NEW SECTION

WAC 388-891-0880 What happens if my DVR counselor and I do not find a source for extended services and/or we cannot establish natural supports during the initial eighteen months of my individualized plan for employment? If you and your DVR counselor do not find a source for extended services and/or cannot establish natural supports during the initial eighteen months of your individualized plan for employment, DVR must determine that you are no longer eligible for VR services.

NEW SECTION

WAC 388-891-0885 Under what conditions does DVR close my case service record for supported employment? If you have achieved a supported employment outcome, DVR must wait at least ninety days after helping you change from supported employment services to extended services before closing your case service record.

NEW SECTION

WAC 388-891-0890 Under what conditions does DVR provide supported employment services as post-employment services? DVR provides supported employment services to you as post-employment services following the change from supported employment services to extended services if:

(1) Your extended service provider cannot provide the services; and

(2) You need such services as job station redesign, repair and maintenance of assistive technology devices and replacement of prosthetic and orthotic devices to keep your job.

APPLYING FOR VR SERVICES

NEW SECTION

WAC 388-891-0900 Who can apply for vocational rehabilitation services? Any individual who intends to achieve an employment outcome may apply for VR services.

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NEW SECTION

WAC 388-891-0910 Am I required to provide proof of my identity and work status? Before DVR pays for VR services, including assessment services, you must provide copies of documents requested by DVR that verify your identity and, if you are not a United States citizen, your legal work status.

NEW SECTION

WAC 388-891-0920 If I don't live in Washington, can I receive VR services? The state in which you live has the primary responsibility to provide VR services to you. If you are not a resident of Washington state, you may receive VR services if you maintain a home, are registered to vote, or are otherwise present in the state.

PERMANENT

NEW SECTION

WAC 388-891-0930 Can I receive VR services if I am legally blind? The Washington state department of services for the blind, under an agreement with DVR, is the primary agency responsible for providing vocational rehabilitation services to individuals who are blind or have a visual impairment resulting in an impediment to employment. DSB and DVR may coordinate to provide joint services if you would benefit from such coordination.

NEW SECTION

WAC 388-891-0940 Can I receive VR services if I am Native American? DVR serves eligible Native Americans, including Native Americans who belong to an Indian tribe. If you live on an Indian reservation that operates a vocational rehabilitation program, you may apply for VR services from the tribe or from DVR, or from both agencies.

NEW SECTION

WAC 388-891-0950 How do I contact DVR if I don't speak English? If you don't speak English, you may request another type of communication to enable you to meet with DVR. DVR arranges and pays for services you need to communicate with DVR to apply for or receive VR services.

NEW SECTION

WAC 388-891-0960 What other methods of communication does DVR use? DVR uses equipment, devices or other services you need to understand and respond to information. Methods DVR can use to communicate with you include, but are not limited to, the use of:

(1) Interpreters;
(2) Readers;
(3) Captioned videos;
(4) Telecommunications devices and services;
(5) Taped text;
(6) Braille and large print materials; and
(7) Electronic formats.

NEW SECTION

WAC 388-891-0970 Does DVR translate written communication for people who don't speak English? (1) DVR translates the following written communication into the primary language of an applicant or eligible individual:

(a) Application for VR services;
(b) Notification of eligibility or ineligibility;
(c) Plan for employment;
(d) Notification of case closure;
(e) Notification of annual review, if appropriate; and
(f) Any notice requiring a response or a signature from the individual to continue receiving services.

(2) DVR translates the Washington Administrative Code (WAC) regarding VR services or service providers into the primary language of an applicant or eligible individual upon his or her request.

NEW SECTION

WAC 388-891-0980 How do I apply for VR services? You have completed the application requirements when you:

(1) Have provided information needed to begin an assessment of eligibility and VR needs.

(2) Are available to participate in assessment services necessary to determine if you are eligible for VR services.

(3) Have signed an application form provided by DVR or provided a written request that includes the following information:

(a) Your name, address and county;
(b) The nature of your disability;
(c) Your birth date and gender;
(d) The date of application; and
(e) Your Social Security Number (optional).

ELIGIBILITY

NEW SECTION

WAC 388-891-1000 Who is eligible to receive VR services? You are eligible for VR services if a DVR counselor determines that you meet all of the following criteria:

(1) You have a physical, mental, or sensory impairment that results in a substantial impediment to employment;

(2) You require VR services to prepare for, get or keep a job that matches your strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and

(3) You are capable of working as a result of receiving VR services.

NEW SECTION

WAC 388-891-1005 How does DVR determine if I am eligible? (1) A DVR counselor reviews and assesses information and records about the current status of your disability and determines whether you meet the eligibility requirements outlined in WAC 388-891-1000. A DVR counselor bases the determination on observations, education records, medical records, information provided by you or

your family, and information provided by other agencies or professionals.

(a) If information or records are not current, not available, or not sufficient for a DVR Counselor to determine if you are eligible, DVR provides the assessment services necessary to get the information needed to make a decision.

(b) VR services used to collect additional information and records to determine eligibility can include trial work, assistive technology, personal assistant services, or any other support services necessary to determine if you are eligible.

(c) DVR assists you to make informed choices in the decisions related to assessment services needed to make an eligibility determination.

(d) If you refuse to provide or consent to the release of records or if you refuse to participate in VR services necessary to obtain information required to make an eligibility determination your VR case service record is closed.

(2) If you receive Social Security benefits under Title II or Title XVI of the Social Security Act and you are capable of working after receiving VR services, DVR determines you are eligible upon verification of benefits.

(a) If you cannot provide appropriate evidence, such as an award letter or other type of verification, DVR may request the verification for you, with your consent.

(b) DVR makes maximum efforts to obtain the verification in a reasonable period of time and to determine eligibility within sixty days from the date you complete the application requirements.

NEW SECTION

WAC 388-891-1010 After I submit my application to DVR, how long does it take DVR to make an eligibility decision? (1) DVR makes an eligibility decision as soon as enough information is available, but no longer than sixty days after you complete the application requirements.

(2) If DVR does not have enough information to determine your eligibility within sixty days, you and a DVR counselor must agree to:

(a) Extend the eligibility period to collect additional information or records; or

(b) Conduct a trial work experience or extended evaluation, if a DVR counselor is not certain whether VR services will enable you to achieve an employment outcome because of the severity of your disability

(3) If you do not agree to extend the eligibility period, DVR must close your case service record.

NEW SECTION

WAC 388-891-1015 What if a DVR counselor cannot presume that I am capable of working as a result of receiving VR services because of the severity of my disability? If a DVR counselor cannot presume VR services will enable you to achieve an employment outcome because of the severity of your disability, DVR will assess your ability to perform work using a trial work experience or an extended evaluation. The DVR counselor will evaluate the results of the trial work experience or extended evaluation to determine whether you can work as a result of receiving VR services and whether you are eligible for VR services.

NEW SECTION

WAC 388-891-1020 Am I eligible for VR services if I receive Social Security disability benefits? If you receive disability benefits under Title II or XVI of the Social Security Act (SSI or SSDI), DVR presumes that you are an eligible individual.

NEW SECTION

WAC 388-891-1025 What criteria are not considered in the eligibility decision? In making an eligibility decision, DVR does not consider your:

(1) Type of disability;

(2) Age, gender, race, color, creed, religion, national origin, or sexual orientation;

(3) Rehabilitation needs;

(4) Type of employment outcome you expect to achieve;

(5) Source of referral;

(6) Anticipated cost of services;

(7) Income.

NEW SECTION

WAC 388-891-1030 What is involved in a trial work experience? (1) During a trial work experience, you perform in a realistic work situation with appropriate VR services and/or supports to address your rehabilitation needs, such as supported employment, on-the-job training, assistive technology or personal assistant services. A DVR counselor develops a written plan describing the VR services to be used in the trial work experience.

(2) You participate in one or more trial work experiences over a period of time necessary to produce clear and convincing evidence for a DVR counselor to determine:

(a) You can benefit from VR services and achieve an employment outcome and are eligible for VR services; or

(b) You cannot benefit from VR services and achieve an employment outcome because of the severity of your disability and you are ineligible for VR services.

(3) Trial work experiences occur in the most integrated setting possible, based on your informed choice and rehabilitation needs.

NEW SECTION

WAC 388-891-1035 What if I cannot participate in a trial work experience? If you cannot participate in a trial work experience or if DVR has exhausted efforts to arrange a trial work experience, DVR conducts an extended evaluation to obtain the information necessary to determine whether you are eligible for VR services or to enable you to participate in a trial work experience.

PERMANENT

NEW SECTION

WAC 388-891-1040 What is an extended evaluation? An extended evaluation involves one or more VR services designed to assess whether you are capable of working as a result of receiving VR services. A DVR counselor develops a written plan outlining the VR services to be used during the extended evaluation. Only those services necessary to make an eligibility determination are provided. VR services are provided in the most integrated setting possible, based on your informed choice and rehabilitation needs.

NEW SECTION

WAC 388-891-1045 What happens if DVR determines that I am not eligible or no longer eligible for VR services? (1) Before determining that you are not eligible for VR services or that you are no longer eligible for VR services, a DVR counselor consults with you and gives you an opportunity to discuss the decision.

(2) DVR sends you a notice in writing, or using another method of communication, if needed. The notice includes:

(a) An explanation of the reason(s) you are not eligible or no longer eligible;

(b) Your rights to appeal the decision; and

(c) An explanation of the services available from the client assistance program.

(3) If you are ineligible based on a determination that you cannot achieve employment because of the severity of your disability, DVR reviews the decision within twelve months.

NEW SECTION

WAC 388-891-1050 If I am not eligible for VR services, can DVR help me find other services and programs to meet my needs? If DVR determines that you are not eligible for VR services, DVR provides you with information and refers you to other agencies or organizations that may provide services to meet your employment-related needs. This may include a referral to community rehabilitation programs offering extended employment (sheltered work) if you are determined ineligible based on a determination that you are too severely disabled to achieve employment as a result of receiving VR services.

IPE DEVELOPMENT

NEW SECTION

WAC 388-891-1100 What is an assessment for determining vocational rehabilitation needs? Each person determined eligible for VR services completes an assessment of VR needs that may include:

(1) An assessment for determining vocational rehabilitation needs includes a variety of services, including counseling and guidance, to determine your unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(2) The purpose of the comprehensive assessment is to collect and review information you need to select the type of employment outcome to achieve and the VR services you need to achieve the employment outcome.

(3) The comprehensive assessment is limited to services necessary to select an employment outcome and to develop a plan for employment.

(4) DVR uses existing information gathered to determine eligibility, including information provided by you and your family, to the maximum extent possible and appropriate.

(5) The comprehensive assessment may include, as needed:

(a) An assessment of the personality, interests, interpersonal skills, intelligence and related functional abilities, educational abilities, work experience, vocational aptitudes, personal and social adjustments, employment opportunities, and other vocational, educational, cultural, social, recreational, and environmental factors that affect your employment and rehabilitation needs.

(b) Work in real job situations to evaluate and/or develop work behavior and capacities necessary to achieve an employment outcome, including work skills, attitudes, habits, tolerances and social behavior.

(c) Referral for assistive technology services to assess whether services or devices could increase your ability to perform work.

NEW SECTION

WAC 388-891-1105 Do I have to disclose criminal history information to DVR? (1) You must disclose information to DVR before you develop a plan for employment about conditions or circumstances, such as a criminal record, identity and work status, that restrict the type of employment you can legally perform.

(2) If you select an employment outcome in a field that customarily requires a background check as a condition of employment, DVR must obtain a criminal history background check that verifies you are not excluded from employment in the field and/or specific job prior to IPE development.

NEW SECTION

WAC 388-891-1110 What other assessments might be required? (1) If you have a documented history of violent or predatory behavior that reasonably leads a DVR counselor to believe you may be a threat to yourself or others, you must participate in VR services necessary to determine the level of risk.

(2) If a VR counselor determines, based on an assessment conducted by a qualified professional, that your employment may pose a threat to the safety of you or others because you meet the conditions outlined in WAC 388-891-0110, the employment outcome and employment setting you choose must be evaluated for risk by an appropriate qualified professional.

(3) If a VR counselor becomes aware of a condition or circumstance after you have developed an IPE that may affect your ability to achieve an employment outcome, the VR

counselor may conduct necessary assessment services to determine whether you are capable of achieving the employment outcome identified on your IPE.

(4) If you decline to authorize the release of information to DVR or participate in VR services necessary to collect pertinent information which prevents the development of an appropriate IPE, the VR counselor may close your case service record.

NEW SECTION

WAC 388-891-1115 What is an individualized plan for employment (IPE)? An individualized plan for employment (IPE) is a DVR form that documents important decisions you and a VR counselor make about vocational rehabilitation services. The decisions documented on the IPE include, but are not limited to:

(1) The employment outcome you plan to achieve;

(2) Each major step you need to accomplish to reach the employment outcome;

(3) Your responsibilities in accomplishing each step of the plan;

(4) DVR's responsibilities in assisting you to accomplish each step of the plan;

(5) VR services needed to complete each step;

(6) Terms and conditions you and your VR counselor agree are required for continued support from DVR.

NEW SECTION

WAC 388-891-1120 Who develops an IPE? Each eligible individual develops an IPE, unless DVR is operating under an order of selection. If DVR is operating under an order of selection, each eligible individual in the priority category being served develops an IPE.

NEW SECTION

WAC 388-891-1125 What information does DVR provide to help me develop my IPE? DVR provides the following information to help you develop an IPE:

(1) Information about the options available for developing an IPE.

(2) Information that must be included in the IPE.

(3) Financial conditions or restrictions that apply to an IPE.

(4) How to get help completing forms required by DVR.

(5) Information about your rights if you disagree with a decision a DVR counselor makes relating to the IPE.

(6) Information about the client assistance program (CAP) and how to contact the program.

(7) Other information you request.

NEW SECTION

WAC 388-891-1130 What are the options for developing an IPE? (1) You may develop an individualized plan for employment (IPE) with support and assistance from:

(a) A VR counselor employed by DVR.

(b) A VR counselor not employed by DVR, but who meets the minimum qualifications for a VR counselor established by DVR.

(c) Another person you choose, such as a representative, family member, advocate, or other individual.

(2) If you choose to develop the IPE with someone other than a DVR counselor, DVR can help you identify individuals that may help you develop your IPE, to the extent resources are available.

(3) You may develop an IPE on your own.

(4) DVR does not pay for any related costs or fees charged by other parties to develop an IPE.

NEW SECTION

WAC 388-891-1135 Does DVR support any job I choose? (1) The employment outcome you choose must be consistent with the information and results of the assessment of your VR needs.

(2) DVR supports an individual to achieve an employment outcome as defined in WAC 388-891-0010. If you choose another type of employment, DVR refers you to other programs or organizations that offer the type of employment you choose, when available.

NEW SECTION

WAC 388-891-1140 What must be included on the IPE form? An IPE must include:

(1) An employment outcome that is consistent with the definition of employment outcome in WAC 388-891-0010;

(2) The VR services you need to achieve the employment outcome;

(3) Timeline for each service on your IPE and for achieving the employment outcome;

(4) The name of the person or organization selected to provide each service included on the IPE and how you will obtain the services;

(5) Criteria you will use to evaluate whether you are making progress toward achieving the employment outcome;

(6) Terms and conditions, including:

(a) A description of what DVR has agreed to do to support your IPE; and

(b) A description of what you have agreed to do to reach your employment outcome, including:

(i) Steps you will take to achieve your employment goal;

(ii) Services you agree to help pay for, and how much you agree to pay; and

(iii) Services you agree to apply for and use that are available to you at no cost from another program.

(7) Expected need for post-employment services prior to closing the case service record and, if appropriate, a statement of how post employment services are arranged using comparable services and benefits;

(8) An IPE that includes a supported employment outcome must also document:

(a) Supported employment services to be provided;

(b) Extended services or natural supports that are likely to be needed;

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(c) Who will provide and pay for natural supports or extended services. If it is not known who will provide and/or pay for extended services or natural supports at the time the IPE is developed, the IPE must include a statement explaining the basis for determining that a resource is likely to become available;

(d) A goal for the number of hours per week you are going to work and a plan to monitor your progress toward meeting the goal;

(e) A description of how the services on your IPE are coordinated with other federal or state services you get under an individualized plan;

(f) If job skills training is provided, the IPE must reflect that the training is provided on-site;

(g) Placement in an integrated setting for the maximum number of hours possible based on your strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(9) An IPE for a high school student who is receiving special education services is coordinated with the individualized education plan in terms of the goals, objectives, and services identified to the extent possible.

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NEW SECTION

WAC 388-891-1145 When does the IPE become effective? The IPE becomes effective when it is signed by you and a DVR counselor. DVR gives you a copy of the signed IPE, in writing or in another method of communication, if needed.

NEW SECTION

WAC 388-891-1150 Is the IPE reviewed and updated? You and a qualified VR counselor review the IPE at least once a year, or more often if needed, to assess your progress in achieving an employment outcome. You and a VR counselor amend the IPE if there are major changes in the employment goal, VR services, or service provider(s). Changes to an IPE take effect when you and a DVR counselor sign the amended IPE.

LOANING EQUIPMENT

NEW SECTION

WAC 388-891-1200 Under what conditions does DVR loan equipment, devices or other items to me? If you need a device, tool, piece of equipment or other item to participate in VR services or to go to work, DVR loans a new or used item to you until you achieve an employment outcome. DVR loans a used item from the DVR inventory if available at the time needed and DVR determines it is adequate to meet your needs.

NEW SECTION

WAC 388-891-1210 What if I need an item customized for my own personal needs? A DVR counselor determines whether to loan or issue a device, tool, piece of equipment or other item based on the reasonable likelihood that the item could be used by another individual if returned to DVR. If the DVR counselor determines an item could not be used by another individual if it were returned to DVR, the DVR counselor may issue the item directly to you without a loan agreement and the item is owned by you at the time of issue.

NEW SECTION

WAC 388-891-1220 What conditions apply to the use of a device, tool, piece of equipment or other item that is loaned to me? Before DVR loans an item to you, you must sign an agreement with DVR to comply with the following conditions:

(1) You agree to immediately return the item upon request or to pay for the item if you cannot return it to DVR;

(2) You agree to maintain the item according to DVR instructions and manufacturer's guidelines, if applicable, and keep it secure from damage, loss or theft.

NEW SECTION

WAC 388-891-1230 What happens if I fail to return a device, tool, piece of equipment or other item if requested by DVR? If DVR directs you to return an item loaned to you and you do not immediately return it, DVR reports the loss to the DSHS office of financial recovery (OFR). The OFR attempts to recover the item or payment for the item from you. If the OFR cannot recover the item or payment for the item from you, the OFR may report the loss to the local county prosecutor for legal action.

NEW SECTION

WAC 388-891-1240 What happens to a device, tool, piece of equipment or other item if I need it when my DVR case service record is closed? DVR may transfer ownership of the device, tool, piece of equipment or other item to you at the time a DVR counselor closes your case service record if you have achieved an employment outcome and you need the item to keep your job.

CASE CLOSURE

NEW SECTION

WAC 388-891-1300 Why does DVR close a case service record? A DVR counselor closes your case service record for any of the following reasons:

(1) You achieve an employment outcome;

(2) DVR determines that you are not eligible or no longer eligible;

(3) You are no longer available to participate in services;

(4) You decline VR services;

(5) You cannot be located;

(6) You ask DVR to close your case service record; or

(7) You refuse to cooperate in required or agreed upon services.

NEW SECTION

WAC 388-891-1310 How does DVR determine that I have achieved an employment outcome? DVR determines that you have achieved an employment outcome and no longer need VR services if:

(1) You received services under an IPE that helped you achieve the employment outcome on your employment plan;

(2) Your job matches your strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice;

(3) You have been working at the same job for at least ninety days to ensure the stability of your employment; and

(4) You and a DVR counselor agree the job is satisfactory, that you are performing the job well, and that you no longer need VR services.

NEW SECTION

WAC 388-891-1320 Am I involved in the decision to close my case? Before closing your case, a DVR counselor gives you an opportunity to discuss the decision. DVR notifies you in writing, or another method of communication, if needed, about the reason your case is being closed and your rights if you disagree with the decision.

NEW SECTION

WAC 388-891-1330 Under what conditions does DVR follow up with me after my case is closed? (1) DVR contacts you within twelve months after your case service record is closed and annually for two years after that to review whether anything has changed to affect your eligibility if:

(a) DVR closes your case after determining you are ineligible because you are too severely disabled to achieve an employment outcome as a result of VR services;

(b) You achieve a supported employment outcome and earn wages under section 14(c) of the Fair Labor Standards Act while working toward competitive employment;

(c) You choose extended employment; or

(d) You and your DVR counselor cannot find a source for extended services and/or cannot establish natural supports during the initial eighteen months of your individualized plan for supported employment.

(2) After DVR completes the reviews annually for two years, you or your representative may request additional annual reviews.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-890-0005	What is the purpose of this chapter?
WAC 388-890-0010	What definitions apply to this chapter?
WAC 388-890-0015	What is informed choice?
WAC 388-890-0020	How does DVR support the informed choice process?
WAC 388-890-0025	What decisions can I make using informed choice?
WAC 388-890-0030	What if I don't know how to use the informed choice decision making process?
WAC 388-890-0035	Who is eligible to receive VR services?
WAC 388-890-0040	How does DVR determine whether VR services will enable me to work?
WAC 388-890-0045	Am I eligible for VR services if I receive Social Security disability benefits?
WAC 388-890-0050	What criteria are not considered in the eligibility decision?
WAC 388-890-0055	What information does DVR use to make an eligibility decision?
WAC 388-890-0060	After I submit my application to DVR, how long does it take DVR to make an eligibility decision?
WAC 388-890-0065	What happens if DVR determines that I am not eligible?
WAC 388-890-0070	If I am not eligible for DVR services, can DVR help me find other services and programs to meet my needs?
WAC 388-890-0071	If I am eligible for or ineligible for VR services, how will I be notified?
WAC 388-890-0075	Who can apply for vocational rehabilitation services?
WAC 388-890-0080	Can I receive VR services if I am not a United States citizen?
WAC 388-890-0085	Am I required to provide proof of my identity and work status?
WAC 388-890-0090	If I don't live in Washington, can I receive VR or IL program services?
WAC 388-890-0095	Can I receive VR services if I am legally blind?
WAC 388-890-0100	Can I receive VR or IL program services if I am Native American?

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	whether I have to help pay for services?
WAC 388-890-1165	How does DVR decide whether I have resources to help pay for VR services?
WAC 388-890-1170	How is the amount I pay for VR or IL program services determined?
WAC 388-890-1175	What VR or IL program services am I not required to help pay for?
WAC 388-890-1180	What if a VR counselor makes a decision about my VR services that I don't agree with?
WAC 388-890-1185	What is the client assistance program (CAP)?
WAC 388-890-1190	What is mediation?
WAC 388-890-1195	When can I ask for mediation?
WAC 388-890-1200	Who arranges and pays for mediation?
WAC 388-890-1205	Is information discussed during mediation confidential?
WAC 388-890-1210	How do I request mediation?
WAC 388-890-1215	After the mediation session, do I receive a written statement of the results?
WAC 388-890-1220	What is a formal hearing?
WAC 388-890-1225	When is a formal hearing available?
WAC 388-890-1230	How do I request a formal hearing?
WAC 388-890-1235	After I submit a request for a formal hearing, when is it held?
WAC 388-890-1240	Do I receive a written formal hearing decision?
WAC 388-890-1245	Is the decision after a formal hearing final?
WAC 388-890-1250	Can DVR suspend, reduce or terminate my services while waiting for a formal hearing decision?
WAC 388-890-1255	How do I know what personal information I must give DVR and how it is used?
WAC 388-890-1260	Does DVR keep a record of my VR services on file?
WAC 388-890-1265	Under what conditions does DVR share personal information in my record with another service provider or organization?
WAC 388-890-1270	When DVR gets personal information about me from another agency or service provider, is it kept confidential?
WAC 388-890-1275	Does DVR change incorrect information in my record?
WAC 388-890-1280	How do I receive copies of information from my DVR record?
WAC 388-890-1285	Can DVR release personal information without my written consent?
WAC 388-890-1290	Under what conditions does DVR release personal information for audit, evaluation or research?
WAC 388-890-1295	How does DVR protect personal information about drug, alcohol, HIV/AIDS and sexually transmitted diseases?
WAC 388-890-1300	How do I contact DVR if I don't speak English?
WAC 388-890-1305	What other methods of communication does DVR use?
WAC 388-890-1310	When does DVR communicate with me using methods other than English?

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WSR 03-02-038
PERMANENT RULES
BOARD OF INDUSTRIAL INSURANCE APPEALS
[Filed December 24, 2002, 8:39 a.m.]

Date of Adoption: December 23, 2002.

Purpose: To revise the board's rules of practice and procedure by amending WAC 263-12-045, 263-12-050, 263-12-059, 263-12-060, 263-12-065, 263-12-093, 263-12-115 and 263-12-150; and adding two new sections, WAC 263-12-117 and 263-12-156.

Citation of Existing Rules Affected by this Order: Amending WAC 263-12-045, 263-12-050, 263-12-059, 263-12-060, 263-12-065, 263-12-093, 263-12-115 and 263-12-150.

Statutory Authority for Adoption: RCW 51.52.020.

Adopted under notice filed as WSR 02-19-088 on September 17, 2002.

Changes Other than Editing from Proposed to Adopted Version: WAC 263-12-045 (2)(k), in the last sentence, the phrase "may close the record and issue" has been changed to "may consider appropriate sanctions, including closing the record and issuing."

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 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 8, 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.

December 24, 2002
Thomas E. Egan
Chairperson

AMENDATORY SECTION (Amending WSR 00-23-021, filed 11/7/00, effective 12/8/00)

WAC 263-12-045 Industrial appeals judges. (1) **Definition.** Whenever used in these rules, the term "industrial appeals judge" shall include any member of the board, the executive secretary, as well as any duly authorized industrial appeals judge assigned to conduct a conference or hearing.

(2) **Duties and powers.** It shall be the duty of the industrial appeals judge to conduct conferences or hearings in cases assigned to him or her in an impartial and orderly manner. The industrial appeals judge shall have the authority, subject to the other provisions of these rules:

(a) To administer oaths and affirmations;

(b) To issue subpoenas on request of any party or on his or her motion. Subpoenas may be issued to compel:

(i) The attendance and testimony of witnesses at hearing and/or deposition, or

(ii) The production of books, papers, documents, and other evidence for discovery requests or proceedings before the board;

(c) To rule on all objections and motions including those pertaining to matters of discovery or procedure;

(d) To rule on all offers of proof and receive relevant evidence;

(e) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

(f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he or she deems necessary to fairly and equitably decide the appeal, including the obtaining of physical, mental, or vocational examinations or evaluations of workers;

(g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;

(h) To issue orders joining other parties, on motion of any party, or on his or her own motion when it appears that such other parties may have an interest in or may be affected by the proceedings;

(i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;

(j) To schedule the presentation of evidence and the filing of pleadings, including the filing of perpetuation depositions;

(k) To close the record on the completion of the taking of all evidence and the filing of pleadings and perpetuation depositions. In the event that the parties do not confirm witnesses or present their evidence within the timelines prescribed by the judge, the judge may consider appropriate sanctions, including closing the record and issuing a proposed decision and order;

(l) To take any other action necessary and authorized by these rules and the law.

(3) **Interlocutory review.** A party may request interlocutory review pursuant to WAC 263-12-115(6) of any exercise of authority by the industrial appeals judge under this rule.

(4) **Substitution of industrial appeals judge.** At any time the board or a chief industrial appeals judge or designee may substitute one industrial appeals judge for another in any given appeal.

AMENDATORY SECTION (Amending WSR 01-09-031, filed 4/11/01, effective 5/12/01)

WAC 263-12-050 Contents of notice of appeal. The board's jurisdiction shall be invoked by filing a written notice of appeal.

(1) **General Rule.** In all appeals, the notice of appeal shall contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any;

(b) A statement identifying the date and content of the department order, decision or award being appealed. This requirement may be satisfied by attaching a copy of the order, decision or award;

(c) The reason why the appealing party considers such order, decision or award to be unjust or unlawful;

(d) A statement of facts in full detail in support of each stated reason;

(e) The specific nature and extent of the relief sought;

(f) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held;

(g) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true((:));

(h) The signature of the appealing party or the party's representative.

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(2) **Industrial Insurance Appeals.** In appeals arising under the Industrial Insurance Act (Title 51 RCW), the notice of appeal shall also contain:

(a) The name and address of the injured worker;

(b) The name and address of the worker's employer at the time the injury occurred;

(c) In the case of occupational disease, the name and address of all employers in whose employment the worker was allegedly exposed to conditions that gave rise to the occupational disease;

(d) The nature of the injury or occupational disease((;)).

(e) The time when and the place where the injury occurred or the occupational disease arose((;)).

(3) **Crime Victims' Compensation Act.** In appeals arising under the Crime Victims' Compensation Act (chapter 7.68 RCW), the notice of appeal shall also contain:

(a) The time when and the place where the criminal act occurred;

(b) The name and address of the alleged perpetrator of the crime; and

(c) The nature of the injury.

(4) **Assessment Appeals.** In appeals from a notice of assessment arising under chapter 51.48 RCW or in cases arising from an assessment under the Worker and Community Right to Know Act (chapter 49.70 RCW), the notice of appeal shall also contain:

(a) A statement setting forth with particularity the reason for the appeal; and

(b) The amounts, if any, that the party admits are due((;)).

(5) **LEOFF Appeals.** In appeals arising under the special death benefit provision of the Law Enforcement Officers' and Fire Fighters' Retirement System (chapter 41.26 RCW), the notice of appeal shall also contain:

(a) The time when and the place where the death occurred; and

(b) ((t))The name and address of the decedent's employer at the time the injury occurred((;)).

(6) **Asbestos Certification Appeals.** In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects, the notice of appeal shall also contain:

(a) A statement identifying the certification decision appealed from;

(b) The reason why the appealing party considers such certification decision to be incorrect.

(7) **WISHA Appeals.** In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), the appeal shall also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s);

(c) A statement certifying compliance with WAC 263-12-059((;)).

(8) **Other Safety Appeals.** In appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal shall also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation or violations;

(c) ((A)) If applicable, a statement certifying compliance with WAC 263-12-059.

AMENDATORY SECTION (Amending WSR 01-09-032, filed 4/11/01, effective 5/12/01)

WAC 263-12-059 Appeals arising under the Washington Industrial Safety and Health Act—Notice to interested employees. In the case of any appeal by an employer concerning an alleged violation of the Washington Industrial Safety and Health Act, the employer shall give notice of such appeal to its employees by either: (1) providing copies of the appeal to each employee member of the employer's safety committee; or (2) by posting a copy of the appeal in a conspicuous place at the work site at which the alleged violation occurred. Any posting shall remain during the pendency of the appeal.

The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

The employer shall file with the board a certificate of proof of compliance with this section within fourteen days of receipt of the board's notice acknowledging receipt of the appeal. If notice as required by this section is not possible the employer shall advise the board or its designee of the reasons why notice cannot be accomplished. If the board, or its designee, accepts the impossibility of the required notice it will prescribe the terms and conditions of a substitute notice procedure reasonably calculated to give notice to affected employees.

AMENDATORY SECTION (Amending WSR 00-23-021, filed 11/7/00, effective 12/8/00)

WAC 263-12-060 Filing appeals—Limitation of time. (1) In cases arising under the Industrial Insurance Act, or the Worker and Community Right to Know Act, the notice of appeal shall be filed within sixty days from the date the copy of the order, decision or award of the department was received by the appealing party, except an appeal from an order or decision making demand for repayment of sums paid to a provider of medical, dental, vocational or other health services shall be filed within twenty days from the date the order or decision was received by the provider.

(2) In appeals arising under the Crime Victims Compensation Act (chapter 7.68 RCW), the notice of appeal shall be filed within ninety days from the date the copy of the order,

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decision or award of the department was received by the appealing party.

(3) In appeals from a notice of assessment arising under chapter 51.48 RCW, the notice of appeal shall be filed within thirty days from the date the notice of assessment was served.

(4) In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), the appeal shall be initiated by giving the director of the department of labor and industries notice of intent to appeal within fifteen working days from the date of notification of such citation, abatement period or penalty assessment. If the director does not reassume jurisdiction over the matter to which notice of intent to appeal is given, the department shall promptly transmit the notice of intent to appeal together with the department's record in the matter to the board, whereupon the matter shall be deemed an appeal before the board. If the director reassumes jurisdiction pursuant to a notice of intent to appeal, there shall be, within thirty working days of such reassumption or within the extended redetermination period up to an additional fifteen working days upon agreement of all parties to the appeal, a further determinative order issued in the matter. Any appeal from such further determinative order must be made directly to the board, with a copy filed with the director of the department, within fifteen working days from the date of notification of such further determinative order.

(5) In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects or in appeals arising under chapter 49.22 RCW concerning alleged violations of safety procedures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal shall be filed in the manner and within the time allowed for filing appeals under RCW 49.17.140 and WAC 263-12-060 ((~~(3)~~)) (4).

(6) In appeals arising under the special death benefit provision of the Law Enforcement Officers' and Fire Fighters' Retirement System (chapter 41.26 RCW), the notice of appeal shall be filed within sixty days from the date the copy of the order, decision or award of the department was received by the appealing party.

(7) The board shall forthwith acknowledge receipt of any appeal filed with the board and the board's stamp placed thereon shall be prima facie evidence of the date of receipt. The board may thereafter require additional copies to be filed.

AMENDATORY SECTION (Amending WSR 91-13-038, filed 6/14/91, effective 7/15/91)

WAC 263-12-065 Disposition on department record. In cases arising under the Industrial Insurance Act, the Worker and Community Right to Know Act, and the Crime Victims Compensation Act, the board may, within the times prescribed by RCW 51.52.090, enter an order making final disposition of an appeal, without prejudice to any party's right to appeal from any subsequent order, decision or award issued by the department, based solely upon review of the notice of appeal and the record of the department in the case, as follows:

(1) If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised therein, the board may deny the appeal and affirm the department's decision or award; or

(2) If the department's record sustains the contention of the appealing party, the board may allow the relief asked in such appeal((~~,~~));

(3) If the appeal is brought prior to the taking of appealable action or issuance of an appealable order, decision or award by the department, the board may deny the appeal ((~~and return the matter to the department without prejudice to the right of any party to appeal from any further order, decision or award of the department.~~));

(4) If the department has (a) held the order, decision or award under appeal in abeyance or modified, reversed or changed the order, decision or award under appeal within the time limited for appeal or within thirty days after receiving a notice of appeal, or (b) directed the submission of further evidence within the time limited for filing a notice of appeal, the board may deny the appeal on the basis that the appealing party is no longer aggrieved by the order, decision or award under appeal; or

(5) If an employer has filed an appeal from a notice of assessment, and the department, within thirty days after receiving a notice of appeal, modifies, reverses or changes any notice of assessment or holds any such notice of assessment in abeyance pending further investigation the board may deny the appeal.

AMENDATORY SECTION (Amending WSR 00-23-021, filed 11/7/00, effective 12/8/00)

WAC 263-12-093 Conferences—Disposition of appeals by agreement. (1) If an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts.

(a) In industrial insurance cases, if an agreement concerning final disposition of the appeal is reached by the employer and worker or beneficiary at a conference at which the department is represented, and no objection is interposed by the department, an order shall be issued in conformity with their agreement, providing the board finds that the agreement is in accordance with the law and the facts. If an objection is interposed by the department on the ground that the agreement is not in accordance with the law or the facts, a hearing shall be scheduled.

(b) In cases involving the Washington Industrial Safety and Health Act, an agreement concerning final disposition of the appeal among the parties must include regardless of other substantive provisions covered by the agreement: (i) A statement reciting the abatement date for the violations involved, and (ii) A statement confirming that the penalty assessment for contested and noncontested violations has or will be paid.

(c) Where all parties concur in the disposition of an appeal but the industrial appeals judge is not satisfied that the agreement is in conformity with the facts and the law or that

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the board has jurisdiction or authority to order the relief sought, the industrial appeals judge may require such evidence or documentation necessary to adequately support the agreement in fact and/or in law.

(2) All agreements reached at a conference concerning final disposition of the appeal shall be stated on the record by the industrial appeals judge and the parties shall indicate their concurrence on the record. The record may either be transcribed by a court reporter or recorded and certified by the industrial appeals judge conducting the conference.

The industrial appeals judge may, in his or her discretion accept an agreement for submission to the board in the absence of one or more of the parties from the conference, or without holding a conference.

(a) In such cases the agreement may be confirmed in writing by the parties to the agreement not in attendance at a conference, except that the written confirmation of a party to the agreement not in attendance at a conference will not be required where the industrial appeals judge is satisfied of the concurrence of the party or that the party received notice of the conference and did not appear.

(b) In cases where no conference has been held but the parties have informed the judge of their agreement, yet no written confirmation has been received, the judge may submit a judge's report of proceedings which encompasses the agreement. The judge will submit copies of the report to the parties and, if no objection is received within ten days, the agreement may be submitted to the board for approval.

(3) In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of appeals under the Washington Industrial Safety and Health Act, a copy of the proposed agreement shall be posted by the employer at each establishment to which the agreement applies in a conspicuous place or places where notices to employees are customarily posted. The agreement shall be posted for ten days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with ((~~WAC 296-350-400 (4) and (5)~~)) WAC 263-12-059. If an objection to the agreement is interposed by affected employees or employee groups prior to entry of the final order of the board, further proceedings shall be scheduled.

(4) The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties or proposed decision and order may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled or an order on agreement of parties or proposed decision and order issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the Board for any fee charged for their failure to attend.

AMENDATORY SECTION (Amending WSR 00-23-021, filed 11/7/00, effective 12/8/00)

WAC 263-12-115 Procedures at hearings. (1) **Industrial appeals judge.** All hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Order of presentation of evidence.**

(a) In any appeal under either the Industrial Insurance Act, the Worker and Community Right to Know Act or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her case-in-chief except that in an appeal from an order of the department that alleges fraud the department or self-insured employer shall initially introduce all evidence in its case-in-chief.

(b) In all appeals subject to the provisions of the Washington Industrial Safety and Health Act, the department shall initially introduce all evidence in its case-in-chief.

(c) After the party with the initial burden has presented his or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order. Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(3) **Objections and motions to strike.** Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon. Extended argument or debate shall not be permitted.

(4) **Rulings.** The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and statements that are inadmissible pursuant to WAC 263-12-095(5). All rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state.

(5) **Interlocutory appeals to the board - Confidentiality of trade secrets.** A direct appeal to the board shall be allowed as a matter of right from any ruling of an industrial appeals judge adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.

(6) **Interlocutory review by a chief industrial appeals judge.** (a) Except as provided in subsection (5) of this section interlocutory rulings of the industrial appeals judge are not subject to direct review by the board. A party to an appeal or a witness who has made a motion to quash a subpoena to appear at board related proceedings, may within five working days of receiving an adverse ruling from an industrial appeals judge request a review by a chief industrial appeals judge or his or her designee. Such request for review shall be in writing and shall be accompanied by an affidavit in support of the request and setting forth the grounds for the request, including the reasons for the necessity of an immediate review dur-

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ing the course of conference or hearing proceedings. Within ten working days of receipt of the written request, the chief industrial appeals judge, or designee, may decline to review the ruling based upon the written request and supporting affidavit; or, after such review as he or she deems appropriate, may either affirm or reverse the ruling, or refer the matter to the industrial appeals judge for further consideration.

(b) Failure to request review of an interlocutory ruling shall not constitute a waiver of the party's objection, nor shall an unfavorable response to the request preclude a party from subsequently renewing the objection whenever appropriate.

(c) No conference or hearing shall be interrupted for the purpose of filing a request for review of the industrial appeals judge's rulings; nor shall any scheduled proceedings be canceled pending a response to the request.

(7) **Recessed hearings.** Where, for good cause, all parties to an appeal are unable to present all their evidence at the time and place originally set for hearing, the industrial appeals judge may recess the hearing to the same or a different location so as to insure that all parties have reasonable opportunity to present their respective cases. No written "notice of hearing" shall be required as to any recessed hearing.

(8) **Failure to present evidence when due.** If any party is due to present certain evidence at a hearing or recessed hearing and, for any reason on its part, fails to appear and present such evidence, the industrial appeals judge may conclude the hearing and issue a proposed decision and order on the record, or recess or set over the proceedings for further hearing for the receipt of such evidence.

(9) ((~~Evidence by deposition. When a hearing is recessed or set over pursuant to subsection (7) or (8) of this section, or if a party volunteers or desires to take the testimony of any witness in a proceeding by deposition, or if the admission of evidence cannot otherwise be accomplished in a reasonably timely manner, the industrial appeals judge may permit or require the perpetuation of testimony by deposition regardless of the witness' availability to testify at the hearing or at a future recessed hearing. Such ruling may only be given after the industrial appeals judge gives due consideration to: (a) The complexity of the issues raised by the appeal, (b) the desirability of having the witness' testimony presented at a hearing, (c) the costs incurred by the parties in complying with the ruling, and (d) the fairness to the parties in complying with the ruling. The industrial appeals judge may require that depositions be taken and published within prescribed time limits, which time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs, except when appropriate and requested by a party the industrial appeals judge may allocate costs to parties or their representatives. The deposition must be transcribed in a reproducible format or it may be excluded from the record.~~

(~~10) Procedure at deposition. Unless the parties stipulate or the industrial appeals judge determines otherwise, all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions: (a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition, and if not raised at such time shall be deemed waived; (b) that all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition; (c) that the deposition be published, without necessity of further conference or hearing, at the time it is received by the industrial appeals judge; (d) that all motions and objections raised at the time of the deposition shall be ruled upon by the industrial appeals judge in the proposed decision and order; and (e) that the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being re-typed into the record.~~

(~~11~~))) **Offers of proof in colloquy.** When an objection to a question is sustained an offer of proof in question and answer form shall be permitted unless the question is clearly objectionable on any theory of the case.

AMENDATORY SECTION (Amending WSR 91-13-038, filed 6/14/91, effective 7/15/91)

WAC 263-12-150 Finality of proposed decisions and orders. (1) Where no petition for review is filed. In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts.

(2) Proposed decision and order deemed adopted without formal action. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts.

(3) Order adopting proposed decision and order—delay in mailing to parties. To permit adequate time for postal delivery of petitions for review or requests for extension of time to file petitions for review which have been filed by mail pursuant to RCW 51.52.104 and WAC 263-12-01501((~~(3)~~)) (b)(ii), the board will delay the mailing of its order adopting the proposed decision and order to all parties until three days after the date the petition is due. Notwithstanding the date of mailing of the order adopting the proposed decision and order, such order shall be effective immediately following the last day permitted for filing a petition for review.

(4) Setting aside final order due to delayed postal delivery. If, after entry or mailing of the order adopting proposed decision and order, a petition for review or a request for extension of time to file a petition for review is received which bears evidence of mailing within the time permitted for filing such petition or request for extension, the board will set aside the order adopting the proposed decision and order and consider the petition or request for extension as one timely filed.

NEW SECTION

WAC 263-12-117 Perpetuation depositions. (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition.

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Such ruling may only be given after the industrial appeals judge gives due consideration to: (a) The complexity of the issues raised by the appeal; (b) The desirability of having the witness's testimony presented at a hearing; (c) The costs incurred by the parties in complying with the ruling; and (d) The fairness to the parties in complying with the ruling. The industrial appeals judge may require that depositions be taken and published within prescribed time limits, which time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when appropriate and requested by a party, the industrial appeals judge may allocate costs to parties or their representatives. If the deposition is not transcribed in a reproducible format it may be excluded from the record.

(2) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions: (a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived; (b) that all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition; (c) that the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge; (d) that all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order; and (e) that the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being re-typed into the record.

NEW SECTION

WAC 263-12-156 Board review of final order. The board will consider motions to reconsider and motions to vacate final board orders. The procedure for review of final orders is as defined in CR 59 and CR 60 of the Washington Court Rules except that hearings on the motion will be held solely at the discretion of the board. After receipt of the motion the board will acknowledge receipt of the motion and direct the time frames for opposing parties to respond to the motion and for the moving party to reply.

WSR 03-03-001
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed January 2, 2003, 1:42 p.m.]

Date of Adoption: December 11, 2002.

Purpose: These rules revise the state funding formula for the K-4 staff ratio for the 2002-03 school year and thereafter.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-908 and 392-140-912.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

Other Authority: Section 502 (2)(a) of ESSB 6387 (the 2002 supplemental budget).

Adopted under notice filed as WSR 02-22-066 on November 1, 2002.

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 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

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

December 31, 2002
Thomas J. Kelly
for Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 02-09-024, filed 4/8/02, effective 5/9/02)

WAC 392-140-908 K-4 Staff enhancement—Determination of the K-4 certificated staff ratio equivalent of increased K-4 classified instructional assistants. For those school districts with an increase in K-4 basic education classified instructional assistants, the superintendent of public instruction shall calculate a K-4 certificated staff ratio equivalent as follows:

(1) Sum the increase in the district's K-4 basic education classified instructional assistants determined pursuant to WAC 392-140-907;

(2) Divide the result of subsection (1) of this section by the district's FTE K-4 basic education enrollment;

(3) Multiply the result of subsection (2) of this section by the ratio of actual average salary for basic education classified instructional assistants to average ((~~basic education~~)) certificated instructional staff salary for the purpose of apportionment; and

(4) Multiply the result of subsection (3) of this section by 1000.

AMENDATORY SECTION (Amending WSR 02-09-024, filed 4/8/02, effective 5/9/02)

WAC 392-140-912 K-4 Staff enhancement—Determination of K-4 apportionment ratios. The superintendent of public instruction shall determine each school district's ratio of state allocated certificated instructional staff units per one thousand K-4 students for state basic education apportionment as follows:

(1) For the months of September through December, the superintendent shall use the district's estimated K-4 ratio as submitted on Report F-203 Estimates of State Revenue, or as submitted on a letter to the superintendent after submission of Report F-203.

(2) Beginning with the January apportionment payment and each month thereafter, the superintendent shall calculate the district's K-4 apportionment ratio as the greater of (a) or (b) of this subsection:

(a) The district's minimum state-funded K-4 staffing ratio, using FTE enrollment for state apportionment, and calculated as follows:

(i) Sum the district's K-3 FTE enrollment times 0.049 and the district's fourth grade FTE enrollment times 0.046;

(ii) Divide the result of (a)(i) of this subsection by the district total K-4 FTE enrollment;

(iii) Multiply the result of (a)(ii) of this subsection by 1000.

(b) The lesser of:

(i) 55.4 for the 2001-02 school year and 54.0 for the 2002-03 school year and thereafter; or

(ii) The sum of the following:

(A) The district's K-4 certificated instructional staff ratio pursuant to WAC 392-140-910; and

(B) The lesser of 2.2 for the 2001-02 school year and 0.8 for the 2002-03 school year and thereafter or the district's K-4 staff ratio equivalent of K-6 basic education supplemental contracts for extended learning opportunities pursuant to WAC 392-140-904; and

(C) If the district's K-4 basic education certificated instructional staff ratio is 51.00 or greater, the lesser of 1.3 or the district's K-4 certificated staff ratio equivalent of the increased K-4 classified instructional assistants pursuant to WAC 392-140-908 if applicable, otherwise zero.

WSR 03-03-010
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 6, 2003, 4:47 p.m., effective January 6, 2003]

Date of Adoption: January 6, 2003.

Purpose: Chapter 296-130 WAC, Family care.

The purpose of this rule making is to make changes to the family care rules (chapter 296-130 WAC) in response to the passage of chapter 243, Laws of 2002 (SSB 6426) from the 2002 legislative session.

These changes are necessary to:

- Update the rules to reflect legislative changes.
- Make necessary changes to reflect current department practices.
- Make necessary housekeeping changes.

AMENDED SECTIONS:

WAC 296-130-010 Purpose. Clarifies that a minimum standard is established to allow an employee to use sick leave or other paid time off to care for a sick family member.

WAC 296-130-020 Definitions. Added a new definition of "child" to clarify when leave may be used for a child under the age of eighteen or eighteen years of age and older. Deleted old language for "accrued sick leave." Added new definition of "parent," "grandparent," "parent-in-law," "spouse," "serious health condition," "emergency condition," "incapable of self-care," and "physical or mental disability." Lastly, made housekeeping changes to definitions of "infraction" and "administrative law judge."

WAC 296-130-030 Employee rights. Changes were made to this section to reflect the statutory changes to allow employee's choice of sick leave or other paid time off to care for minor and adult children as defined in WAC 296-130-020, and for other family members with a serious health condition or emergency condition, also defined in WAC 296-130-020. Specifies that an employee may not take leave until it has been earned and that taking of leave must comply with the terms of the collective bargaining agreement or employer policy, except for any terms relating to choice of leave.

In addition, a note was added to further clarify when and if an employer may require paid time off (PTO) leave to be used prior to the use of leave banks that are provided by the employer for specific purposes (i.e. extended illness).

WAC 296-130-035 Employee complaints. The requirements found in the current WAC 296-130-040 were moved to this section and minor edits were done to reflect clear rule-writing principles.

WAC 296-130-040 Prohibited action. The requirements found in the current WAC 296-130-035 were moved to this section and minor edits were done to reflect clear rule-writing principles.

WAC 296-130-050 Posting. Minor edits were made to reflect clear rule-writing principles.

WAC 296-130-060 Notices of infraction. Housekeeping changes and minor edits were made to reflect clear rule-writing principles.

WAC 296-130-065 Service on employers. Housekeeping changes and minor edits were made to reflect clear rule-writing principles.

WAC 296-130-070 Appeal of infraction notice. Housekeeping changes and minor edits were made to reflect clear rule-writing principles. In addition, established that the department must notify the employee who filed the initial complaint that resulted in the notice of infraction.

WAC 296-130-080 Penalty assessment. Housekeeping changes and minor edits were made to reflect clear rule-writing principles.

NEW SECTION:

WAC 296-130-100 Collective bargaining not impaired. The requirements found in the current WAC 296-130-500 were moved to this section and minor edits were done to reflect clear rule-writing principles.

REPEALED SECTION:

WAC 296-130-500 Collective bargaining not impaired. These requirements were moved to a new section, WAC 296-130-100.

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Citation of Existing Rules Affected by this Order: Repealing WAC 296-130-500; and amending WAC 296-130-010, 296-130-020, 296-130-030, 296-130-035, 296-130-040, 296-130-050, 296-130-060, 296-130-065, 296-130-070, and 296-130-080.

Statutory Authority for Adoption: RCW 49.12.033, 49.12.280, 49.12.285, 43.22.270, and chapter 243, Laws of 2002 (SSB 6426).

Other Authority: Chapters 49.12 and 43.22 RCW.

Adopted under notice filed as WSR 02-21-106 on October 22, 2002.

Changes Other than Editing from Proposed to Adopted Version: **WAC 296-130-020 Definitions.** Added "that involves" to the definition of "Serious health condition."

WAC 296-130-030 Employee rights. A note was added to further clarify when and if an employer may require paid time off (PTO) leave to be used prior to the use of leave banks that are provided by the employer for specific purposes (i.e. extended illness).

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 10, Repealed 1.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 10, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 10, 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 10, Repealed 1.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Section (4), chapter 243, Laws of 2002 (SSB 6426) contains a provision that "This act takes effect January 1, 2003." As these rules are necessary for the implementation of this act, the department is authorized to adopt and put these rules into effect immediately per RCW 34.05.380(3).

Effective Date of Rule: January 6, 2003.

January 6, 2003
Gary Moore
Director

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-010 ((~~Declaration of~~)) Purpose. It is in the public interest for employers to accommodate employees by providing reasonable leaves from work for family reasons. This chapter serves to establish a minimum standard allowing an employee to use the employee's ((~~accrued~~)) sick leave or other paid time off to care for a ((~~child of the employee~~)) sick family member.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-020 Definitions. (1) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees. Employer also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(2) "Employee" means a worker who is employed in the business of an employer. "Employee," for the purposes of this chapter, also includes workers performing in an executive, administrative, professional, or outside sales capacity.

(3) "Employ" means to engage, suffer, or permit to work.

(4) ((~~"Accrued sick leave" means leave which the employee has accumulated by earning a certain number of hours or days per month or per year which the employee is entitled to use to continue his or her normal compensation during absences due to illness, accident, or other conditions which require medical treatment or supervision, and which is provided for by a collective bargaining agreement, employer/employee agreement, employer policy, ordinance, or civil service rule.~~

~~It does not include annual leave, vacation leave, or personal leave. It does not include any benefit which includes leave granted by short-term or long-term disability plans except in a case where those plans include a separate and identifiable component which allows the employee to accumulate by earning a certain number of hours or days per month or per year which the employee is entitled to use to continue his or her normal compensation in absence due to illness, accident, or other conditions which require medical treatment or supervision which is provided for by a collective bargaining agreement, employer/employee agreement, employee/employer policy, ordinance, or civil service rule. In a case where a short-term or long-term disability plan includes a separate and identifiable component which allows the employee to accumulate leave by earning a certain number of hours or days per month or per year which the employee is entitled to use to continue his or her normal compensation in absence due to illness, accident, or other conditions which require medical treatment or supervision, only that separate identifiable portion shall be considered accrued sick leave.~~

~~(5) "Child of the employee" means any child under the age of eighteen who is:~~

~~(a) The natural offspring of the employee;~~

~~(b) The adopted child of the employee;~~

~~(c) The natural or adopted child of the employee's spouse; or~~

~~(d) Is under the employee's legal guardianship, legal custody, or foster care.~~

~~(6)~~)) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is:

(a) Under eighteen years of age; or

(b) Eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(5) "Grandparent" means a parent of a parent of an employee.

(6) "Parent" means a biological parent of an employee or an individual who stood *in loco parentis* to an employee when the employee was a child.

(7) "Parent-in-law" means a parent of the spouse of an employee.

(8) "Sick leave or other paid time off" means time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable, to an employee for illness, vacation, and personal holiday. It does not include any benefit which includes leave granted by short-term or long-term disability plans or policies.

(9) "Spouse" means a husband or wife, as the case may be.

(10) "Health condition that requires treatment or supervision" ((~~shall~~)) includes:

(a) Any medical condition requiring treatment or medication that the child cannot self ((~~medicate~~)) administer;

(b) Any medical or mental health condition which would endanger the child's safety or recovery without the presence of a parent or guardian; or

(c) Any condition warranting treatment or preventive health care such as physical, dental, optical or immunization services, when a parent must be present to authorize and when sick leave may otherwise be used for the employee's preventive health care.

(((~~7~~))) (11) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment or recovery in connection with such inpatient care; or that involves continuing treatment by or under the supervision of a health care provider or a provider of health care services and which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities).

(12) "Emergency condition" means a health condition that is a sudden, generally unexpected occurrence or set of circumstances related to one's health demanding immediate action, and is typically very short term in nature.

(13) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(14) "Physical or mental disability" means a physical or mental impairment that limits one or more activities of daily living or instrumental activities of daily living.

(15) "Infraction" means an alleged violation of RCW ((~~49.12.___ (chapter 236, Laws of 1988)~~)) 49.12.270 through 49.12.295 as cited by the department.

(((~~8~~))) (16) "Administrative law judge" means any person appointed by the chief administrative law judge, as defined in RCW 34.12.020(2) to preside at contested cases convened under RCW ((~~49.12.___ (chapter 236, Laws of 1988)~~)) 49.12.270 through 49.12.295.

(((~~9~~))) (17) "Department" means the department of labor and industries.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-030 Employee rights. ((~~An employer shall allow an employee to use the employee's accrued sick leave, when such benefit exists, to care for the child of the employee under the age of eighteen with a health condition that requires treatment or supervision as defined in WAC 296-130-020(6). In all other instances the same benefits and requirements that would govern the employee's personal use of accrued sick leave shall apply to the use of sick leave for the child's treatment or supervision. Nothing in this section requires an employer to provide sick leave.~~)) (1) If, under the terms of a collective bargaining agreement or employer policy applicable to an employee, the employee is entitled to sick leave or other paid time off, then an employer must allow an employee to use any or all of the employee's choice of sick leave or other paid time off to care for:

(a) A child of the employee with a health condition as defined in WAC 296-130-020(10); or

(b) A spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency condition, also defined in WAC 296-130-020 (11) and (12).

(2) An employee may not take leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave. Use of leave other than sick leave or other paid time off to care for a child, spouse, parent, parent-in-law, or grandparent under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable.

Note: Many employers combine paid leave categories such as sick leave and vacation leave, often described as "paid time off" or PTO. Such PTO allows employees the choice as to their use of this leave, thereby maintaining the intent of this chapter. In addition, employers may require employees to use PTO (provided it may be used for any purpose) as a prerequisite to using leave designated for a specific purpose, such as an extended illness leave, without violating this chapter, provided other leave is available for employees to use to care for sick family members on the same terms that it is available for an employee's health condition.

AMENDATORY SECTION (Amending Order 88-29, filed 11/23/88)

WAC 296-130-035 ((~~Employee complaints.~~)) Prohibited action. ((~~(1) An employee who believes that his or her employer has not complied with RCW 49.12.___ (chapter 236, Laws of 1988), or with the rules promulgated thereto, may file a complaint with the department within six months~~

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~~of the alleged violation. The complaint should contain the following:~~

~~(a) The name and address of the employee making the complaint;~~

~~(b) The name, address, and telephone number of the employer against whom the complaint is made;~~

~~(c) A statement of the specific fact which constitute the alleged violation, including the date(s) on which the alleged violation occurred.~~

~~(2) Upon receipt of a complaint, the department shall forward written notice of the complaint to the employer, along with a warning of prohibited actions as stated in WAC 296-130-040.~~

~~(3) The department may investigate any complaint it deems appropriate. If the department determines that a violation of this chapter has occurred, it may issue a notice of infraction pursuant to WAC 296-130-060.~~)) An employer must not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee:

(1) Has exercised, or attempted to exercise, any right provided under RCW 49.12.270 through 49.12.295; or

(2) Has filed a complaint, testified, or assisted in any proceeding under RCW 49.12.270 through 49.12.295.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-040 ((~~Prohibited action.~~)) Employee complaints. ((~~No employer shall discharge or in any other way discriminate against or penalize any employee because he/she sought any information about family leave provisions, has filed a complaint alleging a violation of the chapter or exercised any right granted under the law. Nothing in this section however, shall prohibit an employer from applying its attendance policies.~~)) (1) An employee who believes that his or her employer has not complied with RCW 49.12.270 through 49.12.295, or this chapter, may file a complaint with the department within six months of the alleged violation. The complaint should contain the following:

(a) The name and address of the employee making the complaint;

(b) The name, address, and telephone number of the employer against whom the complaint is made; and

(c) A statement of the specific fact which constitutes the alleged violation, including the date(s) on which the alleged violation occurred.

(2) Upon receipt of a complaint, the department will forward written notice of the complaint to the employer, along with a warning of prohibited actions as stated in WAC 296-130-035.

(3) The department may investigate any complaint it deems appropriate. If the department determines that a violation of this chapter has occurred, it may issue a notice of infraction pursuant to WAC 296-130-060.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-050 Posting. (1) The department ((~~shall~~)) will furnish each employer a poster describing an employee's rights and an employer's obligations provided in this chapter.

(2) The employer ((~~shall~~)) must keep posted a current edition department poster stipulating the provisions of this chapter. The employer ((~~shall~~)) must display this poster in a conspicuous place.

(3) The employer ((~~shall~~)) must post its leave policies, if any, in a conspicuous place accessible to the employees at the employer's place of business.

(4) The posting requirement for employees whose leave policies are specified by individual contracts may be satisfied by stating that leave for such employees will be governed by the terms of such contracts.

(5) Employers with informal leave policies which are established on a case-by-case basis may satisfy the posting requirement by posting a statement explaining that policy.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-060 Notices of infraction. The department may issue a notice of infraction to an employer who violates RCW ((~~49.12.___ (chapter 236, Laws of 1988)~~)) 49.12.270 through 49.12.295. The employment standards supervisor ((~~shall~~)) will direct that notices of infraction contain the following when issued((~~:~~)):

(1) A statement that the notice represents a determination that the infraction has been committed by the employer named in the notice and that the determination ((~~shall~~)) will be final unless contested;

(2) A statement that the infraction is a noncriminal offense for which imprisonment ((~~shall~~)) will not be imposed as a sanction;

(3) A statement of the specific violation which necessitated issuance of the infraction;

(4) A statement of the penalty involved if the infraction is established;

(5) A statement informing the employer of the right to a hearing conducted pursuant to chapter ((~~34.04~~)) 34.05 RCW if requested within twenty days of issuance of the infraction;

(6) A statement that at any hearing to contest the notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed, and that the employer may subpoena witnesses including the agent that issued the notice of infraction;

(7) If a notice of infraction is personally served upon a supervisory or managerial employee of a firm or corporation, the department ((~~shall~~)) will within ten days of service send a copy of the notice by certified mail to the employer; and

(8) Constructive service may be made by certified mail directed to the employer named in the notice of infraction.

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AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-065 Service on employers. (1) If an employer is a corporation or a partnership, the department ((~~need not~~)) is not required to serve the employer personally. In such a case, if no officer or partner of a violating employer is present, the department may issue a notice of infraction to any supervisor or managerial employee.

(2) If the department serves a notice of infraction on a supervisory or managerial employee, and not on an officer, or partner of the employer, the department ((~~shall~~)) will mail by certified mail a copy of the notice of infraction to the employer or registered agent of the company. The department ((~~shall~~)) will mail a second copy by ordinary mail.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-070 Appeal of infraction notice. (1) If an employer desires to contest the notice of infraction issued, the employer ((~~shall~~)) will file two copies of a notice of appeal with the department at the office designated on the notice of infraction, within twenty days of issuance of the infraction.

(2) The department ((~~shall~~)) must:

(a) Conduct a hearing in accordance with chapter ((~~34.04~~)) 34.05 RCW and chapter 10-08 WAC; and

(b) Notify the employee who filed the initial complaint that resulted in the notice of infraction.

(3) Employers may appear before the administrative law judge through counsel, or may represent themselves. The department ((~~shall~~)) must be represented by the office of the attorney general.

(4) All relevant evidence shall be admissible in a hearing convened pursuant to RCW ((~~49.12.___ (chapter 236, Laws of 1988)~~)) 49.12.270 through 49.12.295. Admission of evidence is subject to ((~~RCW 34.04.100 and 34.04.105 of~~)) the Administrative Procedure Act ((~~of Washington~~)), chapter 34.05 RCW.

(5) The administrative law judge ((~~shall~~)) will issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any legal penalty. The proposed decision ((~~shall~~)) will be served by certified mail or personally on the employer and the department. The employer or department may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and four copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director ((~~shall~~)) or his/her designee will review the proposed decision in accordance with the Administrative Procedure Act, chapter ((~~34.04~~)) 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director ((~~shall~~)) or his/her designee will serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to the Administrative Procedure Act, chapter 34.05 RCW ((~~34.04.130~~)) unless the final decision affirms an unappealed proposed decision. If no party appeals within ((~~the period set by RCW 34.04.130~~)) twenty days, the director's decision is conclusive and binding on all parties.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 296-130-080 Penalty assessment. An employer found to have committed an infraction under RCW ((~~49.12.___ (chapter 236, Laws of 1988)~~)) 49.12.270 through 49.12.295 may be assessed the maximum penalty of a fine of two hundred dollars for the first noncompliance violation. An employer that continues to violate the terms of the statute may be subject to a fine not to exceed one thousand dollars for each violation.

NEW SECTION

WAC 296-130-100 Collective bargaining not impaired. Nothing in this chapter will be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish leave benefits in excess of the applicable provisions of this chapter.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-130-500	Collective bargaining not impaired.

WSR 03-03-012
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION
[Filed January 7, 2003, 9:39 a.m.]

Date of Adoption: January 7, 2003.

Purpose: Implements RCW 39.04.155 which requires adoption of a rule for establishing a small works roster pro-

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cess to solicit competitive bids for projects under $200,000 in lieu of formal advertisements for bids.

Statutory Authority for Adoption: RCW 47.01.101, 39.04.155.

Adopted under notice filed as WSR 02-23-047 on November 15, 2002.

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 6, 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 6, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 0, Repealed 0.

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

January 7, 2003
John F. Conrad
Assistant Secretary
Engineering and Regional

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Chapter 468-15 WAC

SMALL WORKS ROSTER

NEW SECTION

WAC 468-15-010 Purpose and authority. This chapter is adopted pursuant to RCW 39.04.155, which requires a state agency establishing a small works roster or rosters to adopt rules implementing the statute. It is further intended to:

(1) Establish procedures for solicitation of contractors interested in being placed on the department's small works roster(s).

(2) Provide a fair cost effective alternative method of contracting through the small works roster process.

(3) Provide for a clear concise method for a contractor to qualify for placement on the department's small works roster(s).

(4) Provide for an appeal and for a hearing procedure, for denial, suspension, or removal from a small works roster.

NEW SECTION

WAC 468-15-020 Contractor prequalification. No contract for the construction, alteration, improvement, or repair of any state highway, or of any other public highway to be awarded and administered by the department of transportation, may be awarded to any contractor who has not first been prequalified to perform the work per the requirements of chapter 468-16 WAC. Bidding proposals will be issued only to prequalified contractors. Only prequalified contractors will be placed on a small works roster.

NEW SECTION

WAC 468-15-030 Public notice required by department establishing small works roster. The department will at a minimum once per year provide a public notice to the contracting community encouraging contractors to submit applications for inclusion on the small works roster. Such notice may be mailed directly to trade associations or to individual contractors, by publishing the notice in one trade publication of general circulation within the state, a minimum once per week for two weeks, preceding the date for establishment of the small works roster, or by any method reasonably calculated to assure that all contractors in the state of Washington are aware of the opportunity to be included on the small works roster. The notice shall include the address and phone number, of the department's contract ad and award office from which to request the required questionnaire form for application and approval to be placed on the small works roster.

NEW SECTION

WAC 468-15-040 Contractors questionnaire form—Information required. Contractors desiring to be included on a small works roster established by Washington state department of transportation pursuant to RCW 39.04.155, shall submit a completed standard questionnaire and financial form on a form prescribed by the secretary of transportation. Copies of the form may be obtained from the department's contract ad and award office. The completed questionnaire shall be prepared and transmitted to the secretary, attention: Contractor prequalification office. The questionnaire shall include the following information:

(1) The contractor's name, address, telephone number, FAX number, e-mail address, and type of organization (corporation, partnership, sole proprietorship, etc.);

(2) A statement of ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary companies;

(3) State contractor's license number;

(4) State of Washington unified business identifier number (UBI) and UBI expiration date;

(5) Federal tax ID number;

(6) List of classes of work as enumerated on the form that the firm desires to be considered for such work class;

(7) Indication of those counties in which the contractor is interested in being considered for small works projects;

(8) Indication whether the contractor is certified as a minority or women's business enterprise or a disadvantaged business enterprise by the office of minority women business enterprises;

(9) List all contracts or subcontracts performed in whole or in part within the immediate three preceding years. Include the contract amount, date of completion, classes of work performed, owner or prime contractor's name, mailing address, phone number, fax number, and name of a contact person for the owner/prime for which the contractor per-

formed the work. Only that work completed by the contractor's own organization under its own supervision will be considered for qualification. A minimum three completed projects must be listed.

(a) Personnel requirements.

(i) List principal officers and key employees indicating their years of experience in the classes of work for which qualification is sought.

(ii) A firm must have, within its own organization, qualified permanent, full-time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which qualification is sought. Those firms seeking qualification for electrical work (classes 9, 16, and 42) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(iii) "Its own organization" shall be construed to include only the contractor's permanent, full-time employed office and site supervisory personnel. Workers of the organization shall be employed and paid directly by the prime contractor.

(b) The applicant shall list the following occurrences within the previous three years:

(i) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(ii) Convictions for felonies listed in WAC 468-16-050.

(iii) Failure to complete contract.

(c) Complete financial statement for the contracting firm's last fiscal year. The contractor firm must have a positive net worth.

(d) A wholly owned subsidiary firm may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for the subsidiary.

(e) The standard questionnaire shall be processed as follows:

(i) A standard questionnaire will be reviewed and a written notice provided to the applicant, within thirty days of its receipt, stating whether or not the applicant has qualified for or been denied qualification for the small works roster. The applicant will be advised of lack of receipt of data corroborating project completion and error or omissions in the questionnaire and a request for additional information necessary to complete the evaluation of the applicant. If the information is not provided within twenty calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(ii) The department will enter the contractor's information on the appropriate small works roster. The department will notify the contractor by letter of placement on the appropriate small works roster. An applicant should not consider itself enrolled on the small works roster until receipt of such written notice.

It is the responsibility of the contractor to notify the department of any incorrect information set forth in the notice, and to notify the department of any change in the information set forth in its application.

NEW SECTION

WAC 468-15-050 Denial or removal of contractor from small works roster—Reasons. A contractor may be denied placement on or, after such placement, may be removed from a small works roster for any one or more of the following reasons:

(1) Information set forth in the contractor's application is not accurate or can not be verified;

(2) The contractor fails to notify the department maintaining the small works roster of any changes in the information set forth in its original application for placement on the small works roster within thirty days of the effective date of the change;

(3) The contractor fails to respond to five solicitations for bids on jobs offered through the small works roster;

(4) The contractor's past performance demonstrates a lack of qualification in any specialty area indicated by the contractor in the application for placement on the small works roster;

(5) The contractor fails to complete and return to the department maintaining the small works roster any periodic update submitted by the department to determine the contractor's ongoing interest in maintaining its placement on the small works roster;

(6) Conviction of the firm or its principals of violating a federal or state antitrust law by bid-rigging, collusion, or restraint of competition between bidders; or conviction of violating any other federal or state law related to bidding or contract performance; or

(7) Knowingly concealing any deficiency in the performance of a prior contract; or

(8) Falsification of information or submission of deceptive or fraudulent statements in connection with prequalification, bidding, performance of a contract, or in legal proceedings; or

(9) Debarment of the contractor by a federal or state agency; or

(10) Willful disregard for applicable laws, rules or regulations.

The reasons for the denial or removal from the small works roster must be based on acts or omissions which took place within the five years preceding the date of the most recent submitted questionnaire.

NEW SECTION

WAC 468-15-060 Hearings procedure. (1) Whenever the department believes that grounds exist to deny the contractor placement on a small works roster or to suspend or remove the contractor from the roster, notice of such grounds shall be given to the contractor by first-class mail. If the contractor fails to object or request a hearing within twenty calendar days after the mailing of said notice, then the denial, suspension or removal shall be made effective. If the contractor requests a hearing by certified mail within twenty calendar days after the mailing of the notice, a hearing shall be conducted in accordance with the procedure set forth in this section. Unless the department is otherwise prohibited from contracting with the contractor, the denial, suspension or

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revocation shall not become effective until the final decision of the secretary has been rendered.

(2) The secretary shall designate a hearing official to conduct any hearing held under this section. The hearing official shall furnish written notice by certified mail of a hearing to the contractor and any named affiliates at least twenty calendar days before the effective date of suspension or revocation or denial of qualification for placement on the small works roster. The notice shall state:

(a) That suspension or revocation or denial of qualification for placement on the small works roster is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within twenty calendar days of receipt of the notice, submit to the hearing official by certified mail, return receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the denial, suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and mailing address of the hearing official.

(j) That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-15-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of qualification for placement on the small works roster, the respondent may appeal there from to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

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WSR 03-03-016
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 03-03—Filed January 7, 2003, 10:42 a.m.]

Date of Adoption: December 6, 2002.

Purpose: To amend WAC 232-12-106 Provisions for accidental take by falconers, 232-28-282 Big game and wild turkey auction, raffle, and special incentive permits, 232-28-271 Private lands wildlife management area hunting seasons, rules and boundary descriptions, and 232-12-181 Livestock grazing on department of fish and wildlife lands.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-106, 232-28-282, 232-28-271, and 232-12-181.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 02-21-130 and 02-21-131 on October 23, 2002; and WSR 02-17-118 on August 21, 2002.

Changes Other than Editing from Proposed to Adopted Version:

CONCISE EXPLANATORY STATEMENT

WAC 232-12-106 Provisions for accidental take by falconers. Changes, if any, from the text of the proposed rule and reasons for difference: Within subsection (4): (Page 1), the words "protected under the federal Endangered Species Act or" taken out. The section now reads, "Notwithstanding any other section of this rule, take of species designated as endangered, threatened, or sensitive in Washington under WAC 232-12-011 or 232-12-014 is not permitted except by permit from the director." The director does not have the authority to preempt federal authority regarding take of a federally listed threatened or endangered species under the Endangered Species Act. The state/director does have cojurisdiction with the USFWS for ESA listed species as per a cooperative agreement between the WDFW and the USFWS, but may only authorize actions that may be the

same or more restrictive. The deleted wording would have given an overt statement to the contrary of the director's authority.

WAC 232-28-271 Private lands wildlife management area hunting seasons, rules and boundary descriptions. Changes, if any, from the text of the proposed rule and reasons for difference: Page 5, minor corrections were made to the legal description for PLWMA 201 to correct errors, and the townships were rearranged or clarification.

Page 7, minor corrections were made to the legal description for PLWMA 600 to correct errors and changes in ownership.

WAC 232-12-181 Livestock grazing on department of fish and wildlife lands. Changes, if any, from the text of the proposed rule and reasons for difference: The word lease and lessee are changed to permit and permittee throughout the WAC. The zip code was changed in the first paragraph to correct an error.

In subsection (1):

- Changed "and" to "or" in the sentence "for those lands or the department's strategic plan." This is to allow for it to be consistent with either the department's strategic plan or desired conditions, not necessarily both.
- Changed language from "is consistent with the commission grazing policy" to "ensure it conforms with commission policy." This change allows for broader commission discretion.

In subsection (5):

- Clarifies that temporary permits do not require a management plan. The WAC already states in the same subsection that all grazing permits, except temporary permits, must have a livestock-grazing plan so the last sentence in this subsection is not necessary.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

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

January 3, 2003

Susan Yeager

for Russ Cahill, Chairman

Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 00-197, filed 9/27/00, effective 10/28/00)

WAC 232-12-106 Provisions for accidental take by falconers. (1) When a raptor being used in falconry accidentally takes any species of wildlife (quarry) for which the hunting season is not currently open, the falconer must release the quarry if it is not seriously injured. If the quarry has been seriously injured or killed, the falconer may not retain or possess the quarry, but the raptor may feed upon the quarry before leaving the site of the kill.

(2) If the accidentally killed quarry is a species identified on the Washington candidate species list (for endangered, threatened, or sensitive status) or specifically identified by the director, the falconer shall, before leaving the site of the kill, record upon a form provided by the department, or upon a facsimile, the falconer's name, falconry permit number, date, species and sex (if known) of the quarry, and exact location of the kill. The falconer shall submit the information to the Washington department of fish and wildlife falconry permit coordinator by April 1 following the close of the current hunting season.

(3) Accidental kill by any falconer in any license year shall not exceed a total of five individuals of any combination of species designated under subsection (2) of this section. Following an accidental kill by any falconer of any species designated under subsection (2) of this section, the falconer shall cease hunting for the day.

(4) Notwithstanding any other section of this rule, take of species ((~~protected under the federal Endangered Species Act or~~)) designated as endangered, threatened, or sensitive in Washington under WAC 232-12-011 or 232-12-014 is not permitted except by permit from the director.

AMENDATORY SECTION (Amending Order 323, filed 11/22/88)

WAC 232-12-181 Livestock grazing on department of fish and wildlife lands. All persons wishing to apply for a grazing ((~~lease~~)) permit should contact the Washington Department of Fish and Wildlife, 600 North Capitol Way, Olympia, Washington ((~~98504~~)) 98501-1091.

(1) The director is authorized to enter into grazing ((~~leases~~)) permits when the director determines that a grazing ((~~lease~~)) permit will ((~~benefit wildlife management programs and will be in the public interest. Except for temporary permits, each grazing lease shall first be submitted to the commission, which may review the lease to determine whether it will benefit wildlife or improve public hunting, fishing or recreation without adverse impact on wildlife. If, within 30 days, the commission has not disapproved the lease, the director shall be deemed authorized to enter into that lease~~)) be consistent with the desired ecological condition for those lands or the department's strategic plan. Except for temporary permits, each grazing permit shall first be submitted to the commission, which may review the permit to ensure it conforms with commission policy. If, within thirty days, the commission has not disapproved the permit, the director shall be deemed authorized to enter into that permit.

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(2) The director shall advertise and sell a ((~~license~~)) permit to use department lands for grazing at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the department to do so. The director may negotiate a grazing ((~~lease~~)) permit without using the public auction process only when the director determines that benefits to wildlife would be equal to or greater than the cash or monetary payments foregone.

(3) The term of each grazing ((~~lease~~)) permit shall be no greater than five years. When an existing ((~~lease~~)) permit expires or is about to expire, and the director wishes to continue to permit grazing on the subject parcel, then a modified public auction process shall be used. A minimum bid based on market value shall be established prior to the public auction. The last previous or the existing ((~~lessee~~)) permittee shall be provided the option of meeting the highest bid made at public auction. The director may grant a term longer than five years only with the prior approval of the commission. The director may permit exceptions to the public auction process only when the director determines that benefits to wildlife would be equal to or greater than the cash or monetary payment foregone.

(4) A temporary permit may be granted by the director to satisfy an immediate, short-term need where benefits to wildlife management programs and the public interest can be demonstrated. The term of a temporary permit shall not exceed two weeks and no fee need be charged.

(5) ((~~The director may approve a grazing lease where a grazing management plan which includes objectives and site characteristics, pasture rotation schedule, on-off dates, number of AUM's, and a monitoring plan has been developed by the agency.~~)) Except for temporary permits, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological condition, fish and wildlife benefits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. The director shall inspect the site of a grazing ((~~lease~~)) permit no less than two times each year. The director shall retain the right to alter provisions of the plan to reduce acreage available or the number of animals using the area when such change is, in the judgment of the director, required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses. ((~~The director may not enter into any grazing lease not accompanied by a grazing management plan unless the commission has approved it.~~))

(6) The director may cancel a ((~~lease (1)~~)) permit (a) for noncompliance with the terms and conditions of the ((~~lease~~)) permit, or (((~~2~~))) (b) if the area described in the ((~~lease~~)) permit is included in a land use plan determined by the agency to be a higher and better use, or (((~~3~~))) (c) if the property is sold or conveyed, or (((~~4~~))) (d) if damage to wildlife or wildlife habitat occurs.

(7) All lands covered by any grazing permit agreement shall at all times be open to public hunting, fishing and other wildlife recreational uses unless such lands have been closed by action of the commission or emergency order of the director.

AMENDATORY SECTION (Amending Order 01-283, filed 12/28/01, effective 1/28/02)

WAC 232-28-271 Private lands wildlife management area hunting seasons, rules and boundary descriptions.

DEER GENERAL SEASONS ON PRIVATE LANDS
WILDLIFE MANAGEMENT AREAS

Rainier Timber Company (PLWMA 401) Kapowsin Tree Farm		
Hunting Method	**((~~2002~~)) 2003 Dates**	**Special Restrictions**
Archery	Aug. ((~~26~~)) 22-Sept. 8	Any Buck
	Sept. ((~~30~~)) 29-Oct. ((~~10~~)) 5	2 Pt. Min. or Antlerless
Modern Firearm	Oct. ((~~11-24~~)) 10-26	2 Pt. Min.
Muzzleloader	Nov. ((~~22~~)) 21-Dec. ((~~3~~)) 7	2 Pt. Min. or Antlerless

Merrill and Ring (PLWMA 600) Pysht Tree Farm		
Hunting Method	**((~~2002~~)) 2003 Dates**	**Special Restrictions**
Archery	Sept. 1-14 and Nov. 25-Dec. 31	((~~Either Sex~~)) Any Buck South Unit (600B)
Modern Firearm	Oct. ((~~12~~)) 11-31 and Nov. 13-16	Any Buck ((~~Only~~)) South Unit (600B)
Muzzleloader	((~~Nov. 14-17~~)) Oct. 1-9	((~~Buck Only South Unit (600B)~~)) Any Buck ((~~Only~~)) South Unit (600B)

((~~2002~~)) 2003 DEER PERMIT SEASONS ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS

((~~2002~~)) 2003 - Mule and Whitetail Deer

Buckrun Limited Permit Draw Permits. Hunters apply to Washington Department of Fish and Wildlife in WDFW permit draw process. Only hunters possessing a modern firearm deer tag are eligible for Buckrun Limited draw hunts. Hunters ((~~are limited to~~)) can expect one day of hunting during the permit season with written authorization from the PLWMA manager. All hunters must check in and out on hunt day.

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
((~~Buckrun A~~	~~10~~	~~Sept 15-Dec. 31~~	~~Antlerless mule deer, Any whitetail~~	~~PLWMA 201~~
~~Buckrun B~~	~~20~~	~~Sept 15-Dec 31~~	~~AHE graduates only, Antlerless mule deer, Any whitetail~~	~~PLWMA 201~~))
Buckrun ((~~C~~)) A	((~~20~~)) 35	((~~Sept 15-Dec 31~~)) Sept. 1-Oct. 10	*Youth hunters, Antlerless ((~~mule~~)) deer((~~, Any whitetail~~))	PLWMA 201
Buckrun ((~~D~~)) B	((~~20~~)) 35	((~~Sept 15-Dec 31~~)) Oct. 21-Nov. 15	Disabled hunters, Antlerless ((~~mule~~)) deer((~~, Any whitetail~~))	PLWMA 201

* Youth hunters on Buckrun must be 12 - 15 years of age and must be accompanied by an adult during the hunt. Hunts are scheduled by the manager 509-345-2577. All other hunting regulations apply.

((~~2002~~)) 2003 - Blacktail Deer

Rainier Timber Company Kapowsin Tree Farm -

Rainier Timber Company Permit Draw Deer Permits - Hunters apply to Washington Department of Fish and Wildlife in WDFW permit draw process.

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Kapowsin Central	30	Dec. ((~~6-8~~)) 12-14	Antlerless Only, Age 65 and older Hunters	PLWMA 401B Central
	20	Dec. ((~~6-8~~)) 12-14	Antlerless Only, AHE Hunters	PLWMA 401B Central
	50	Dec. ((~~6-8~~)) 12-14	Antlerless Only	PLWMA 401B Central
Kapowsin South	50	Dec. ((~~6-8~~)) 12-14	Antlerless Only, Youth Hunters	PLWMA 401C South
	50	Dec. ((~~6-8~~)) 12-14	Antlerless Only, Disabled Hunters	PLWMA 401C South

ACCESS QUOTAS AND RAFFLE SEASONS ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS

((~~2002~~)) 2003 - Mule and Whitetail Deer

Buckrun Limited Area - Access Quotas and Seasons

Only hunters possessing a modern firearm deer tag are eligible for access authorizations on PLWMA 201. An access fee will be charged for these hunts. You may contact the PLWMA manager, Derek Stevens, at (509) 345-2577 for information ((~~on these hunts~~)).

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Buckrun	((~~100~~)) 70	((~~Sept. 15-Oct. 31~~)) Oct. 1-Dec. 7	Any Deer (((~~Access Fee~~)))	PLWMA 201
((~~Buckrun~~	~~50~~	~~Nov. 1-Dec. 31~~	~~Mule deer, 3 pt. min. or Antlerless, Any whitetail (access fee)~~	~~PLWMA 201~~))

PERMANENT

((~~2002~~)) 2003 - Blacktail Deer
Rainier Timber Company Kapowsin Tree Farm — Raffle Quotas and Seasons
Hunter must contact Rainier Timber Company for auction/raffle permit opportunity.
Only hunters possessing a valid deer tag (any ((~~2002~~)) 2003 deer tag) are eligible for Rainier Timber Company buck permits. Hunters drawing a Rainier Timber Company deer raffle permit may purchase a second deer tag for the hunt. Persons interested in these deer permits should contact Rainier Timber Company, 31716 Camp 1 Road, Orting, WA 98360. For more information, please call 1-800-782-1493.

Hunt Name	Permit Number	Raffle Season	Special Restrictions	Boundary Description
Kapowsin North/Buck	8	((~~Nov. 8-21~~)) Oct. 31-Nov. 16	Buck Only (Raffle)	PLWMA 401A North
Kapowsin Central/Buck	29	((~~Nov. 8-21~~)) Oct. 31-Nov. 16	Buck Only (Raffle)	PLWMA 401B Central
Kapowsin South/Buck	14	((~~Nov. 8-21~~)) Oct. 31-Nov. 16	Buck Only (Raffle)	PLWMA 401C South
Kapowsin North	50	Dec. ((~~6-8~~)) 12-14	Antlerless Only (Raffle)	PLWMA 401A North

PERMANENT

((~~2002~~)) 2003 - Blacktail Deer
Merrill and Ring's Pysht Tree Farm - Quotas and Seasons
An access fee will be charged by the landowner for hunting on the Pysht Tree Farm. The following hunts are raffle hunts offered by Merrill and Ring. Hunters must possess a valid deer tag when participating in these hunts. Persons interested in these hunts should contact Merrill and Ring, 11 Pysht River Rd., Clallam Bay, WA 98326. For more information, please call Merrill and Ring at 1-800-998-2382.

Hunt Name	Quota	Raffle Season	Special Restrictions	Boundary Description
Pysht North A	15	Sept. 1-14	Raffle, Archery, 3 pt. minimum ((~~or Antlerless~~))	PLWMA (600A) North Unit
Pysht North B	20	Oct. ((~~1-9~~)) 1-10	Raffle, Muzzleloader, 3 pt. minimum ((~~or Antlerless~~))	PLWMA (600A) North Unit
Pysht North C	((~~25~~)) 30	Nov. ((~~9-24~~)) 8-23	Raffle, 3 pt. min. ((~~or Antlerless~~))	PLWMA (600A) North Unit
Pysht North D	5	Nov. ((~~9-24~~)) 8-23	Restricted, 3 pt. minimum ((~~or Antlerless~~))	PLWMA (600 A) North Unit

2003 ELK RAFFLE SEASONS ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS

((~~2002~~)) 2003 - Elk
Rainier Timber Company (PLWMA 401) Kapowsin Tree Farm - Raffle Quotas and Seasons
Only hunters possessing a valid ((~~2002~~)) 2003 elk tag and meeting the special restrictions noted for each hunt are eligible for Rainier Timber Company access permits on PLWMA 401. Hunters must contact Rainier Timber Company for auction/raffle permit opportunity. Hunters drawing a Rainier Timber Company elk raffle permit are eligible to purchase a second elk tag for the hunt. Rainier Timber Company, 31716 Camp 1 Road, Orting, Washington 98360. For more information, please call 1-800-782-1493.

Hunt Name	Quota	Raffle Season	Special Restrictions	Boundary Descriptions
Kapowsin Bull North	2	Sept. 13-29	Auction/Raffle Any Bull, Any Tag	PLWMA 401A North
Kapowsin Bull Central	((~~2~~)) 3	Sept. 13-29	Auction/Raffle Any Bull, Any Tag	PLWMA 401B Central
Kapowsin Bull South	((~~2~~)) 3	Sept. 13-29	Auction/Raffle Any Bull, Any Tag	PLWMA 401C South
((~~Kapowsin All~~	~~2~~	~~Sept. 13-29~~	~~Restricted, Any Bull, Any Tag~~	~~PLWMA 401-A, B, or C~~))

((~~2002~~)) 2003 - Elk **Merrill and Ring PLWMA 600 Pysht Tree Farm - Raffle Quota and Season** **Hunter must contact Merrill and Ring for raffle hunt opportunity. For more information please call Merrill and Ring at 1-800-998-2382 or write to them at Merrill and Ring Tree Farm, 11 Pysht River Rd., Clallam Bay, WA 98326.**				
Hunt Name	**Quota**	**Raffle Season**	**Special Restrictions**	**Boundary Descriptions**
Pysht A	3	Sept. 15-30	Any ((~~Bull~~)) Elk, Any Weapon	PLWMA 600
Pysht B	1	Sept. 1-14	Any Elk, Archery	PLWMA 600
Pysht C	1	Oct. 1-10	Any Elk, Muzzle Loader	PLWMA 600

AREA DESCRIPTIONS - PRIVATE LANDS WILDLIFE MANAGEMENT AREAS

PLWMA 201 - Buckrun Limited (Grant County):

((~~Beginning at the southwest corner of S27 T23 R27E; 2 miles east, 1/2 mile north, 1 mile east, 1/2 mile south of S25; continuing 2 miles east to the southwest corner of S26 T23 R28E; 1 mile south to the southwest corner of S33 T23 R28E; east 1 mile; thence 1/4 mile north, 1 mile east, 1/4 mile to the intersection with the Stratford Game Reserve; from the southwest corner of S6 T22 R29E; east 1 mile along BNSF right-of-way to the intersection of S5 T22 R29E; south 1.75 miles to the southwest corner of S8 T22 R29E; east 2 miles to the southeast corner of S9 T22 R29E; north 1.5 miles (except the southeast 1/4 of the southeast 1/4 of S4 T22 R29E); east 1.5 miles to the middle 1/4 corner of S2 T22 R29E; north 1/4 mile, west 1/2 mile, north 1/2 mile; east at the northeast corner of S2 T22 R29E; 1 mile east to the southeast corner of S35 T23 R29E; north 1 mile to the southeast corner of S26 T23 R29E; east 1 mile to the southeast corner of S25 T23 R29E; north 4.25 miles to the northeast 1/4 of the southeast 1/4 of S1 T23 R29E; west 1 mile to the northwest corner of the northwest 1/4 of S1 T23 R29E; south 1 mile to the southwest corner of the northwest 1/4 of the southwest 1/4 of S12 T23 R29E; 1/2 mile east to the northwest corner of the southeast 1/4 of the southwest 1/4 of S12 T23 R29E; south 1/4 mile to the southeast corner of the southwest 1/4 of S12 T23 R29E; west 3 miles to the northwest corner of the east 1/2 of S16 T23 R29E; south 1 mile to the southeast corner of the east 1/2 of S16 T23 R29E; west 1/2 mile to the northeast corner of S20 T23 R29E; north 1 mile to the northwest corner of S16 T23 R29E; east 1 mile to the northeast corner of S9 T23 R29E; north 1 mile to the northeast corner of S9 T23 R29E; west 1 mile to the northeast corner of S8 T23 R29E; north 1 mile to the northeast corner of S5 T23 R29E; west 1/2 mile to the southeast corner of the west 1/2 of S32 T23 R29E; north 1 mile to the corner of the west 1/2 of S32 T23 R29E; 1.5 miles west to the northwest corner of S31 T24 R29E; south 1 mile to the northwest corner of S6 T23 R29E; west 1 mile to the northeast corner of S2 T23 R28E; north 1 mile to the northeast corner of S35 T24 R28E; west 1 mile to the northwest corner of S35 T24 R28E; south 1 mile to the northwest corner of S2 T23 R28E; west 3/4 mile to the northwest corner of the northeast 1/4 of S3 T23 R28E; south 1.5 miles to the intersection with the Stratford Game Reserve; continue from the southeast corner of the southeast 1/4 of the northeast 1/4 of S9 T23 R28E; north 1/2 mile to the northeast corner of S9 T23 R28E; west 1/4 mile north to the intersection of the Pinto Ridge Road; southwest on the Pinto Ridge Road to the northeast corner of the southeast 1/4 of S8 T23 R28E; west 1/2 mile to the northwest corner of the southeast 1/4 of S8 T23 R28E; south 1/4 mile to the intersection with the old NPRR bed. Follow the NPRR bed southwest to the southeast corner of the southwest 1/4 of S13 T23 R27E; northeast along the Dry Coulee Road to the northeast corner of S13 T23 R27E; west 1/4 mile to the southwest corner of the southeast 1/4 of S12 T23 R27E; north 1/4 mile, west 1/2 mile, north 1/4 mile, west 1/4 mile to the corner of the southwest 1/4 of S12 T23 R27E; west 1 mile to the northwest corner of the south 1/2 of S11 T23 R27E; south 1.5 miles to the northwest corner of S23 T23 R27E; west 2 miles to the northwest corner of S22 T23 R27E; south 1 mile to the southwest corner of S21 T23 R27E; east 1 mile, south 1 mile to the point of beginning. Public lands within the external boundaries are not part of the PLWMA.~~)) **PLWMA 201 SHALL INCLUDE THE FOLLOWING DESCRIBED LANDS WITHIN GAME MANAGEMENT UNIT 272 (BEAZLEY) IN GRANT COUNTY:**

T22N R29EWM:
Sections 2 (S 1/2 of NW 1/4), 3 (N 1/2), 4 (except SE 1/4 of SE 1/4), 5, 6 (those lands lying north of the Burlington Northern Santa Fe Railroad bed and S 1/2 of the SE 1/4), 8, and 9.

T23N R26EWM:
Section 13 (E 1/2 of SE 1/4).

T23N R27EWM:
Sections 7 (E 1/2 of SE 1/4 and SE 1/4 of NE 1/4), 8 (S 1/2 and S 1/2 of the NW 1/4), 11 (S 1/2), 12 (S 1/2 of SW 1/4 and SW 1/4 of SE 1/4), 13 (except the area between Dry Coulee Road and the Northern Pacific Railroad bed), 14, 17 (except those lands enrolled in the Hunt By Written Permission program), 18, 19, 20 (W 1/2), 21, 22, 23, 24, 25 (N 1/2), 26, and 27.

T23N R28EWM:
Sections 1, 2, 3 (except W 1/2 of W 1/2), 4 (W 1/2 of SE 1/4 south of the Pinto Ridge Road), 8 (SE 1/4 and S 1/2 of SW 1/4), 9 (southeast of the Pinto Ridge Road except the Stratford Game Reserve), 10 (NE 1/4 and the E 1/2 of NW 1/4), 12 (N 1/2), 15 (south of the Stratford Game Reserve), 16 (south of the Stratford Game Reserve), 18 (south of the Northern Pacific Railroad bed), 19, 20, 21, 22, 23, 26, 27, 28, 29 (N 1/2 and N 1/2 of the S 1/2), 30, 32 (SE 1/4, S 1/2 of NE 1/4 east of the Pinto Ridge Road), 33, 34 (N 1/2 and N 1/2 of the S 1/2), and 35 (north of the Stratford Game Reserve).

T23N R29EWM:
Sections 1 (S 1/2 of S 1/2), 5, 6, 7, 8, 9, 12 (except S 1/2 of SW 1/4), 13, 14, 15, 16 (E 1/2), 17, 18, 19 (except the Stratford Game Reserve), 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 (SE 1/4), 31, 32, 33, 34, and 35).

PERMANENT

T24N R28EWM:
Section 35.
T24N R29EWM:
Sections 31 and 32 (W 1/2).
A map of PLWMA 201 is available from WDFW's Region 2 office in Ephrata, (509) 754-4624.

PLWMA 401 - Rainier Timber Company RTC (Pierce County): Beginning at the intersection of RTC haul road (RTC 1 Rd.) and the Camp One Road near the town of Kapowsin; southwest along the east side of Lake Kapowsin to Ohop Creek; up Ohop Creek to RTC ownership line; along ownership line to S.W. corner of the north half of Section 6, T16N, R5E; easterly along Weyerhaeuser/RTC ownership line to the intersection with Busy Wild Creek; up Busy Wild Creek to intersection with RTC ownership on the section line between Sections 10 & 15, T15N, R6E; west and south along DNR/RTC ownership line and Plum Creek Timber Co./RTC ownership line to most southerly point of RTC ownership (northwest of Ashford, WA); easterly along RTC ownership line to DNR/RTC ownership line; north and east to USFS/RTC ownership line; east along USFS/RTC ownership line to S.W. corner of Section 31, T16N, R7E; north along USFS/RTC ownership line to N.W. corner Section 32, T16N, R7E; east along Plum Creek Timber Co./USFS ownership line to N.E. corner of Section 32, T16N, R7E; south along USFS/RTC ownership line to S.E. corner Section 32, T16N, R7E; east along USFS/RTC ownership line to Mount Rainier National Park Boundary; north along Mount Rainier National Park Boundary to N.E. corner Section 24, T17N, R7E; northwest along SR 165 to intersection with Carbon River; down Carbon River to the BPA Transmission Line; south and west along the powerline to the Fisk Road; south along the Fisk Road to the King Creek Gate; north and west along the Brooks Road BPA Transmission line; southwest along BPA Transmission line to the Puyallup River (excluding all small, private ownerships); up Puyallup River to intersection with RTC haul road bridge; south along RTC haul road to point of beginning. Another portion of PLWMA 401 RTC is the Buckley block (Kapowsin North described as follows: Beginning at the intersection of the BPA Transmission line and South Prairie Creek; up South Prairie Creek to East Fork South Prairie Creek; up East Fork South Prairie Creek to Plum Creek Timber Co./RTC ownership line (on south line of Section 33, T19N, R7E); along RTC ownership line to center line of Section 34, T19N, R7E; north and east along DNR/RTC ownership line to S.W. corner of Section 27, T19N, R7E; north along Weyerhaeuser/RTC ownership line to White River; down White River to where it crosses west line Section 6, T19N, R7E; south and west along RTC ownership line to intersection with South Prairie Creek; up South Prairie Creek to point of beginning.

PLWMA 401A - Kapowsin North (Buckley): That portion of PLWMA 401 description which includes the Buckley block.

PLWMA 401B - Kapowsin Central (King Creek): That portion of PLWMA 401 description which lies to the north of the Puyallup River, excluding the Buckley block.

PLWMA 401C - Kapowsin South (Kapowsin): That portion of PLWMA 401 description which lies to the south of the Puyallup River.

PLWMA 600 - Merrill and Ring (Clallam County): Beginning at Clallam Bay, east along the Strait of Juan de Fuca to the mouth of Deep Creek, south along Deep Creek to the township line between Townships 30 and 31, west along said township line to Highway 113 (Burnt Mt. Road) and north along Burnt Mt. Road (Highway 112 and 113) to Clallam Bay and point of beginning, except the following described lands: T31N R10W: E 1/2 W 1/2, E 1/2 West of Deep Creek Section 19, Except SW 1/4 NW 1/4, SW 1/4, W 1/2 E 1/2 West of Deep Creek Section 30, Except North & West of Deep Creek Section 31: T31N R11W; Except the SW 1/4 SE 1/4 Section 7, Except that portion of NW 1/4 SE 1/4 which is County Park Section 10, Except the NE 1/4 NE 1/4 Section 14, Except W 1/2, W 1/2 E 1/2, SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 16, Except SW 1/4 NE 1/4 Section 17, Except NW 1/4 NW 1/4, SW 1/4, NW 1/4 north of the Pysht River, SE 1/4 NW 1/4, south of the Pysht River, SE 1/4((,)) NE 1/4, NW 1/4 SE 1/4 Section 18, ((~~Except W 1/2 SW 1/4, SW 1/4 NE 1/4 Section 19,~~)) Except W 1/2 SW 1/4 Section 27, Except S 1/2 S 1/2, N 1/2 SW 1/4 Section 28, Except E 1/2 SE 1/4, SW 1/4 SE 1/4, NE 1/4((,)) SW 1/4 Section 29, Except SW 1/4 SE 1/4 Section 30, Except NE 1/4 Section 31, Except All Section 32, Except All Section 33, except SW 1/4 NE 1/4, S 1/2 Section 34, Except All Section 36, T31N R12W; Except SE 1/4 SE 1/4, W 1/2 SE 1/4 East of Highway 112 Section 4, Except All East of Highway 112 Section 9, Except E 1/2 NE 1/4, SW 1/4 NE 1/4, ((~~W 1/2, SW 1/4~~)) E 1/2 SW 1/4, NW 1/4 SE 1/4 Section 13, Except S 1/2 SE 1/4 Section 14, Except E 1/2 NW 1/4 East of Highway 112 Section 23, ((~~Except N 1/2 SW 1/4, SE 1/4 NW 1/4 Section 24,~~)) Except SE 1/4 SW 1/4, SW 1/4 SE 1/4 Section 26, Except N 1/2 N 1/2, NE 1/4 SW 1/4 Section 35, Except All Section 36: T32N R12W; Except W 1/2 SE 1/4 Section 21, Except All Section 22, Except NW 1/4 Section 27, Except NE 1/4, N 1/2 SE 1/4, E 1/2 W 1/2 East of Highway 112 Section 28, Except E 1/2 W 1/2 East of Highway 112 Section 33, Except S 1/2 Section 36.

PLWMA 600A North - Merrill and Ring North: That portion of PLWMA 600 north of Highway 112.

PLWMA 600B South - Merrill and Ring South: That portion of PLWMA 600 south of Highway 112.

AMENDATORY SECTION (Amending Order 02-135, filed 7/8/02, effective 1/1/03)

WAC 232-28-282 Big game and wild turkey auction, raffle, and special incentive permits.

BIG GAME AUCTION PERMITS

The director will select a conservation organization(s) to conduct annual auction(s). Selection of the conservation organizations will be based on criteria adopted by the Washington department of fish and wildlife. Big game and wild turkey

auctions shall be conducted consistent with WAC 232-28-292.

SPECIES - ONE DEER PERMIT

Hunting season dates: September 1 - December 31
Hunt Area: Statewide EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), GMU 485, and those GMUs closed to deer hunting by the fish and wildlife commission.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One additional any buck deer

SPECIES - ONE WESTSIDE ELK PERMIT

Hunting season dates: September 1 - December 31
Hunt Area: Western Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One additional any bull elk

SPECIES - ONE EASTSIDE ELK PERMIT

Hunting season dates: September 1 - December 31
Hunt Area: Eastern Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), GMU 157, those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One additional any bull elk

SPECIES - ONE BIGHORN SHEEP PERMIT

Hunting season dates: September 1 - October 31
Hunt Area: Sheep Unit 4 (Selah Butte), Sheep Unit 5 (Umtanum), Sheep Unit 7 (Cleman Mountain), Sheep Unit 12 (Lincoln Cliffs), or Sheep Unit 13 (Quilomene)((~~, or Sheep Unit 14 (Swakane)~~)).
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One bighorn ram

SPECIES - ONE MOOSE PERMIT

Hunting season dates: October 1 - November 30
Hunt Area: Any open moose unit.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One moose of either sex

SPECIES - ONE MOUNTAIN GOAT PERMIT

Hunting season dates: September 15 - October 31
Hunt Area: Goat Unit 3-6 (Naches Pass), Goat Unit 3-9 (Tieton River), Goat Unit 3-10 (Blazed Ridge), or Goat Unit 5-4 (Goat Rocks).
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One mountain goat of either sex

RAFFLE PERMITS

Raffle permits will be issued to individuals selected through a Washington department of fish and wildlife drawing or the director may select a conservation organization(s) to conduct annual raffles. Selection of a conservation organization will be based on criteria adopted by the Washington department of fish and wildlife. Big game and wild turkey raffles shall be conducted consistent with WAC 232-28-290.

RAFFLE PERMIT HUNT(S)

DEER RAFFLE PERMIT HUNT

Bag limit: One additional any buck deer
Open area: Statewide EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), GMU 485, and those GMUs closed to deer hunting by the fish and wildlife commission.
Open season: September 1 - December 31.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Number of permits: 1
Raffle ticket cost: $5.00 including a 50-cent vendor fee.

WESTSIDE ELK RAFFLE PERMIT HUNT

Bag limit: One additional any bull elk
Open area: Western Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), those GMUs closed to elk hunting, and those GMUs not open to branch antlered bull elk hunting by the fish and wildlife commission.
Open season: September 1 - December 31.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Number of permits: 1
Raffle ticket cost: $5.00 including a 50-cent vendor fee.

EASTSIDE ELK RAFFLE PERMIT HUNT

Bag limit: One additional any bull elk
Open area: Eastern Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), GMU 157, those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.
Open season: September 1 - December 31.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Number of permits: 1
Raffle ticket cost: $5.00 including a 50-cent vendor fee.

BIGHORN SHEEP RAFFLE PERMIT HUNT

Bag limit: One bighorn ram

PERMANENT

Open area: Sheep Unit 4 (Selah Butte), Sheep Unit 5 (Umtanum), Sheep Unit 7 (Cleman Mountain), Sheep Unit 12 (Lincoln Cliffs), or Sheep Unit 13 (Quilomene)((~~, or Sheep Unit 14 (Swakane)~~)).
Open season: September 1 - October 31.
Weapon: Hunter may use any legal weapon.
Number of permits: 1
Raffle ticket cost: $10.00 including a 50-cent vendor fee.

MOOSE RAFFLE PERMIT HUNT

Bag limit: One moose of either sex
Open area: Any open moose unit.
Open season: October 1 - November 30.
Weapon: Hunter may use any legal weapon.
Number of permits: 1
Raffle ticket cost: $5.00 including a 50-cent vendor fee.

MOUNTAIN GOAT RAFFLE PERMIT HUNT

Bag limit: One mountain goat of either sex
Open area: Goat Unit 3-6 (Naches Pass), Goat Unit 3-9 (Tieton River), Goat Unit 3-10 (Blazed Ridge), or Goat Unit 5-4 (Goat Rocks).
Open season: September 15 - October 31.
Weapon: Hunter may use any legal weapon.
Number of permits: 1
Raffle tickets cost: $5.00 including a 50-cent vendor fee.

TURKEY RAFFLE PERMIT HUNTS

Bag limit: Three (3) additional wild turkeys, but not to exceed more than one turkey in Western Washington or two turkeys in Eastern Washington.
Open area: Statewide.
Open season: April 1 - May 31.
Weapon: Archery or shotgun only.
Number of permits: 2
Raffle ticket cost: $5.00 including a 50-cent vendor fee.

SPECIAL INCENTIVE PERMITS

Hunters will be entered into a drawing for special deer and elk incentive permits for prompt reporting of hunting activity in compliance with WAC 232-28-299.

(a) There will be two (2) any elk special incentive permits for Western Washington.
Open area: Western Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), GMUs 418, 485, 522, and those GMUs closed to elk hunting or closed to branch antlered bull elk hunting by the fish and wildlife commission.
Open season: September 1 - December 31.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One additional elk.

There will be two (2) any elk special incentive permits for Eastern Washington.
Open area: Eastern Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), GMU 157 and those GMUs closed to elk hunting or closed to branch antlered bull elk hunting by the fish and wildlife commission.
Open season: September 1 - December 31.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One additional elk.

(b) There will be five (5) statewide any deer special incentive permits, for use in any area open to general or permit hunting seasons EXCEPT all Private Lands Wildlife Management Areas (PLWMAs), GMUs 157, 418, 485, 522, and those GMUs closed to deer hunting by the fish and wildlife commission.
Open season: September 1 - December 31.
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons and any legal weapon at other times if there are no firearm restrictions.
Bag limit: One additional any deer.

Auction, raffle, and special incentive hunt permittee rules

(1) Permittee shall contact the appropriate regional office of the department of fish and wildlife when entering the designated hunt area or entering the region to hunt outside the general season.

(2) The permittee may be accompanied by others; however, only the permittee is allowed to carry a legal weapon or harvest an animal.

(3) Any attempt by members of the permittee's party to herd or drive wildlife is prohibited.

(4) If requested by the department, the permittee is required to direct department officials to the site of the kill.

(5) The permit is valid during the hunting season dates for the year issued.

(6) The permittee will present the head and carcass of the bighorn sheep killed to any department office within 72 hours of date of kill.

(7) The permittee must abide by all local, state, and federal regulations including firearm restriction areas and area closures.

(8) 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 special incentive permit winner.

WSR 03-03-024
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed January 8, 2003, 1:04 p.m., effective February 10, 2003]

Date of Adoption: January 8, 2003.

Purpose: (1) The department needs to plug the gap in current law by passing a rule that will require aliens to produce their alien firearm licenses when applying for and renewing their armed private investigator licenses. The department issues aliens armed private investigator licenses and by doing so it implies that the alien is legal to be armed,

which is not true because an alien commits a felony by carrying or possessing a firearm without an alien firearm license.

(2) Maintaining the annual shooting requirements at the private investigator company level will reduce turn-around time and reduce workloads for armed private investigator licensing renewals without compromising public safety.

Citation of Existing Rules Affected by this Order: Amending WAC 308-17-120 and 308-17-240.

Statutory Authority for Adoption: Chapter 18.165 RCW.

Adopted under notice filed as WSR 02-23-059 on November 18, 2002.

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 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Effective Date of Rule: February 10, 2003.

January 8, 2003
Alan E. Rathbun
Assistant Director

AMENDATORY SECTION (Amending WSR 97-17-051, filed 8/15/97)

WAC 308-17-120 Armed private investigator applications—Conditions. (1) Any person desiring to be an armed private detective shall obtain a firearms certificate from the criminal justice training commission, make application on a form prescribed by the director, and pay a nonrefundable fee as prescribed by WAC 308-17-150.

(2) If the applicant is an alien resident, the applicant must provide proof of their Alien Firearm License when they submit an application for original or renewal of their armed private investigator license. Proof of Alien Firearm License may be provided by submitting a copy of their current Alien Firearm License.

AMENDATORY SECTION (Amending WSR 97-17-051, filed 8/15/97)

WAC 308-17-240 Required records. The minimum records the principal of a private investigative agency shall be required to keep are:

(1) ((~~p~~)) Preassignment training and testing records for each private investigator.

(2) The company principal shall maintain proof of annual shooting requirements for each armed private investigator employed by the private investigator company in the armed private investigator's training files or employee's files. These records shall be retained and available for inspection by the director or the director's authorized representative for a minimum of three years.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

WSR 03-03-035
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION
[Filed January 10, 2003, 10:29 a.m., effective January 10, 2003]

PERMANENT

Date of Adoption: January 10, 2003.

Purpose: To specify maximum speeds for the movement of loads requiring oversize/overweight special motor vehicle permits.

Citation of Existing Rules Affected by this Order: Amending WAC 468-38-340.

Statutory Authority for Adoption: RCW 46.44.090.

Adopted under notice filed as WSR 02-23-087 on November 20, 2002.

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 0, Repealed 0.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Replaces emergency rule with identical language.

Effective Date of Rule: January 10, 2003.

January 10, 2003
John F. Conrad
Assistant Secretary
Engineering and Operations

AMENDATORY SECTION (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-340 Speed limits. (1) Unless otherwise stated, maximum speeds for vehicles, combination of vehi-

cles, or vehicles and loads being operated under permit shall be as posted for trucks.

(2) When travel on the roadway shoulder is required on a two-lane highway to allow overtaking traffic to pass, the speed will not exceed 25 miles per hour.

(3) ((~~The~~)) If a speed limit ((~~contained~~)) is stated in a permit ((~~is listed as~~)) it becomes one of the conditions upon which the permit has been issued. This stated speed limit shall not be exceeded, but if a lower limit is posted on any highway, it shall take precedence. Violation of the speed limit ((~~contained~~)) stated in the permit will render the permit null and void.

(((~~(4) Speed limits shall be as follows:~~

~~(a) On two-lane highways in rural areas, 45 miles per hour.~~

~~(b) On multiple-lane highways (for all moves including 12-foot width), as posted.~~

~~(c) On multiple-lane highways (for moves over 12-foot width), 50 miles per hour.~~))

PERMANENT

WSR 03-03-041
PERMANENT RULES
HORSE RACING COMMISSION
[Filed January 10, 2003, 11:43 a.m.]

Date of Adoption: January 9, 2003.

Purpose: Adopt rule outlining the duties and responsibilities of the executive secretary of the Washington Horse Racing Commission.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 02-21-022 on October 9, 2002.

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 0, Amended 0, Repealed 0.

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

January 9, 2003
R. M. Leichner
Executive Secretary

NEW SECTION

WAC 260-08-595 Role of the commission and the executive secretary. The horse racing commission shall appoint an executive secretary who shall act as the chief operating officer for the agency. The executive secretary shall be responsible for the implementation of policies and to enforce rules of the commission. He/she shall also be responsible to carry out the administrative details and the day-to-day operation of the agency, to include the achievement of performance goals and objectives established by the commission and to administrate the agency's budget. The executive secretary shall also act as the appointing authority for agency staff, and as such has the authority and responsibility to hire, promote, assign work, determine duty stations, evaluate, take corrective action, and, where appropriate terminate staff. The executive secretary shall also be responsible to enter into contracts and agreements, and to exercise such other management oversight, decision-making and administrative action that are necessary to achieve agency mission and goals.

WSR 03-03-043
PERMANENT RULES
DEPARTMENT OF ECOLOGY
[Order 99-24—Filed January 10, 2003, 1:14 p.m.]

Date of Adoption: January 10, 2003.

Purpose: To adopt a new rule, chapter 173-350 WAC, Solid waste handling standards. This rule will include comprehensive standards for solid waste handling practices and facilities, and provide permit exemption opportunities that encourage the use, reuse, and recycling of solid waste.

Statutory Authority for Adoption: Chapter 70.95 RCW.

Adopted under notice filed as WSR 02-14-061 on June 27, 2002.

Changes Other than Editing from Proposed to Adopted Version:

- Revised the purpose statement in WAC 173-350-010(5) to remove confusing terminology.
- Revised WAC 173-350-020(8) to clarify circumstances when dredged material was exempt from rule.
- Revised WAC 173-350-020(15) to clarify circumstances when PCB wastes are exempt from rule.
- Revised WAC 173-350-030 so that existing facilities would have sufficient time to meet the requirements of local ordinances adopted to implement this rule.
- Replaced all references to the unqualified use of the term "risk" with "threat."
- Moved prohibition against dilution from WAC 173-350-040(6) to WAC 173-350-320 (4)(f) to clarify intent.
- Deleted fourteen definitions from WAC 173-350-100 that were unnecessary. Modified twenty-four definitions to clarify terms used in the rule. Created six new definitions to clarify terms used in the rule including "conditionally exempt small quantity generator waste," "facility construction," "hydrostratigraphic unit," "liquid waste," "nuisance odor," and "product take-back center."
- Added WAC 173-350-200 (4)(f)(iii) to allow the department to respond to new information as it becomes available.

- Several modifications were made to WAC 173-350-210 to clarify the difference between the act of recycling, as defined, and the collection and handling of solid wastes prior to recycling. Material recovery facilities have been moved from this section to WAC 173-350-310 to further highlight the difference.
- Deleted general references to "Natural Resources Conservation Service standards" in WAC 173-350-220 and replaced with appropriate references.
- Deleted requirement for annual reporting by registered dairies that do not distribute compost off-site in WAC 173-350-220 (1)(c)(vi).
- Added requirement for reporting quantity of compost produced and analyses of composted materials in annual reports required under WAC 173-350-220.
- Replaced requirement that waste removed at closure be managed in accordance with chapter 70.95 RCW with requirement that the wastes be managed in accordance with applicable regulations.
- Modified the requirement to provide recyclable material collection at energy recovery and incineration facilities to apply only to those facilities that accept waste from the public.
- Inserted standards for material recovery facilities in WAC 173-350-310.
- Revised terms and conditions for permit exempt material recovery facilities to only allow "recyclable material" as defined to be handled.
- Revised some prescriptive design standards of WAC 173-350-310(4) to performance based standards.
- Revised closure notification to one hundred eighty days for all facilities that manage household waste.
- Limited the terms and conditions of permit exemption to compliance with performance standards for inert waste piles under two hundred fifty cubic yards.
- Clarified that WAC 173-350-320 is applicable to treatment of contaminated soils and contaminated dredged material including the addition of specific operating criteria for managing these wastes.
- Added requirement in WAC 173-350-330 (3)(a)(vi) that surface impoundment liners be above seasonal high ground water.
- Deleted requirement for annual reports from WAC 173-350-330.
- Deleted requirement in WAC 173-350-350 (9)(c) for waste tire storage site license prior to permit issuance.
- Replaced all references to "retail take-back center" with "product take-back center" for consistency with definitions.
- WAC 173-350-360 (6)(b)(iii) requirement for five year inspections was deleted.
- Volume threshold for financial assurance at MRW facilities was increased from 550 gallons to 9000 gallons.
- Replaced references to "aquifer" with "hydrostratigraphic unit" for consistency with definitions.
- Provided performance standard for landfill gas control in WAC 173-350-400.
- Clarified that some PCB waste may be disposed at limited purpose landfills.
- Revised inert landfill setback from drinking water wells from fifty feet to one hundred feet.
- Simplified the operating record requirement for inert waste landfills in WAC 173-350-410 (4)(c).
- Provided flexibility in method of determining waste quantities at landfills.
- Clarified WAC 173-350-500 (5)(b)(i)(B) to indicate that only parameters showing a statistically significant increase must be analyzed when resampling of ground water monitoring wells for confirmation of contamination.
- Deleted WAC 173-350-700 (1)(b)(i)-(iii) for consistency with chapter 70.105D RCW.
- Deleted "completed" from WAC 173-350-710 (2)(a) for consistency with RCW 70.95.180.
- Added stainless steel and aluminum as listed inert waste in WAC 173-350-990 (2)(f).
- Several sections of the rule were edited for clarification of the content and to make rule language consistent with other regulations and laws. For more detail about these edits and the changes described above, please see the *Concise Explanatory Statement*. To obtain a copy you can contact Michelle Payne at (360) 407-6129 or mdav461@ecy.wa.gov, or visit the publications site on the ecology website http://www.ecy.wa.gov/biblio/rpsearch.html.

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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 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 25, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 0, Repealed 0.

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

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

January 10, 2003
Tom Fitzsimmons
Director

Chapter 173-350 WAC

SOLID WASTE HANDLING STANDARDS

NEW SECTION

WAC 173-350-010 Purpose. This chapter is adopted under the authority of chapter 70.95 RCW, Solid waste management—Reduction and recycling, to protect public health, to prevent land, air, and water pollution, and conserve the state's natural, economic, and energy resources by:

(1) Setting minimum functional performance standards for the proper handling and disposal of solid waste originat-

ing from residences, commercial, agricultural and industrial operations and other sources;

(2) Identifying those functions necessary to assure effective solid waste handling programs at both the state and local level;

(3) Following the priorities for the management of solid waste as set by the legislature in chapter 70.95 RCW, Solid waste management—Reduction and recycling.

(4) Describing the responsibility of persons, municipalities, regional agencies, state and local government related to solid waste;

(5) Requiring solid waste handling facilities to be located, designed, constructed, operated and closed in accordance with this chapter;

(6) Promoting regulatory consistency by establishing statewide minimum standards for solid waste handling; and

(7) Encouraging the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling.

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NEW SECTION

WAC 173-350-020 Applicability. This chapter applies to facilities and activities that manage solid wastes as that term is defined in WAC 173-350-100. This chapter does not apply to the following:

(1) Overburden from mining operations intended for return to the mine;

(2) Wood waste used for ornamental, animal bedding, mulch and plant bedding, or road building purposes;

(3) Wood waste directly resulting from the harvesting of timber left at the point of generation and subject to chapter 76.09 RCW, Forest practices;

(4) Land application of manures and crop residues at agronomic rates;

(5) Home composting as defined in WAC 173-350-100;

(6) Single-family residences and single-family farms whose year round occupants engage in solid waste disposal regulated under WAC 173-351-700(4);

(7) Clean soils and clean dredged material as defined in WAC 173-350-100;

(8) Dredged material as defined in 40 CFR 232.2 that is subject to:

(a) The requirements of a permit issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(b) The requirements of a permit issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(c) In the case of U.S. Army Corps of Engineers civil works projects, the administrative equivalent of the permits referred to in (a) and (b) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 CFR 336.1, 336.2, and 337.6;

(9) Biosolids that are managed under chapter 173-308 WAC, Biosolids management;

(10) Domestic septage taken to a sewage treatment plant permitted under chapter 90.48 RCW, Water pollution control;

(11) Liquid wastes, the discharge or potential discharge of which, is regulated under federal, state or local water pollution permits;

(12) Domestic wastewater facilities and industrial wastewater facilities otherwise regulated by federal, state, or local water pollution permits;

(13) Dangerous wastes fully regulated under chapter 70.105 RCW, Hazardous waste management, and chapter 173-303 WAC, Dangerous waste regulations;

(14) Special incinerator ash regulated under chapter 173-306 WAC, Special incinerator ash management standards;

(15) PCB wastes regulated under 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, except for:

(a) PCB household waste; and

(b) PCB bulk product wastes identified in 40 CFR Part 761.62 (b)(1) that are disposed of in limited purpose landfills;

(16) Radioactive wastes, defined by chapter 246-220 WAC, Radiation protection—General provisions, and chapter 246-232 WAC, Radioactive protection—Licensing applicability;

(17) Landfilling of municipal solid waste regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills;

(18) Drop boxes used solely for collecting recyclable materials;

(19) Intermodal facilities as defined in WAC 173-350-100; and

(20) Solid waste handling facilities that have engaged in closure and closed before the effective date of this chapter.

NEW SECTION

WAC 173-350-025 Owner responsibilities for solid waste. The owner, operator, or occupant of any premise, business establishment, or industry shall be responsible for the satisfactory and legal arrangement for the solid waste handling of all solid waste generated or accumulated by them on the property.

NEW SECTION

WAC 173-350-030 Effective dates. (1) *Effective dates.* These standards apply to all facilities, except existing facilities, upon the effective date of this chapter.

(2) *Effective dates - Existing facilities.*

(a) The owner or operator of existing facilities shall:

(i) Meet all applicable operating, environmental monitoring, closure and post-closure planning, and financial assurance requirements of this chapter within twenty-four months of the effective date of this chapter; and

(ii) Meet all applicable performance and design requirements, other than location or setback requirements, within thirty-six months of the effective date of this chapter.

(b) These standards apply to all new solid waste handling units at existing facilities upon the effective date of this chapter.

(c) The owner or operator of existing facilities shall initiate the permit modification process outlined in WAC 173-350-710(4) within eighteen months after the effective date of this chapter. If a permit modification is necessary, every application for a permit modification shall describe the date and methods for altering an existing facility to meet (a)(i) through (iii) of this subsection.

(d) The jurisdictional health department shall determine if a new permit application is required based on the extent of the changes needed to bring the facility into compliance.

(e) An existing facility completing closure within twelve months of the effective date of this chapter may close in compliance with the requirements of chapter 173-304 WAC, Minimum functional standards for solid waste handling. Any facility that does not complete closure within twelve months of the effective date of this chapter shall close in compliance with applicable requirements of this chapter.

NEW SECTION

WAC 173-350-040 Performance standards. The owner or operator of all solid waste facilities subject to this chapter shall:

(1) Design, construct, operate, and close all facilities in a manner that does not pose a threat to human health or the environment;

(2) Comply with chapter 90.48 RCW, Water pollution control and implementing regulations, including chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington;

(3) Conform to the approved local comprehensive solid waste management plan prepared in accordance with chapter 70.95 RCW, Solid waste management—Reduction and recycling, and/or the local hazardous waste management plan prepared in accordance with chapter 70.105 RCW, Hazardous waste management;

(4) Not cause any violation of emission standards or ambient air quality standards at the property boundary of any facility and comply with chapter 70.94 RCW, Washington Clean Air Act; and

(5) Comply with all other applicable local, state, and federal laws and regulations.

NEW SECTION

WAC 173-350-100 Definitions. When used in this chapter, the following terms have the meanings given below.

"Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being, are proposed to be, or have been conducted. Setbacks shall not be considered part of the active area of a facility.

"Agricultural composting" means composting of agricultural waste as an integral component of a system designed to improve soil health and recycle agricultural wastes. Agricultural composting is conducted on lands used for farming.

"Agricultural wastes" means wastes on farms resulting from the raising or growing of plants and animals including, but not limited to, crop residue, manure and animal bedding, and carcasses of dead animals weighing each or collectively in excess of fifteen pounds.

"Agronomic rates" means the application rate (dry weight basis) that will provide the amount of nitrogen or other critical nutrient required for optimum growth of vegetation, and that will not result in the violation of applicable standards or requirements for the protection of ground or surface water as established under chapter 90.48 RCW, Water pollution control and related rules including chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington, and chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington.

"Air quality standard" means a standard set for maximum allowable contamination in ambient air as set forth in chapter 173-400 WAC, General regulations for air pollution sources.

"Below ground tank" means a device meeting the definition of "tank" in this chapter where a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface of the tank that is in the ground.

"Beneficial use" means the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use.

"Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management. Biosolids includes a material derived from biosolids and septic tank sludge, also known as septage, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management.

"Buffer" means a permanently vegetated strip adjacent to an application area, the purpose of which is to filter runoff or overspray from the application area and protect an adjacent area.

"Cab cards" means a license carried in a vehicle that authorizes that vehicle to legally pick up waste tires and haul to a permitted, licensed facility or an exempt facility for deposit.

"Captive insurance companies" means companies that are wholly owned subsidiaries controlled by the parent company and established to insure the parent company or its other subsidiaries.

"Channel migration zone" means the lateral extent of likely movement of a stream or river channel along a stream reach.

"Clean soils and clean dredged material" means soils and dredged material that do not contain contaminants at concentrations which could negatively impact the existing quality of air, waters of the state, soils, or sediments; or pose a threat to the health of humans or other living organisms.

"Closure" means those actions taken by the owner or operator of a solid waste handling facility to cease disposal

PERMANENT

operations or other solid waste handling activities, to ensure that all such facilities are closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period.

"Closure plan" means a written plan developed by an owner or operator of a facility detailing how a facility is to close at the end of its active life.

"Composted material" means organic solid waste that has undergone biological degradation and transformation under controlled conditions designed to promote aerobic decomposition at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

"Composting" means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

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"Conditionally exempt small quantity generator (CESQG)" means a dangerous waste generator whose dangerous wastes are not subject to regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated or accumulated in quantities below the threshold for regulation and meets the conditions prescribed in WAC 173-303-070 (8)(b).

"Conditionally exempt small quantity generator (CESQG) waste" means dangerous waste generated by a conditionally exempt small quantity generator.

"Container" means a portable device used for the collection, storage, and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in the environment or that occurs at concentrations greater than natural background levels.

"Contaminate" means the release of solid waste, leachate, or gases emitted by solid waste, such that contaminants enter the environment at concentrations that pose a threat to human health or the environment, or cause a violation of any applicable environmental regulation.

"Contaminated soils and contaminated dredged material" means soils and dredged material that contain contaminants at concentrations which could negatively impact the existing quality of air, waters of the state, soils or sediments, or pose a threat to the health of humans or other living organisms.

"Corrosion expert" means a person certified by the National Association of Corrosion Engineers (NACE) or a registered professional engineer who has certification or licensing that includes education and experience in corrosion control.

"Crop residues" means vegetative material leftover from the harvesting of crops, including leftover pieces or whole fruits or vegetables, crop leaves and stems. Crop residue does not include food processing waste.

"Dangerous wastes" means any solid waste designated as dangerous waste by the department under chapter 173-303 WAC, Dangerous waste regulations.

"Department" means the Washington state department of ecology.

"Detachable containers" means reusable containers that are mechanically loaded or handled, such as a dumpster or drop box.

"Disposable containers" means containers that are used once to handle solid waste, such as plastic bags, cardboard boxes and paper bags.

"Disposal" or **"deposition"** means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

"Domestic septage" means Class I, II or III domestic septage as defined in chapter 173-308 WAC, Biosolids management.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present.

"Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive waste from off-site.

"Energy recovery" means the recovery of energy in a useable form from mass burning or refuse-derived fuel incineration, pyrolysis or any other means of using the heat of combustion of solid waste that involves high temperature (above twelve hundred degrees Fahrenheit) processing.

"Existing facility" means a facility which is owned or leased, and in operation, or for which facility construction has begun, on or before the effective date of this chapter and the owner or operator has obtained permits or approvals necessary under federal, state and local statutes, regulations and ordinances.

"Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements on the land used for solid waste handling.

"Facility construction" means the continuous on-site physical act of constructing solid waste handling unit(s) or when the owner or operator of a facility has entered into contractual obligations for physical construction of the facility that cannot be canceled or modified without substantial financial loss.

"Facility structures" means constructed infrastructure such as buildings, sheds, utility lines, and piping on the facility.

"Garbage" means animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking, and serving of foods.

"Ground water" means that part of the subsurface water that is in the zone of saturation.

"Holocene fault" means a plane along which earthen material on one side has been displaced with respect to that on the other side and has occurred in the most recent epoch of

the Quaternary period extending from the end of the Pleistocene to the present.

"Home composting" means composting of on-site generated wastes, and incidental materials beneficial to the composting process, by the owner or person in control of a single-family residence, or for a dwelling that houses two to five families, such as a duplex or clustered dwellings.

"Household hazardous wastes" means any waste which exhibits any of the properties of dangerous wastes that is exempt from regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated by households. Household hazardous waste can also include other solid waste identified in the local hazardous waste management plan prepared pursuant to chapter 70.105 RCW, Hazardous waste management.

"Hydrostratigraphic unit" means any water-bearing geologic unit or units hydraulically connected or grouped together on the basis of similar hydraulic conductivity which can be reasonably monitored; several geologic formations or part of a geologic formation may be grouped into a single hydrostratigraphic unit; perched sand lenses may be considered a hydrostratigraphic unit or part of a hydrostratigraphic unit, for example.

"Incineration" means reducing the volume of solid wastes by use of an enclosed device using controlled flame combustion.

"Incompatible waste" means a waste that is unsuitable for mixing with another waste or material because the mixture might produce excessive heat or pressure, fire or explosion, violent reaction, toxic dust, fumes, mists, or gases, or flammable fumes or gases.

"Industrial solid wastes" means solid waste generated from manufacturing operations, food processing, or other industrial processes.

"Industrial wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of industrial wastewater.

"Inert waste" means solid wastes that meet the criteria for inert waste in WAC 173-350-990.

"Inert waste landfill" means a landfill that receives only inert wastes.

"Intermediate solid waste handling facility" means any intermediate use or processing site engaged in solid waste handling which is not the final site of disposal. This includes material recovery facilities, transfer stations, drop boxes, baling and compaction sites.

"Intermodal facility" means any facility operated for the purpose of transporting closed containers of waste and the containers are not opened for further treatment, processing or consolidation of the waste.

"Jurisdictional health department" means city, county, city-county or district public health department.

"Land application site" means a contiguous area of land under the same ownership or operational control on which solid wastes are beneficially utilized for their agronomic or soil-amending capability.

"Land reclamation" means using solid waste to restore drastically disturbed lands including, but not limited to, construction sites and surface mines. Using solid waste as a component of fill is not land reclamation.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

"Leachate" means water or other liquid within a solid waste handling unit that has been contaminated by dissolved or suspended materials due to contact with solid waste or gases.

"Limited moderate risk waste" means waste batteries, waste oil, and waste antifreeze generated from households.

"Limited moderate risk waste facility" means a facility that collects, stores, and consolidates only limited moderate risk waste.

"Limited purpose landfill" means a landfill which is not regulated or permitted by other state or federal environmental regulations that receives solid wastes limited by type or source. Limited purpose landfills include, but are not limited to, landfills that receive segregated industrial solid waste, construction, demolition and landclearing debris, wood waste, ash (other than special incinerator ash), and dredged material. Limited purpose landfills do not include inert waste landfills, municipal solid waste landfills regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills, landfills disposing of special incinerator ash regulated under chapter 173-306 WAC, Special incinerator ash management standards, landfills regulated under chapter 173-303 WAC, Dangerous waste regulations, or chemical waste landfills used for the disposal of polychlorinated biphenyls (PCBs) regulated under Title 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

"Liquid" means a substance that flows readily and assumes the form of its container but retains its independent volume.

"Liquid waste" means any solid waste which is deemed to contain free liquids as determined by the Paint Filter Liquids Test, Method 9095, in *"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,"* EPA Publication SW-846.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete or asphalt, or unconsolidated earth materials, soil or regolith lying at or near the earth's surface.

"Local fire control agency" means a public or private agency or corporation providing fire protection such as a local fire department, the department of natural resources or the United States Forest Service.

"Lower explosive limits" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at twenty-five degrees centigrade and atmospheric pressure.

"Material recovery facility" means any facility that collects, compacts, repackages, sorts, or processes for trans-

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port source separated solid waste for the purpose of recycling.

"Mobile systems and collection events" means activities conducted at a temporary location to collect moderate risk waste.

"Moderate risk waste (MRW)" means solid waste that is limited to conditionally exempt small quantity generator (CESQG) waste and household hazardous waste (HHW) as defined in this chapter.

"MRW facility" means a solid waste handling unit that is used to collect, treat, recycle, exchange, store, consolidate, and/or transfer moderate risk waste. This does not include mobile systems and collection events or limited MRW facilities that meet the applicable terms and conditions of WAC 173-350-360 (2) or (3).

"Municipal solid waste (MSW)" means a subset of solid waste which includes unsegregated garbage, refuse and similar solid waste material discarded from residential, commercial, institutional and industrial sources and community activities, including residue after recyclables have been separated. Solid waste that has been segregated by source and characteristic may qualify for management as a non-MSW solid waste, at a facility designed and operated to address the waste's characteristics and potential environmental impacts. The term MSW does not include:

- Dangerous wastes other than wastes excluded from the requirements of chapter 173-303 WAC, Dangerous waste regulations, in WAC 173-303-071 such as household hazardous wastes;
- Any solid waste, including contaminated soil and debris, resulting from response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601), chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act, chapter 173-340 WAC, the Model Toxics Control Act cleanup regulation or a remedial action taken under those rules; nor
- Mixed or segregated recyclable material that has been source-separated from garbage, refuse and similar solid waste. The residual from source separated recyclables is MSW.

"Natural background" means the concentration of chemical, physical, biological, or radiological substances consistently present in the environment that has not been influenced by regional or localized human activities. Metals at concentrations naturally occurring in bedrock, sediments and soils due solely to the geologic processes that formed the materials are natural background. In addition, low concentrations of other persistent substances due solely to the global use or formation of these substances are natural background.

"New solid waste handling unit" means a solid waste handling unit that begins operation or facility construction, and significant modifications to existing solid waste handling units, after the effective date of this chapter.

"Nuisance odor" means any odor which is found offensive or may unreasonably interfere with any person's health, comfort, or enjoyment beyond the property boundary of a facility.

"One hundred year flood plain" means any land area that is subject to one percent or greater chance of flooding in any given year from any source.

"Open burning" means the burning of solid waste materials in an open fire or an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

"Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

"Permeability" means the ease with which a porous material allows liquid or gaseous fluids to flow through it. For water, this is usually expressed in units of centimeters per second and termed hydraulic conductivity.

"Permit" means an authorization issued by the jurisdictional health department which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

"Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatever.

"Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

"Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

"Point of compliance" means a point established in the ground water by the jurisdictional health department as near a possible source of release as technically, hydrogeologically and geographically feasible.

"Post-closure" means the requirements placed upon disposal facilities after closure to ensure their environmental safety for at least a twenty-year period or until the site becomes stabilized (i.e., little or no settlement, gas production, or leachate generation).

"Post-closure plan" means a written plan developed by an owner or operator of a facility detailing how a facility is to meet the post-closure requirements for the facility.

"Premises" means a tract or parcel of land with or without habitable buildings.

"Private facility" means a privately owned facility maintained on private property solely for the purpose of managing waste generated by the entity owning the site.

"Processing" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal.

"Product take-back center" means a retail outlet or distributor that accepts household hazardous waste of comparable types as the products offered for sale or distributed at that outlet.

"Public facility" means a publicly or privately owned facility that accepts solid waste generated by other persons;

"Putrescible waste" means solid waste which contains material capable of being readily decomposed by microorganisms and which is likely to produce offensive odors.

"Pyrolysis" means the process in which solid wastes are heated in an enclosed device in the absence of oxygen to

vaporization, producing a hydrocarbon-rich gas capable of being burned for recovery of energy.

"Recyclable materials" means those solid wastes that are separated for recycling or reuse, including, but not limited to, papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

"Representative sample" means a sample that can be expected to exhibit the average properties of the sample source.

"Reserved" means a section having no requirements and which is set aside for future possible rule making as a note to the regulated community.

"Reusable containers" means containers that are used more than once to handle solid waste, such as garbage cans.

"Runoff" means any rainwater, leachate or other liquid that drains over land from any part of the facility.

"Run-on" means any rainwater or other liquid that drains over land onto any part of a facility.

"Scavenging" means the removal of materials at a disposal facility, or intermediate solid waste-handling facility, without the approval of the owner or operator and the jurisdictional health department.

"Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

"Setback" means that part of a facility that lies between the active area and the property boundary.

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

"Soil amendment" means any substance that is intended to improve the physical characteristics of soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW, Municipal sewage sludge—Biosolids and wastewater, as regulated in chapter 90.48 RCW, Water pollution control.

"Solid waste" or **"wastes"** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

"Solid waste handling" means the management, storage, collection, transportation, treatment, use, processing or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.

"Solid waste handling unit" means discrete areas of land, sealed surfaces, liner systems, excavations, facility structures, or other appurtenances within a facility used for solid waste handling.

"Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

"Storage" means the holding of solid waste materials for a temporary period.

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

"Surface water" means all lakes, rivers, ponds, wetlands, streams, inland waters, salt waters and all other surface water and surface water courses within the jurisdiction of the state of Washington.

"Tank" means a stationary device designed to contain an accumulation of liquid or semisolid materials meeting the definition of solid waste or leachate, and which is constructed primarily of nonearthen materials to provide structural support.

"Transfer station" means a permanent, fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling facility.

"Treatment" means the physical, chemical, or biological processing of solid waste to make such solid wastes safer for storage or disposal, amenable for recycling or energy recovery, or reduced in volume.

"Twenty-five-year storm" means a storm of twenty-four hours duration and of such intensity that it has a four percent probability of being equaled or exceeded each year.

"Type 1 feedstocks" means source-separated yard and garden wastes, wood wastes, agricultural crop residues, wax-coated cardboard, preconsumer vegetative food wastes, other similar source-separated materials that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances, human pathogens, and physical contaminants.

"Type 2 feedstocks" means manure and bedding from herbivorous animals that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances and physical contaminants when compared to a type 1 feedstock.

"Type 3 feedstocks" means meat and postconsumer source-separated food wastes or other similar source-sepa-

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rated materials that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances and physical contaminants, but are likely to have high levels of human pathogens.

"Type 4 feedstocks" means mixed municipal solid wastes, postcollection separated or processed solid wastes, industrial solid wastes, industrial biological treatment sludges, or other similar compostable materials that the jurisdictional health department determines to have a comparable high level of risk in hazardous substances, human pathogens and physical contaminants.

"Universal wastes" means universal wastes as defined in chapter 173-303 WAC, Dangerous waste regulations. Universal wastes include, but may not be limited to, dangerous waste batteries, mercury-containing thermostats, and universal waste lamps generated by fully regulated dangerous waste generators or CESQGs.

"Unstable area" means a location that is susceptible to forces capable of impairing the integrity of the facility's liners, monitoring system or structural components. Unstable areas can include poor foundation conditions and areas susceptible to mass movements.

"Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric pressure, and the formation occurs above the zone of saturation.

"Vector" means a living animal, including, but not limited to, insects, rodents, and birds, which is capable of transmitting an infectious disease from one organism to another.

"Vermicomposting" means the controlled and managed process by which live worms convert organic residues into dark, fertile, granular excrement.

"Waste tires" means any tires that are no longer suitable for their original intended purpose because of wear, damage or defect. Used tires, which were originally intended for use on public highways that are considered unsafe in accordance with RCW 46.37.425, are waste tires. Waste tires also include quantities of used tires that may be suitable for their original intended purpose when mixed with tires considered unsafe per RCW 46.37.425.

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

"Wood derived fuel" means wood pieces or particles used as a fuel for energy recovery, which contain paint, bonding agents, or creosote. Wood derived fuel does not include wood pieces or particles coated with paint that contains lead or mercury, or wood treated with other chemical preservatives such as pentachlorophenol, copper naphthanate, or copper-chrome-arsenate.

"Wood waste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, construction, demolition, handling and storage of raw materials, trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hogged fuel, and log sort yard waste, but does not include wood pieces or particles containing paint, laminates, bonding agents or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

"Yard debris" means plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping or similar activities. Yard debris includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris.

"Zone of saturation" means that part of a geologic formation in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.

NEW SECTION

WAC 173-350-200 Beneficial use permit exemptions. (1) *Beneficial use permit exemption - Applicability.* Any person may apply to the department for exemption from the permitting requirements of this chapter for beneficial use of solid waste. Applications for permit exemptions shall be prepared and submitted in accordance with the requirements of subsections (3) and (4) of this section. Upon the department's approval of an application for permit exemption, all approved beneficial use of solid waste shall be conducted in accordance with the terms and conditions for approval, as well as those general terms and conditions prescribed in subsection (2) of this section.

(2) *Beneficial use permit exemption - General terms and conditions.*

(a) The following general terms and conditions apply to all permit exempt beneficial uses of solid waste. All persons beneficially using solid waste approved for permit exemption in accordance with this section shall:

(i) Conduct the beneficial use in a manner that does not present a threat to human health or the environment;

(ii) Ensure that the material is not a dangerous waste regulated under chapter 173-303 WAC, Dangerous waste regulations;

(iii) Not dilute a waste, or the residual from treatment of a waste, as a substitute for treatment or disposal;

(iv) Comply with all applicable federal, state, and local rules, regulations, requirements and codes, and local land use requirements;

(v) Immediately notify the department and the jurisdictional health department of any accidental release(s) of contaminants to the environment;

(vi) Separate wastes intended for beneficial use from wastes that are destined for disposal, prior to entering the location where the beneficial use will occur;

(vii) Manage the waste in a manner that controls vector attraction;

(viii) Ensure that solid waste being stored prior to being beneficially used is managed in accordance with the requirements of all applicable sections of this chapter;

(ix) Allow the department or the jurisdictional health department, at any reasonable time, to inspect the location where a permit exempt solid waste is stored or used to ensure

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compliance with applicable terms and conditions of this section; and

(x) Prepare and submit a copy of an annual report to the department by April 1st on forms supplied by the department. The annual report shall detail the activities of the exemption holder during the previous calendar year and shall include the following information:

(A) The permit exemption number applicable to the beneficial use activity;

(B) The name, address, and telephone number of the exemption holder;

(C) The amount of solid waste beneficially used;

(D) A certification that the nature of the waste and the operating practices have been in compliance with the terms and conditions of this section and the beneficial use permit exemption during the calendar year; and

(E) Any additional information that may be specified by the department under the beneficial use permit exemption.

(b) In addition to the general terms and conditions established in (a) of this subsection, solid wastes applied to the land for agronomic value or soil amending capability under a beneficial use permit exemption shall:

(i) Meet the metals standards required by the Washington state department of agriculture (WSDA) for registered commercial fertilizers by following the procedures of WAC 16-200-7062 through 16-200-7064, Feeds, fertilizers, and livestock remedies;

(ii) Be applied at an application rate and in a manner that ensures protection of ground water and surface water. At a minimum, the application rate shall take into account the concentration of available nutrients and micronutrients in the soil amendment, other solid waste applied to the land, residual nutrients at the application site(s), additional sources of nutrients, pollutant loading rates, soil and waste pH, soil type, crop type and vertical separation from ground water; and

(iii) Not be stored at an application site during periods when precipitation or wind will cause migration from the storage area, unless the site is specifically designed to accommodate storage during these periods. The quantity stored at an application site shall not exceed the maximum needed to meet the annual needs of the site based on the approved application rate. When a soil amendment is stored at an application site it shall not contain liquid waste unless the requirements of WAC 173-350-330 are met.

(c) The department may require a person operating under any exemption issued under this section to meet additional or more stringent requirements for protection of human health and the environment, or to ensure compliance with other applicable regulations:

(i) At the time the department approves an application for a beneficial use permit exemption; or

(ii) When new information becomes available that warrants additional protections, but in the opinion of the department does not necessitate revocation of the beneficial use permit exemption.

(d) The department shall notify in writing the exempted party and all jurisdictional health departments of any additional or more stringent requirements.

(3) *Beneficial use permit exemption - Initial application procedure.* Any person(s) interested in obtaining a statewide exemption from solid waste permitting requirements for the beneficial use of a solid waste must demonstrate to the satisfaction of the department that the proposed use does not present a threat to human health and the environment. Applications shall be submitted to the department on a form supplied by the department. All application attachments and other submittals must be on paper no larger than 11 inch x 17 inch. The application shall at a minimum contain the following:

(a) The name(s), address(es) and phone number(s) of the waste generator(s);

(b) The name(s), address(es) and phone number(s) of the applicant. If the applicant is a broker or other third party the uniform business identifier number shall also be included;

(c) A list of all product(s) made by the waste generator(s);

(d) A list of all feedstocks used to manufacture the product(s);

(e) A description of the solid waste and the proposed beneficial use;

(f) A description of how the waste will be transported or distributed for the proposed beneficial use;

(g) A description of other materials that contribute or potentially contribute contaminants/pollutants to the waste to be beneficially used;

(h) A schematic and text summary of the waste generator(s) operations, including all points where wastes are generated, treated or stored;

(i) A description of how terms and conditions of subsection (2)(a) of this section will be met;

(j) A State Environmental Policy Act checklist;

(k) If the beneficial use is proposed as a soil amendment, or for other solid wastes beneficially applied to the land, a description of how the terms and conditions of subsection (2)(b) of this section will be met; and

(l) Any additional information deemed necessary by the department.

(4) *Beneficial use permit exemption - Secondary application procedure.* Beneficial use permit exemptions, approved by the department in accordance with the procedures of subsection (5) of this section, are granted solely to the original applicant(s). Any person, other than the original applicant(s), interested in beneficially using solid waste pursuant to the terms and conditions of an existing permit exemption shall apply to the department by following the procedures described in subsection (3) of this section.

(5) *Beneficial use permit exemption - Determination, revocation, and appeals.*

(a) The department shall review every application for completeness. Once an application is determined to be complete, the department shall:

(i) Notify the applicant that the application has been determined to be complete.

(ii) Forward a copy of the complete application and supporting documentation to all jurisdictional health departments for review and comment. Within forty-five calendar days, the jurisdictional health departments shall forward their

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comments and any other information that they deem relevant to the department.

(iii) The department shall develop and maintain a register of all complete applications it receives for beneficial use exemptions. The register shall include information regarding the proposed beneficial use and process for submitting comments. The department shall maintain a list of interested parties and forward the register to those parties. The department may provide the register and application information in an electronic form upon request by an interested party.

(b) Once a determination is made by the department that an application is complete and the public review process has begun, any changes to the application or submittal of additional information by the applicant shall result in a withdrawal of the completeness determination by the department and termination of the public review process. The department shall resume review of the amended application in accordance with the procedures of (a) of this subsection.

(c) After completion of the comment period, the department shall review comments, technical information from agency and other publications, standards published in regulations, and other information deemed relevant by the department to render a decision.

(d) Every complete application shall be approved or disapproved by the department in writing within ninety days after receipt. Exemptions shall be granted by the department only to those beneficial uses of solid waste that the department determines do not present a threat to human health or the environment.

(e) Upon approval of the application by the department, the beneficial use of the solid waste by the original applicant is exempt from solid waste handling permitting for use anywhere in the state consistent with the terms and conditions of the approval.

(f) The department may require a person operating under any exemption covered by this section to apply to the jurisdictional health department for a solid waste handling permit under the applicable section of this chapter if:

(i) The exemption holder fails to comply with the terms and conditions of this section and the approval; or

(ii) The department determines that the exemption was obtained by misrepresenting or omitting any information that potentially could have affected the issuance or terms and conditions of an exemption; or

(iii) New information not previously considered or available as part of the application demonstrates to the department that management of the waste under a beneficial use permit exemption may present a threat to human health or the environment.

(g) The department shall provide written notification to the exempted party and all jurisdictional health departments of any requirement to apply for a permit under this chapter. A person that is required by the department to apply for permit coverage shall immediately cease beneficial use activities until all necessary solid waste handling permits are issued.

(h) The terms and conditions of subsection (2)(a)(viii) of this section shall remain in effect until the solid waste handling permit process has been completed.

(i) Any person that violates the terms and conditions of a beneficial use permit exemption issued under this section may be subject to the civil penalty provisions of RCW 70.95.315.

(j) Appeals of the department's decision to issue or deny or revoke a beneficial use permit exemption shall be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The board's review of the decision shall be made in accordance with chapter 43.21B RCW, Environmental hearing office—Pollution control hearings board, and any subsequent appeal of a decision of the board shall be made in accordance with RCW 43.21B.180.

Persons that may appeal are:

(i) For waste derived soil amendments any aggrieved party may appeal.

(ii) For all other beneficial uses of solid waste any jurisdictional health department or the applicant may appeal.

(6) *Beneficial use permit exemption - Solid waste exempt from permitting by rule.* Reserved.

Note: RCW 70.95.300 contains provisions that **allow** the department to exempt from permitting certain beneficial uses of solid waste by rule. The statute also requires the department to develop an application and approval process by which a person could apply for a beneficial use permit exemption. At this time the department has chosen to limit rule making to development of the required application and approval process, and hold a section in reserve for future development of a list of approved beneficial uses.

NEW SECTION

WAC 173-350-210 Recycling. (1) *Recycling - Applicability.* These standards apply to recycling solid waste. These standards do not apply to:

(a) Storage, treatment or recycling of solid waste in piles which are subject to WAC 173-350-320;

(b) Storage or recycling of solid waste in surface impoundments which are subject to WAC 173-350-330;

(c) Composting facilities subject to WAC 173-350-220;

(d) Solid waste that is beneficially used on the land that is subject to WAC 173-350-230;

(e) Storage of waste tires prior to recycling which is subject to WAC 173-350-350;

(f) Storage of moderate risk waste prior to recycling which is subject to WAC 173-350-360;

(g) Energy recovery or incineration of solid waste which is subject to WAC 173-350-240;

(h) Intermediate solid waste handling facilities subject to WAC 173-350-310.

(2) *Recycling - Permit exemption and notification.*

(a) In accordance with RCW 70.95.305, recycling of solid waste is subject solely to the requirements of (b) of this subsection and is exempt from solid waste handling permitting. Any person engaged in recycling that does not comply with the terms and conditions of (b) of this subsection is required to obtain a permit from the jurisdictional health department in accordance with the requirements of WAC 173-350-490. In addition, violations of the terms and conditions of (b) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(b) Recycling shall be conducted in conformance with the following terms and conditions in order to maintain permit exempt status:

(i) Meet the performance standards of WAC 173-350-040;

(ii) Accept only source separated solid waste for the purpose of recycling;

(iii) Allow inspections by the department or jurisdictional health department at reasonable times;

(iv) Notify the department and jurisdictional health department, thirty days prior to operation, or ninety days from the effective date of the rule for existing recycling operations, of the intent to conduct recycling in accordance with this section. Notification shall be in writing, and shall include:

(A) Contact information for the person conducting the recycling activity;

(B) A general description of the recycling activity;

(C) A description of the types of solid waste being recycled; and

(D) An explanation of the recycling processes and methods;

(v) Prepare and submit an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report shall detail recycling activities during the previous calendar year and shall include the following information:

(A) Name and address of the recycling operation;

(B) Calendar year covered by the report;

(C) Annual quantities and types of waste received, recycled and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and

(D) Any additional information required by written notification of the department.

NEW SECTION

WAC 173-350-220 Composting facilities. (1) *Composting facilities - Applicability.*

(a) This section is applicable to all facilities or sites that treat solid waste by composting. This section is not applicable to:

(i) Composting used as a treatment for dangerous wastes regulated under chapter 173-303 WAC, Dangerous waste regulation;

(ii) Composting used as a treatment for petroleum contaminated soils regulated under WAC 173-350-320;

(iii) Treatment of liquid sewage sludge or biosolids in digesters at wastewater treatment facilities regulated under chapter 90.48 RCW, Water pollution control and chapter 70.95J RCW, Municipal sewage sludge—Biosolids;

(iv) Treatment of other liquid solid wastes in digesters regulated under WAC 173-350-330; and

(v) Composting biosolids when permitted under chapter 173-308 WAC, Biosolids management.

(b) In accordance with RCW 70.95.305, the operation of the following activities in this subsection are subject solely to the requirements of (c) of this subsection and are exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of (c) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter. In addition, violations of the terms and conditions of (c) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(i) Production of substrate used solely on-site to grow mushrooms;

(ii) Vermicomposting, when used to process Type 1, Type 2, or Type 3 feedstocks generated on-site;

(iii) Composting of Type 1 or Type 2 feedstocks with a volume limit of forty cubic yards of material on-site at any time. Material on-site includes feedstocks, partially composted feedstocks, and finished compost;

(iv) Composting of food waste generated on-site and composted in containers designed to prohibit vector attraction and prevent nuisance odor generation. Total volume of the containers shall be limited to ten cubic yards or less;

(v) Agricultural composting when all the agricultural wastes are generated on-site and all finished compost is used on-site;

(vi) Agricultural composting when any agricultural wastes are generated off-site, and all finished compost is used on-site, and total volume of material is limited to one thousand cubic yards on-site at any time. Material on-site includes feedstocks, partially composted feedstocks, and finished compost; and

(vii) Agricultural composting at registered dairies when the composting is a component of a fully certified dairy nutrient management plan as required by chapter 90.64 RCW, Dairy Nutrient Management Act.

(viii) Composting of Type 1 or Type 2 feedstocks when more than forty cubic yards and less than two hundred fifty cubic yards of material is on-site at any one time.

(ix) Agricultural composting, when any of the finished compost is distributed off-site and when it meets the following requirements:

(A) More than forty cubic yards, but less than one thousand cubic yards of agricultural waste is on-site at any time; and

(B) Agricultural composting is managed according to a farm management plan written in conjunction with a conservation district, a qualified engineer, or other agricultural professional able to certify that the plan meets applicable conservation practice standards in the *Washington Field Office Technical Guide* produced by the Natural Resources Conservation Service.

(x) Vermicomposting when used to process Type 1 or Type 2 feedstocks generated off-site. Total volume of materials is limited to one thousand cubic yards on-site at any one time.

(c) Composting operations identified in subsection (b) shall be managed according to the following terms and conditions to maintain their exempt status:

(i) Comply with the performance standards of WAC 173-350-040;

(ii) Protect surface water and ground water through the use of best management practices and all known available

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and reasonable methods of prevention, control, and treatment as appropriate. This includes, but is not limited to, setbacks from wells, surface waters, property lines, roads, public access areas, and site-specific setbacks when appropriate;

(iii) Control nuisance odors to prevent migration beyond property boundaries;

(iv) Manage the operation to prevent attraction of flies, rodents, and other vectors;

(v) Conduct an annual analysis, prepared in accordance with the requirements of subsection (4)(a)(viii) of this section, for composted material that is distributed off-site from categorically exempt facilities described in subsection (1)(b)(vii) through (ix) of this section.

(vi) Prepare and submit an annual report to the department and the jurisdictional health department by April 1st for categorically exempt facilities described in subsection (1)(b)(vii) through (ix) of this section. Annual reports are not required for facilities operating under the permit exemption provided in (b)(vii) of this subsection if the composted material is not distributed off-site. The annual report shall be on forms supplied by the department and shall detail facility activities during the previous calendar year and shall include the following information:

(A) Name and address of the facility;

(B) Calendar year covered by the report;

(C) Annual quantity and type of feedstocks received and compost produced, in tons;

(D) Annual quantity of composted material sold or distributed, in tons;

(E) Results of the annual analysis of composted material required by subsection (1)(c)(v) of this section; and

(F) Any additional information required by written notification of the department.

(vii) Allow the department or the jurisdictional health department to inspect the site at reasonable times;

(viii) For activities under (b)(viii) through (x) of this subsection, and registered dairies where compost is distributed off-site, the department and jurisdictional health department shall be notified in writing thirty days prior to beginning any composting activity. Notification shall include name of owner or operator, location of composting operation and identification of feedstocks.

(2) *Composting facilities - Location standards.* There are no specific location standards for composting facilities subject to this chapter; however, composting facilities must meet the requirements provided under WAC 173-350-040(5).

(3) *Composting facilities - Design standards.* The owner or operator of a composting facility shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the design standards of this subsection. Scale drawings of the facility including the location and size of feedstock and finished product storage areas, compost processing areas, fixed equipment, buildings, leachate collection devices, access roads and other appurtenant facilities; and design specifications for compost pads, storm water run-on prevention system, and leachate collection and conveyance systems shall be provided. All composting facilities shall be designed and constructed to meet the following requirements:

(a) When necessary to provide public access, all-weather roads shall be provided from the public highway or roads to and within the compost facility and shall be designed and maintained to prevent traffic congestion, traffic hazards, dust and noise pollution;

(b) Composting facilities shall separate storm water from leachate by designing storm water run-on prevention systems, which may include covered areas (roofs), diversion swales, ditches or other designs to divert storm water from areas of feedstock preparation, active composting and curing;

(c) Composting facilities shall collect any leachate generated from areas of feedstock preparation, active composting and curing. The leachate shall be conveyed to a leachate holding pond, tank or other containment structure. The leachate holding structure shall be of adequate capacity to collect the amount of leachate generated, and the volume calculations shall be based on the facility design, monthly water balance, and precipitation data. Leachate holding ponds and tanks shall be designed according to the following:

(i) For leachate ponds at registered dairies, the design and installation shall meet Natural Resources Conservation Service standards for a waste storage facility in the *Washington Field Office Technical Guide.*

(ii) For leachate ponds at composting facilities other than registered dairies, the pond shall be designed to meet the following requirements:

(A) Have a liner consisting of a minimum 30-mil thickness geomembrane overlying a structurally stable foundation to support the liners and the contents of the impoundment. High density polyethylene geomembranes used as primary liners or leak detection liners shall be at least 60-mil thick to allow for proper welding. The jurisdictional health department may approve the use of alternative designs if the owner or operator can demonstrate during the permitting process that the proposed design will prevent migration of solid waste constituents or leachate into the ground or surface waters at least as effectively as the liners described in this subsection;

(B) Have dikes and slopes designed to maintain their structural integrity under conditions of a leaking liner and capable of withstanding erosion from wave action, overfilling, or precipitation;

(C) Have freeboard equal to or greater than eighteen inches to avoid overtopping from wave action, overfilling, or precipitation. The jurisdictional health department may reduce the freeboard requirement provided that other engineering controls are in place which prevent overtopping. These engineering controls shall be specified during the permitting process;

(D) Leachate ponds that have the potential to impound more than ten-acre feet (three million two hundred fifty-nine thousand gallons) of liquid measured from the top of the dike and which would be released by a failure of the containment dike shall be reviewed and approved by the dam safety section of the department.

(iii) Tanks used to store leachate shall meet design standards in WAC 173-350-330 (3)(b).

(d) Composting facilities shall be designed with process parameters and management procedures that promote an aerobic composting process. This requirement is not intended to

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mandate forced aeration or any other specific composting technology. This requirement is meant to ensure that compost facility designers take into account porosity, nutrient balance, pile oxygen, pile moisture, pile temperature, and retention time of composting when designing a facility.

(e) Incoming feedstocks, active composting, and curing materials shall be placed on compost pads that meet the following requirements:

(i) All compost pads shall be curbed or graded in a manner to prevent ponding, run-on and runoff, and direct all leachate to collection devices. Design calculations shall be based upon the volume of water resulting from a twenty-five-year storm event as defined in WAC 173-350-100;

(ii) All compost pads shall be constructed over soils that are competent to support the weight of the pad and the proposed composting materials;

(iii) The entire surface area of the compost pad shall maintain its integrity under any machinery used for composting activities at the facility; and

(iv) The compost pad shall be constructed of materials such as concrete (with sealed joints), asphaltic concrete, or soil cement to prevent subsurface soil and ground water contamination;

(v) The jurisdictional health department may approve other materials for compost pad construction if the permit applicant is able to demonstrate that the compost pad will meet the requirements of this subsection.

(4) *Composting facilities - Operating standards.* The owner or operator of a composting facility shall:

(a) Operate the facility to:

(i) Control dust, nuisance odors, and other contaminants to prevent migration of air contaminants beyond property boundaries;

(ii) Prevent the attraction of vectors;

(iii) Ensure that only feedstocks identified in the approved plan of operation are accepted at the facility;

(iv) Ensure the facility operates under the supervision and control of a properly trained individual during all hours of operation, and access to the facility is restricted when the facility is closed;

(v) Ensure facility employees are trained in appropriate facility operations, maintenance procedures, and safety and emergency procedures according to individual job duties and according to an approved plan of operation;

(vi) Implement and document pathogen reduction activities when Type 2, 3 or 4 feedstocks are composted. Documentation shall include compost pile temperature and notation of turning as appropriate, based on the composting method used. Pathogen reduction activities shall at a minimum include the following:

(A) In vessel composting - the temperature of the active compost pile shall be maintained at fifty-five degrees Celsius (one hundred thirty-one degrees Fahrenheit) or higher for three days; or

(B) Aerated static pile - the temperature of the active compost pile shall be maintained at fifty-five degrees Celsius (one hundred thirty-one degrees Fahrenheit) or higher for three days; or

(C) Windrow composting - the temperature of the active compost pile shall be maintained at fifty-five degrees Celsius (one hundred thirty-one degrees Fahrenheit) or higher for fifteen days or longer. During the period when the compost is maintained at fifty-five degrees Celsius (one hundred thirty-one degrees Fahrenheit) or higher, there shall be a minimum of five turnings of the windrow; or

(D) An alternative method that can be demonstrated by the owner or operator to achieve an equivalent reduction of human pathogens;

(vii) Monitor the composting process according to the plan of operation submitted during the permitting process. Monitoring shall include inspection of incoming loads of feedstocks and pathogen reduction requirements of (a)(vi) of this subsection; and

(viii) Analyze composted material for:

(A) Metals in Table A at the minimum frequency listed in Table C. Compost facilities composting only Type 1 and Type 2 feedstocks are not required to test for molybdenum and selenium. Testing frequency is based on the feedstock type and the volume of feedstocks processed per year;

(B) Parameters in Table B at the minimum frequency listed in Table C. Testing frequency is based on the feedstock type and the volume of feedstocks processed per year;

(C) Nitrogen content at the minimum frequency listed in Table C; and

(D) Biological stability as outlined in United States Composting Council Test Methods for the Examination of Composting and Compost at the minimum frequency listed in Table C;

(E) The jurisdictional health department may require testing of additional metal or contaminants, and/or modify the frequency of testing based on historical data for a particular facility, to appropriately evaluate the composted material.

Table A - Metals

Metal	Limit (mg/kg dry weight)
Arsenic	< = 20 ppm
Cadmium	< = 10 ppm
Copper	< = 750 ppm
Lead	< = 150 ppm
Mercury	< = 8 ppm
Molybdenum[1]	< = 9 ppm
Nickel	< = 210 ppm
Selenium[1]	< = 18 ppm
Zinc	< = 1400 ppm

[1] Not required for composted material made from Type 1, Type 2 or a mixture of Type 1 and Type 2 feedstocks.

Table B - Other Testing Parameters

Parameter	Limit
Manufactured Inerts	< 1 percent
Sharps	0
pH	5 - 10 (range)

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Fecal Coliform	< 1,000 Most Probable Number per gram of total solids (dry weight).
Salmonella	< 3 Most Probable Number per 4 grams of total solids (dry weight).

Table C - Frequency of Testing Based on Feedstocks Received

Feedstock Type	**< 5,000 cubic yards**	**= or > 5,000 cubic yards**
Type 1 or Type 2	Once per year	Every 10,000 cubic yards or every six months whichever is more frequent
Type 3	Once per quarter (four times per year)	Every 5,000 cubic yards or every other month whichever is more frequent
Type 4	Every 1,000 cubic yards	Every 1,000 cubic yards or once per month whichever is more frequent

(b) Inspect the facility to prevent malfunctions and deterioration, operator errors and discharges, which may cause or lead to the release of waste to the environment or a threat to human health. Inspections shall be conducted at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. For compost facilities with leachate holding ponds, conduct regular liner inspections at least once every five years, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. The frequency of inspections shall be specified in the operations plan and shall be based on the type of liner, expected service life of the material, and the site-specific service conditions. The jurisdictional health department shall be given sufficient notice and have the opportunity to be present during liner inspections. An inspection log or summary shall be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least five years from the date of inspection. Inspection records shall be available to the jurisdictional health department upon request.

(c) Maintain daily operating records of the following:

(i) Temperatures and compost pile turnings for Type 2, Type 3 and Type 4 feedstocks;

(ii) Additional process monitoring data as prescribed in the plan of operation; and

(iii) Results of laboratory analyses for composted materials as required in (a)(viii) of this subsection. Facility inspection reports shall be maintained in the operating record. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be kept for a minimum of five years and shall be available upon request by the jurisdictional health department.

(d) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall detail the facility's activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity and type of feedstocks received and compost produced, in tons;

(iv) Annual quantity of composted material sold or distributed, in tons;

(v) Annual summary of laboratory analyses of composted material; and

(vi) Any additional information required by the jurisdictional health department as a condition of the permit.

(e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan of operation shall convey to site personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) List of feedstocks to be composted, including a general description of the source of feedstocks;

(ii) A description of how wastes are to be handled on-site during the facility's active life including:

(A) Acceptance criteria that will be applied to the feedstocks;

(B) Procedures for ensuring that only the waste described will be accepted;

(C) Procedures for handling unacceptable wastes;

(D) Mass balance calculations for feedstocks and amendments to determine an acceptable mix of materials for efficient decomposition;

(E) Material flow plan describing general procedures to manage all materials on-site from incoming feedstock to finished product;

(F) A description of equipment, including equipment to add water to compost as necessary;

(G) Process monitoring plan, including temperature, moisture, and porosity;

(H) Pathogen reduction plan for facilities that accept Type 2, Type 3, and Type 4 feedstocks;

(I) Sampling and analysis plan for the final product;

(J) Nuisance odor management plan (air quality control plan);

(K) Leachate management plan, including monthly water balance; and

(L) Storm water management plan;

(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspections and inspection logs;

(iv) A neighbor relations plan describing how the owner or operator will manage complaints;

(v) Safety, fire and emergency plans;

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(vi) Forms for recordkeeping of daily weights or volumes of incoming feedstocks by type and finished compost product, and process monitoring results; and

(xvii) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(5) *Composting facilities - Ground water monitoring requirements.* There are no specific ground water monitoring requirements for composting facilities subject to this chapter; however, composting facilities must meet the requirements provided under WAC 173-350-040(5).

(6) *Composting facilities - Closure requirements.* The owner or operator of a composting facility shall:

(a) Notify the jurisdictional health department sixty days in advance of closure. At closure, all solid waste, including but not limited to, raw or partially composted feedstocks, and leachate from the facility shall be removed to another facility that conforms with the applicable regulations for handling the waste.

(b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include methods of removing solid waste materials from the facility.

(7) *Composting facilities - Financial assurance requirements.* There are no specific financial assurance requirements for composting facilities subject to this chapter; however, composting facilities must meet the requirements provided under WAC 173-350-040(5).

(8) *Composting facilities - Permit application contents.* The owner or operator of a composting facility shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(a) Engineering reports/plans and specifications that address the design standards of subsection (3) of this section;

(b) A plan of operation meeting the requirements of subsection (4) of this section; and

(c) A closure plan meeting the requirements of subsection (6) of this section.

(9) *Composting facilities - Construction records.* The owner or operator of a composting facility shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

(10) *Composting facilities - Designation of composted materials.* Composted materials meeting the limits for metals in Table A and the parameters of Table B of this section, and having a stability rating of very stable, stable, or moderately unstable as determined by the analysis required in subsection (4)(a)(viii)(D) of this section, shall no longer be considered a solid waste and shall no longer be subject to this chapter. Composted materials that do not meet these limits are still considered solid waste and are subject to management under chapter 70.95 RCW, Solid waste management—Reduction and recycling.

NEW SECTION

WAC 173-350-230 Land application. (1) *Land application - Applicability.* This section applies to solid waste that is beneficially used on the land for its agronomic value, or soil-amending capability, including land reclamation. This section does not apply to:

(a) The application of commercial fertilizers registered with the Washington state department of agriculture as provided in RCW 15.54.325, and which are applied in accordance with the standards established in RCW 15.54.800(3);

(b) Biosolids regulated under chapter 173-308 WAC, Biosolids management;

(c) Composted materials no longer considered solid waste under WAC 173-350-220(10);

(d) Dangerous waste regulated under chapter 173-303 WAC Dangerous waste regulations;

(e) Waste derived soil amendments exempted from permitting under WAC 173-350-200; and

(f) Solid waste used to improve the engineering characteristics of soil.

(2) *Land application - Location standards.* There are no specific location standards for land application of solid waste subject to this chapter; however, land application sites must meet the requirements provided under WAC 173-350-040(5).

(3) *Land application - Design standards.* There are no specific design standards for land application of solid waste subject to this chapter; however, land application sites must meet the requirements provided under WAC 173-350-040(5).

(4) *Land application - Operating standards.* The owner or operator of a land application site shall operate the site in compliance with the performance standards of WAC 173-350-040. The jurisdictional health department shall determine the need for environmental monitoring to ensure compliance with the performance standards. In addition the owner or operator shall:

(a) Operate the site to ensure that:

(i) For waste stored in piles on the site:

(A) Contamination of ground water, surface water, air and land during storage and in case of fire or flood is prevented;

(B) The potential for combustion within the pile and the potential for combustion from other sources is minimized;

(C) The duration of on-site waste storage is limited to one year, or less if the jurisdictional health department believes it is necessary to prevent the contamination of ground water, surface water, air and land; and

(D) The amount of material on site does not exceed the amount that could potentially be applied to the site during a one-year period in accordance with the plan of operations;

(ii) For storage of liquid waste or semisolid waste in surface impoundments or tanks, the requirements of WAC 173-350-330 are met;

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(iii) Land application occurs at a predictable application rate determined as follows:

(A) For agricultural applications, solid waste shall be applied to the land at a rate that does not exceed the agronomic rate. The agronomic rate should be based on Washington State University cooperative extension service fertilizer guidelines or other appropriate guidance accepted by the jurisdictional health department;

(B) For the purposes of land reclamation or other soil amending activities, the application rate may be designed to achieve a soil organic matter content or other soil physical characteristic and promote long-term soil productivity, with consideration of the carbon-to-nitrogen ratio to control nutrient leaching; and

(C) For liquid wastes, the application rate shall also be based on soil permeability and infiltration rate.

(b) Maintain daily operating records of the amount and type of waste applied to the land, the crop and any additional nutrient inputs. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be kept for a minimum of five years and shall be available upon request by the jurisdictional health department;

(c) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall detail the activities during the previous calendar year and shall include the following information:

(i) Site address or legal description;

(ii) Calendar year covered by the report;

(iii) Annual quantity and type of waste received from each source;

(iv) For each crop grown: The acreage used, the amount, type and source of each waste applied, the crop, and any additional nutrient inputs to the land, such as manure, biosolids, or commercial fertilizer;

(v) Quantity and type of any waste remaining in storage as of December 31st of the reporting year;

(vi) Any additional waste characterization information required to be obtained as a condition of the permit, and a summary report of that data;

(vii) Any environmental monitoring data required to be obtained as a condition of the permit, and a summary report of that data; and

(viii) Any additional information required by the jurisdictional health department as a condition of the permit;

(d) Develop, keep, and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of the types of solid wastes to be handled at the site;

(ii) A description of how wastes are to be handled on-site during the life of the site including:

(A) How wastes will be delivered to the site and meet any local agency notification requirements;

(B) A description of the process, system and equipment that will be used to apply the waste to the land that explains:

(I) How the equipment and system will be calibrated to deliver waste at the agronomic rate;

(II) Whether the waste will be allowed to remain on the surface of the land, will be tilled into the soil, or will be injected into the soil at the time of application;

(III) When the waste will be applied to the land relative to crop and livestock management practices; and

(IV) Any proposed restrictions on application related to climatic factors including typical precipitation, twenty-five-year storm events as defined in WAC 173-350-100, temperature, and wind, or site conditions including frozen soils and seasonal high ground water;

(C) A description of how the waste will be managed at all points during storage and application to control attraction to disease vectors and to mitigate nuisance odor impacts;

(iii) A spill response plan including the names and phone numbers of all contacts to be notified in the event of a spill and how the spill will be cleaned up;

(iv) If the seasonal high ground water is three feet or less below the surface, a management plan describing how ground water will be protected;

(v) A waste monitoring plan providing analytical results representative of the waste being applied to the land, over time, taking into account the rate of production of the waste, timing of delivery, and storage;

(vi) The forms used to record volumes, weights and waste application data;

(vii) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(5) *Land application - Ground water monitoring requirements.* There are no specific ground water monitoring requirements for land application sites subject to this chapter; however, land application sites must meet the requirements provided under WAC 173-350-040(5).

(6) *Land application - Closure requirements.* The owner or operator of all land application sites shall notify the jurisdictional health department sixty days in advance of closure. All land application sites shall be closed by applying all materials in storage in accordance with the permit, or by removing those materials to a facility that conforms to the applicable regulations for handling the waste.

(7) *Land application - Financial assurance requirements.* There are no specific financial assurance requirements for land application sites subject to this chapter; however, land application sites must meet the requirements provided under WAC 173-350-040(5).

(8) *Land application - Permit application contents.*

(a) The owner or operator of land application sites subject to this section shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(i) Contact information, including name, contact person, mailing address, phone, fax, e-mail for:

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(A) Any person who generates waste that will be applied to the site;

(B) The person who is applying for a permit (the permit holder);

(C) The person who prepares the permit application; and

(D) The person who owns the site where the waste will be applied.

(ii) Statement of intended use. The permit application shall contain a clear explanation of the benefit to be obtained from land application of the material. Avoidance of disposal is not adequate justification for land application of solid waste.

(iii) An analysis of the waste which includes:

(A) A description of the material to be applied to the land;

(B) A description of the processes by which the material is generated and treated including all processed feedstocks;

(C) Any pseudonyms or trade names for the material;

(D) A discussion of the potential for the material to generate nuisance odors or to attract disease vectors, including any complaints regarding nuisance odors associated with this material;

(E) An analysis of pollutant concentrations of the following reported on a dry weight basis:

(I) Total arsenic;

(II) Total barium;

(III) Total cadmium;

(IV) Total chromium;

(V) Total copper;

(VI) Total lead;

(VII) Total mercury;

(VIII) Total molybdenum;

(IX) Total nickel;

(X) Total selenium;

(XI) Total zinc.

(F) An analysis of nutrients at a minimum to include total Kjeldahl nitrogen, total nitrate-nitrogen, total ammonia- and ammonium-nitrogen, total phosphorus, and extractable potassium, reported on a dry weight basis;

(G) An analysis of physical/chemical parameters to include at a minimum: Total solids, total volatile solids, pH, electrical conductivity, total organic carbon;

(H) A discussion of any pathogens known or suspected to be associated with this material, including those which can cause disease in plants, animals, or humans;

(I) The concentration of fecal coliform bacteria expressed as CFU or MPN per gram of dry solid material; and

(J) Any additional analysis required by the jurisdictional health department. The jurisdictional health department may reduce the analytical requirements of this section. Methods of analysis are to be determined by the jurisdictional health department.

(iv) A comprehensive site characterization including:

(A) A description of current practices and a brief description of past practices on the application site, including application of wastes, soil amendments, manures, biosolids, liming agents, and other fertilization practices, livestock usage, irrigation practices, and crop history. Also indicate whether any management plan has been prepared for the site such as a farm, forest, or nutrient management plan. Discuss any potential changes to management practices at the site;

(B) A description of the climate at the application site including typical precipitation, precipitation of a twenty-five-year storm, as defined in WAC 173-350-100, temperatures, and seasonal variations;

(C) A brief discussion of the potential for run-on and runoff, and typical depths to seasonal high ground water;

(D) An analysis of soil nutrients including residual nitrate in the upper two feet of soil in one foot increments;

(E) A site map showing property boundaries and ownership of adjacent properties with the application areas clearly shown, and with the latitude and longitude of the approximate center of each land application site;

(F) A topographic relief map of the site extending one quarter beyond the site boundaries at a scale of 1:24,000 or other scale if specified by the jurisdictional health department;

(G) Show the following information on either of the maps provided or on additional maps if needed:

(I) Location of the site by street address, if applicable;

(II) The zoning classification of the site;

(III) The means of access to the site;

(IV) The size of the site in acres, and if applicable, the size of individual fields, units, and application areas;

(V) The location and size of any areas which will be used to store the waste;

(VI) Adjacent properties, uses, and their zoning classifications;

(VII) Delineation of wetlands on the site;

(VIII) Any portion of the site that falls within a wellhead protection area;

(IX) Any seasonal surface water bodies located on the site or perennial surface water bodies within one-quarter mile of the site;

(X) The location of all wells within one-quarter mile of the boundary of the application area which are listed in public records or otherwise known, whether for domestic, irrigation, or other purposes;

(XI) Any setback or buffer to surface water, property boundaries, or other feature, if proposed;

(XII) The location of any critical areas or habitat identified under the Endangered Species Act, local growth management plans, habitat conservation plans, conservation reserve program, or local shoreline master program;

(XIII) A copy of the Natural Resources Conservation Service soil survey map from the most recent edition of the soil survey that includes the distribution of soil types with an overlay of the site boundaries; and

(XIV) A description of the soil type(s), textural classes, and soil depths present on the site as determined by the most recent edition of the Natural Resources Conservation Service soil survey or from actual field measurements.

(v) A plan of operation meeting the requirements of subsection (4) of this section.

(b) Two or more areas of land under the same ownership or operational control which are not contiguous may be considered as one site for the purposes of permitting, if in the opinion of the jurisdictional health department the areas are sufficiently proximate and management practices are suffi-

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ciently similar that viewing them as one proposal would expedite the permit process without compromising the public interest. A jurisdictional health department may also require separate permits for a contiguous area of land if it finds that the character of a proposed site or management practices across the site are sufficiently different that the permit process and public interest would be best served by a more focused approach.

NEW SECTION

WAC 173-350-240 Energy recovery and incineration facilities. (1) *Energy recovery and incineration facilities - Applicability.*

(a) These standards apply to all facilities designed to burn more than twelve tons of solid waste or refuse-derived fuel per day.

(b) These standards do not apply to facilities that burn gases recovered at a landfill or solid waste digesters.

(c) In accordance with RCW 70.95.305, the combustion of wood waste, wood derived fuel, and wastewater treatment sludge generated from the manufacturing of wood pulp or paper, for the purpose of energy recovery is subject solely to the requirements of (d)(i) through (iv) of this subsection and is exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of (d)(i) through (iv) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter. In addition, violations of the terms and conditions of (d)(i) through (iv) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(d) Owners and operators of all categorically exempt energy recovery facilities shall:

(i) Comply with the performance standards of WAC 173-350-040;

(ii) Ensure that only fuels approved in writing by the agency with jurisdiction over the facility for air quality regulation are combusted;

(iii) Allow department and jurisdictional health department representatives to inspect the facility at reasonable times for the purpose of determining compliance with this chapter; and

(iv) Ensure that wastewater treatment sludge generated from the manufacturing of wood pulp or paper is combusted only in energy recovery units at the facility from which it originates.

(2) *Energy recovery and incineration facilities - Location standards.* There are no specific location standards for energy recovery or incineration facilities subject to this chapter; however, energy recovery and incineration facilities must meet the requirements provided under WAC 173-350-040(5).

(3) *Energy recovery and incineration facilities - Design standards.* There are no specific design standards for energy recovery or incineration facilities subject to this chapter; however, energy recovery and incineration facilities must meet the requirements provided under WAC 173-350-040(5).

(4) *Energy recovery and incineration facilities - Operating standards.* The owner or operator of an energy recovery or incineration facility shall:

(a) Operate the facility to:

(i) Confine solid wastes prior to and after processing to specifically designed piles, surface impoundments, tanks or containers meeting the applicable standards of this chapter. Storage of wastes other than in the specifically designed storage compartments is prohibited. Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as required to maintain the plant in a sanitary and clean condition;

(ii) Handle solid wastes, including combustion residues, in a manner that complies with this chapter;

(iii) Provide recyclable material collection at all facilities that accept municipal solid waste from the general public, self-haul residential, or commercial waste generators; and

(iv) Ensure that dangerous waste is not disposed, treated, stored or otherwise handled, unless the requirements of chapter 173-303 WAC, Dangerous waste regulations, are met.

(b) Inspect the facility to prevent malfunctions and deterioration, operator errors and discharges that may lead to the release of wastes to the environment or cause a threat to human health. The owner or operator shall conduct these inspections as needed, but at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process.

(c) Maintain daily operating records on the weights and types of wastes received, and number of vehicles delivering waste to the facility. Facility inspection reports shall be maintained in the operating record. Significant deviations from the plan of operation shall also be noted on the operating record. Records shall be maintained for a minimum of five years and shall be available upon request by the jurisdictional health department.

(d) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st of each year on forms supplied by the department. The annual report shall detail the facility's activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity of each type of solid waste received and incinerated, in tons if available;

(iv) Annual quantity, type and destination of solid waste bypassed, in tons;

(v) Annual quantity of ash disposed and disposal location, in tons; and

(vi) Any additional information required by the jurisdictional health department as a condition of the permit.

(e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at

the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of the types of solid wastes to be handled at the facility;

(ii) How solid wastes are to be handled on-site during the facility's active life, including alternative storage, and/or disposal plans for all situations that would result in overfilling of the storage facility;

(iii) A description of how equipment, structures and other systems, including leachate collection and gas collection equipment, are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety, fire and emergency plans including:

(A) Actions to take if there is a fire or explosion;

(B) Actions to take if leaks are detected;

(C) Remedial action programs to be implemented in case of a release of hazardous substances to the environment;

(D) Actions to take for other releases (e.g., failure of runoff containment system);

(v) Forms used to record volumes or weights;

(vi) Other such details to demonstrate that the facility will be operated in accordance with this chapter and as required by the jurisdictional health department.

(5) *Energy recovery and incineration facilities - Ground water monitoring requirements.* There are no specific ground water monitoring requirements for energy recovery and incineration facilities subject to this chapter; however, energy recovery and incineration facilities must meet the requirements provided under WAC 173-350-040(5).

(6) *Energy recovery and incineration facilities - Closure requirements.* The owner or operator of an energy recovery or incineration facility shall:

(a) Notify the jurisdictional health department one hundred eighty days in advance of closure. At the time of closure all solid waste shall be removed to a facility that conforms with the applicable regulations for handling the waste.

(b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include the methods of removing waste.

(7) *Energy recovery and incineration facilities - Environmental impact statement required.* In accordance with RCW 70.95.700, no solid waste energy recovery or incineration facility shall be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030 (2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW, State Environmental Policy Act.

(8) *Energy recovery and incineration facilities - Financial assurance requirements.* There are no specific financial assurance requirements for energy recovery facilities and incineration facilities subject to this chapter; however, energy recovery and incineration facilities must meet the requirements provided under WAC 173-350-040(5).

(9) *Energy recovery and incineration facilities - Permit application contents.* The owner or operator of an energy recovery or incineration facility shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each permit application shall contain:

(a) Preliminary engineering reports/plans and specifications that address:

(i) The design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash and any other wastes produced by air or water pollution controls; and

(ii) The design of the incinerator or thermal treater, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.

(b) A plan of operation that addresses the requirements of subsection (4) of this section; and

(c) A closure plan meeting the requirements of subsection (6) of this section.

NEW SECTION

WAC 173-350-300 On-site storage, collection and transportation standards. (1) *On-site storage, collection and transportation standards - Applicability.* This section is applicable to the temporary storage of solid waste in a container at a premises, business establishment, or industry and the collecting and transporting of the solid waste.

(2) *On-site storage.*

(a) The owner or occupant of any premises, business establishment, or industry shall be responsible for the safe and sanitary storage of all containerized solid wastes accumulated at those premises.

(b) The owner, operator, or occupant of any premises, business establishment, or industry shall store solid wastes in containers that meet the following requirements:

(i) Disposable containers shall be sufficiently strong to allow lifting without breakage and shall be thirty-two gallons in capacity or less where manual handling is practiced;

(ii) Reusable containers, except for detachable containers, shall be:

(A) Rigid and durable;

(B) Corrosion resistant;

(C) Nonabsorbent and water tight;

(D) Rodent-proof and easily cleanable;

(E) Equipped with a close-fitting cover;

(F) Suitable for handling with no sharp edges or other hazardous conditions; and

(G) Equal to or less than thirty-two gallons in volume where manual handling is practiced;

(iii) Detachable containers shall be durable, corrosion-resistant, nonabsorbent, nonleaking and have either a solid cover or screen cover to prevent littering.

(3) *Collection and transportation standards.*

(a) All persons collecting or transporting solid waste shall avoid littering at the loading point, during transport and during proper unloading of the solid waste.

(b) Vehicles or containers used for the collection and transportation of solid waste shall be tightly covered or screened where littering may occur, durable and of easily

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cleanable construction. Where garbage is being collected or transported, containers shall be cleaned as necessary to prevent nuisance odors and insect breeding and shall be maintained in good repair.

(c) Vehicles or containers used for the collection and transportation of any solid waste shall be loaded and moved in such manner that the containers will not fail, and the contents will not spill or leak. Where such spillage or leakage does occur the waste shall be picked up immediately by the collector or transporter and returned to the vehicle or container and the area properly cleaned.

(d) All persons commercially collecting or transporting solid waste shall inspect collection and transportation vehicles at least monthly. Inspection records shall be maintained at the facility normally used to park such vehicles or such other location that maintenance records are kept. Such records shall be kept for a period of at least two years, and be made available upon the request of the jurisdictional health department.

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NEW SECTION

WAC 173-350-310 Intermediate solid waste handling facilities. (1) *Intermediate solid waste handling facilities - Applicability.* This section is applicable to any facility engaged in solid waste handling that provides intermediate storage and/or processing prior to transport for final disposal. This includes, but is not limited to, material recovery facilities, transfer stations, baling and compaction sites, and drop box facilities. This section is not applicable to:

(a) Storage, treatment or recycling of solid waste in piles which are subject to WAC 173-350-320;

(b) Storage or recycling of solid waste in surface impoundments which are subject to WAC 173-350-330;

(c) Composting facilities subject to WAC 173-350-220;

(d) Recycling which is subject to WAC 173-350-210;

(e) Storage of waste tires which is subject to WAC 173-350-350;

(f) Storage of moderate risk waste prior to recycling which is subject to WAC 173-350-360;

(g) Energy recovery or incineration of solid waste which is subject to WAC 173-350-240; and

(h) Drop boxes placed at the point of waste generation which is subject to WAC 173-350-300.

(2) *Materials recovery facilities - Permit exemption and notification.*

(a) In accordance with RCW 70.95.305, material recovery facilities managed in accordance with the terms and conditions of (b) of this subsection are exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of (b) of this subsection is required to obtain a permit from the jurisdictional health department as an intermediate solid waste handling facility and shall comply with the requirements of WAC 173-350-310. In addition, violations of the terms and conditions of (b) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(b) Material recovery facilities shall be managed according to the following terms and conditions to maintain their exempt status:

(i) Meet the performance standards of WAC 173-350-040;

(ii) Accept only source separated recyclable materials and dispose of an incidental and accidental residual not to exceed five percent of the total waste received, by weight per year, or ten percent by weight per load;

(iii) Allow inspections by the department or jurisdictional health department at reasonable times;

(iv) Notify the department and jurisdictional health department, thirty days prior to operation, or ninety days from the effective date of the rule for existing facilities, of the intent to operate a material recovery facility in accordance with this section. Notification shall be in writing, and shall include:

(A) Contact information for facility owner or operator;

(B) A general description of the facility; and

(C) A description of the types of recyclable materials managed at the facility;

(v) Prepare and submit an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report shall detail facility activities during the previous calendar year and shall include the following information:

(A) Name and address of the facility;

(B) Calendar year covered by the report;

(C) Annual quantities and types of waste received, recycled and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and

(D) Any additional information required by written notification of the department.

(3) *Intermediate solid waste handling facilities - Location standards.* There are no specific location standards for intermediate solid waste handling facilities subject to this chapter; however, intermediate solid waste handling facilities must meet the requirements provided under WAC 173-350-040(5).

(4) *Intermediate solid waste handling facilities - Design standards.* The owner or operator of all intermediate solid waste handling facilities shall prepare engineering reports/plans and specifications to address the following design standards:

(a) Material recovery facilities, transfer stations, baling and compaction sites shall:

(i) Control public access, and prevent unauthorized vehicular traffic and illegal dumping of waste;

(ii) Be sturdy and constructed of easily cleanable materials;

(iii) Provide effective means to control rodents, insects, birds and other vectors;

(iv) Provide effective means to control litter;

(v) Provide protection of the tipping floor from wind, rain or snow;

(vi) Provide pollution control measures to protect surface and ground waters, including runoff collection and dis-

charge designed to handle a twenty-five-year storm as defined in WAC 173-350-100, and equipment cleaning and washdown water;

(vii) Provide pollution control measures to protect air quality; and

(viii) Provide all-weather surfaces for vehicular traffic.

(b) Drop boxes shall be constructed of durable watertight materials with a lid or screen on top that prevents the loss of materials during transport and access by rats and other vectors, and control litter.

(5) *Intermediate solid waste handling facilities - Operating standards.* The owner or operator of an intermediate solid waste handling facility shall:

(a) Operate the facility to:

(i) For material recovery facilities transfer stations, bailing and compaction sites:

(A) Be protective of human health and the environment;

(B) Prohibit the disposal of dangerous waste and other unacceptable waste;

(C) Control rodents, insects, and other vectors;

(D) Control litter;

(E) Prohibit scavenging;

(F) Prohibit open burning;

(G) Control dust;

(H) For putrescible waste, control nuisance odors;

(I) Provide attendant(s) on-site during hours of operation;

(J) Have a sign that identifies the facility and shows at least the name of the site, and, if applicable, hours during which the site is open for public use, what materials the facility does not accept and other necessary information posted at the site entrance; and

(K) Have communication capabilities to immediately summon fire, police, or emergency service personnel in the event of an emergency.

(ii) For drop box facilities:

(A) Be serviced as often as necessary to ensure adequate dumping capacity at all times. Storage of waste outside the drop boxes is prohibited;

(B) Be protective of human health and the environment;

(C) Control rodents, insects, and other vectors;

(D) Control litter;

(E) Prohibit scavenging;

(F) Control dust;

(G) For putrescible waste, control nuisance odors; and

(H) Have a sign that identifies the facility and shows at least the name of the site, and, if applicable, hours during which the site is open for public use, what materials the facility does not accept and other necessary information posted at the site entrance;

(b) Inspect and maintain the facility to prevent deterioration or the release of wastes to the environment that could pose a threat to human health. Inspection shall be as needed, but at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

(c) Maintain daily operating records on the weights and types of wastes received or removed from the facility. Facility inspection reports shall be maintained in the operating record. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be kept for a minimum of five years and shall be available upon request by the jurisdictional health department;

(d) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall detail the facility's activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity of each type of solid waste handled by the facility, in tons;

(iv) Destination of waste transported from the facility for processing or disposal; and

(v) Any additional information required by the jurisdictional health department as a condition of the permit.

(e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of the types of solid wastes to be handled at the facility;

(ii) A description of how solid wastes are to be handled on-site during the facility's life, including maximum facility capacity, methods of adding or removing waste from the facility and equipment used;

(iii) A description of the procedures used to ensure that dangerous waste and other unacceptable waste are not accepted at the facility;

(iv) Safety and emergency plans;

(v) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;

(vi) For putrescible wastes, an odor management plan describing the actions to be taken to control nuisance odors;

(vii) The forms used to record volumes or weights; and

(viii) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(6) *Intermediate solid waste handling facilities - Ground water monitoring requirements.* There are no specific ground water monitoring requirements for intermediate solid waste handling facilities subject to this chapter; however, intermediate solid waste handling facilities must meet the requirements provided under WAC 173-350-040(5).

(7) *Intermediate solid waste handling facilities - Closure requirements.* The owner or operator of an intermediate solid waste handling facility shall:

(a) Notify the jurisdictional health department one hundred eighty days in advance of closure. All waste shall be removed to a facility that conforms with the applicable regulations for handling the waste.

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(b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include the methods of removing waste.

(8) *Intermediate solid waste handling facilities - Financial assurance.* There are no specific financial assurance requirements for intermediate solid waste handling facilities subject to this chapter; however, intermediate solid waste handling facilities must meet the requirements provided under WAC 173-350-040(5).

(9) *Intermediate solid waste handling facilities - Permit application contents.* The owner or operator of an intermediate solid waste handling facility shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(a) For material recovery facilities, transfer stations, baling and compaction sites:

(i) Engineering reports/plans and specifications that address the design standards of subsection (4)(a) of this section;

(ii) A plan of operation meeting the applicable requirements of subsection (5) of this section;

(iii) A closure plan meeting the requirements of subsection (7) of this section;

(b) For drop boxes:

(i) Engineering reports/plans and specifications that address the design standards of subsection (4)(b) of this section;

(ii) A plan of operation meeting the applicable requirements of subsection (5) of this section; and

(iii) A closure plan meeting the requirements of subsection (7) of this section.

NEW SECTION

WAC 173-350-320 Piles used for storage or treatment. (1) *Piles used for storage or treatment - Applicability.*

(a) This section is applicable to solid waste stored or treated in piles where putrescible waste piles that do not contain municipal solid waste are in place for more than three weeks, nonputrescible waste and contaminated soils and dredged material piles are in place for more than three months and municipal solid waste piles are in place for more than three days. This section is not applicable to:

(i) Waste piles located at composting facilities subject to WAC 173-350-220 that are an integral part of the facility's operation;

(ii) Piles of nonputrescible waste stored in enclosed buildings provided that no liquids or liquid waste are added to the pile; and

(iii) Piles of waste tires or used tires subject to WAC 173-350-350.

(b) In accordance with RCW 70.95.305, storage piles of wood waste used for fuel or as a raw material, wood derived fuel, and agricultural wastes on farms, are subject solely to the requirements of (c)(i) through (iii) of this subsection and are exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of (c)(i) through (iii) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter. In addition, violations of the terms and conditions of (c)(i) through (iii) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(c) Owners and operators of all storage piles that are categorically exempt from solid waste handling permitting in accordance with (b) of this subsection shall:

(i) Ensure that at least fifty percent of the material stored in the pile is used within one year and all material is used within three years;

(ii) Comply with the performance standards of WAC 173-350-040; and

(iii) Allow department and jurisdictional health department representatives to inspect the waste pile at reasonable times for the purpose of determining compliance with this chapter.

(d) In accordance with RCW 70.95.305, the storage of inert waste in piles is subject solely to the requirements of (e)(i) through (vi) of this subsection and are exempt from solid waste handling permitting. The storage of inert waste in piles at a facility with a total volume of two hundred fifty cubic yards or less is subject solely to the requirements of (e)(iv) of this subsection. An owner or operator that does not comply with the terms and conditions of (e)(i) through (vi) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter. In addition, violations of the terms and conditions of (e)(i) through (vi) may be subject to the penalty provisions of RCW 70.95.315.

(e) Owners and operators of all storage piles that are categorically exempt from solid waste handling permitting in accordance with (d) of this subsection shall:

(i) Implement and abide by a procedure that is capable of detecting and preventing noninert wastes from being accepted or mixed with inert waste;

(ii) Ensure that at least fifty percent of the material stored in the pile is used within one year and all the material is used within three years;

(iii) Control public access and unauthorized vehicular traffic to prevent illegal dumping of wastes;

(iv) Comply with the performance standards of WAC 173-350-040;

(v) Allow department and jurisdictional health department representatives to inspect the waste pile at reasonable times for the purpose of determining compliance with this chapter; and

(vi) Notify the department and jurisdictional health department thirty days prior to commencing operations of the intent to store inert waste in accordance with this section. Notification shall be in writing, and shall include:

(A) Contact information for the owner or operator;

(B) A general description and location of the facility; and

(C) A description of the inert waste handled at the facility.

(2) *Piles used for storage or treatment - Location standards.* There are no specific location standards for piles subject to this chapter; however, waste piles must meet the requirements provided under WAC 173-350-040(5).

(3) *Piles used for storage or treatment - Design standards.*

(a) The owner or operator of piles used for storage or treatment shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the design standards of this subsection. The maximum waste capacity, elevation and boundaries of the waste pile shall be provided. Piles shall be designed and constructed to:

(i) Control public access;

(ii) Comply with the uniform fire code as implemented through the local fire control agency;

(iii) Minimize vector harborage to the extent practicable; and

(iv) Provide all-weather approach roads and exits.

(b) In addition to the requirements of (a) of this subsection, the owner or operator of piles of putrescible waste, contaminated soils or dredged material or waste determined by the jurisdictional health department to be likely to produce leachate posing a threat to human health or the environment shall prepare engineering reports/plans and specifications of the surface on which the pile(s) will be placed including an analysis of the surface under the stresses expected during operations, and the design of the surface water management systems including run-on prevention and runoff conveyance, storage, and treatment. The piles shall be designed and constructed to:

(i) Place waste on a sealed surface, such as concrete or asphaltic concrete, to prevent soil and ground water contamination. The surface shall be durable enough to withstand material handling practices. The jurisdictional health department may approve other types of surfaces, such as engineered soil, if the applicant can demonstrate that the proposed surface will prevent soil and ground water contamination; and

(ii) Control run-on and runoff from a twenty-five-year storm, as defined in WAC 173-350-100.

(4) *Piles used for storage or treatment - Operating standards.* The owner or operator of piles used for storage or treatment shall:

(a) Operate the facility to:

(i) Control fugitive dust;

(ii) Control access to the pile;

(iii) Ensure that nonpermitted waste is not accepted at the facility;

(iv) Control vector harborage and implement vector control as necessary;

(v) Ensure that waste piles capable of attracting birds do not pose an aircraft safety hazard; and

(vi) For piles of putrescible waste and contaminated soils or dredged material, control nuisance odors.

(b) Inspect and maintain the facility to prevent malfunctions, deterioration, operator errors and discharges that may cause or lead to the release of wastes to the environment or a threat to human health. Inspections shall include the engineered surface on which the piles are placed, and the leachate and stormwater control systems. Inspections shall be as needed, but at least weekly, to ensure it is meeting the operational standards, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

(c) Maintain daily operating records on the weights and the types of waste received or removed from the facility. Facility inspection reports shall be maintained in the operating record. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be kept for a minimum of five years and shall be available upon request by the jurisdictional health department;

(d) Shall prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall detail the facility's activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity and type of solid waste handled by the facility, including amounts received, amounts removed and the amount of waste remaining at the facility at year's end, in tons; and

(iv) Any additional information required by the jurisdictional health department as a condition of the permit.

(e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to the site operating personnel that concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of how solid wastes are to be handled on-site during the facility's life including:

(A) The maximum amount of waste to be stored or treated in pile(s) at the facility;

(B) Methods of adding and removing waste from the pile and equipment used;

(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety and emergency plans;

(v) Forms to record weights or volumes; and

(vi) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(f) Operate the facility in conformance with the following operating standards when storing or treating contaminated soils or dredged material:

(i) Ensure that all soils and dredged material are sufficiently characterized:

(A) Prior to storage or treatment so that contaminants not identified, or at concentrations greater than those provided in the approved plan of operation are not accepted or handled at the facility; and

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(B) Prior to removal to an off-site location so that all soils and dredged material that are not clean soils or dredged material are delivered to a facility that meets the requirements of chapter 70.95 RCW, Solid waste management—Reduction and recycling;

(ii) In addition to the daily operating records in (c) of this subsection, a record of the source of contaminated soils and dredged material received at the facility, contaminants and concentrations contained, and any documentation used to characterize soils and dredged material. Records shall be maintained of end uses, including the location of final placement, for any soils or dredged material removed from the facility that contain residual contaminants;

(iii) In addition to the elements in (e) of this subsection, the plan of operation shall include:

(A) A description of contaminants and concentrations in soils and dredged material that will be handled at the facility;

(B) A sampling and analysis plan and other procedures used to characterize soils and dredged material; and

(C) Forms used to record the source of contaminated soils or dredged material, contaminant concentrations and other documentation used to characterize soils and dredged material, and end uses and the location of final placement for any soils or dredged material removed from the facility that contain residual contaminants;

(iv) Treatment of contaminated soils and dredged materials shall be performed using a process that reduces or eliminates contaminants and harmful characteristics. Contaminated soils and dredged materials shall not be diluted to meet treatment goals or as a substitute for disposal, except for incidental dilution of minor contaminants.

(5) *Piles used for storage or treatment - Ground water monitoring requirements.* There are no specific ground water monitoring requirements for piles used for storage and treatment subject to this chapter; however, waste piles must meet the requirements provided under WAC 173-350-040(5).

(6) *Piles used for storage or treatment - Closure requirements.* The owner or operator of piles used for storage or treatment shall:

(a) Notify the jurisdictional health department sixty days in advance of closure. All waste shall be removed from the pile at closure to a facility that conforms with the applicable regulations for handling the waste.

(b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. As a minimum, the closure plan shall include the methods of removing waste.

(7) *Piles used for storage or treatment - Financial assurance requirements.* There are no specific financial assurance requirements for piles used for storage or treatment subject to this regulation chapter; however, waste piles must meet the requirements provided under WAC 173-350-040(5).

(8) *Piles used for storage or treatment - Permit application contents.* The owner or operator of piles used for storage or treatment shall obtain a permit from the jurisdictional health department.

All applications for permits shall be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(a) The design of fire control features;

(b) Engineering reports/plans and specifications that address the design standards of subsection (3) of this section;

(c) A plan of operation meeting the requirements of subsection (4) of this section; and

(d) A closure plan meeting the requirements of subsection (6) of this section.

(9) *Piles used for storage or treatment - Construction records.* The owner or operator of piles used for storage or treatment shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

NEW SECTION

WAC 173-350-330 Surface impoundments and tanks. (1) *Surface impoundments and tanks - Applicability.*

(a) These standards are applicable to:

(i) Surface impoundments holding solid waste associated with solid waste facilities including, but not limited to, leachate lagoons associated with landfills permitted under this chapter and chapter 173-351 WAC, Criteria for municipal solid waste landfills, and surface impoundments associated with recycling, and piles used for storage or treatment;

(ii) Above or below ground tanks with a capacity greater than one thousand gallons holding solid waste associated with solid waste handling facilities used to store or treat liquid or semisolid wastes or leachate associated with solid waste handling facilities.

(b) These standards are not applicable to:

(i) Surface impoundments or tanks whose facilities are regulated under local, state or federal water pollution control permits;

(ii) Leachate holding ponds at compost facilities regulated under WAC 173-350-220;

(iii) Septic tanks receiving only domestic sewage from facilities at the site;

(iv) Agricultural waste managed according to a farm management plan written in conjunction with the local conservation district;

(v) Underground storage tanks subject to chapter 173-360 WAC, Underground storage tanks; and

(vi) Tanks used to store moderate risk waste subject to WAC 173-350-360.

(2) *Surface impoundments and tanks - Location standards.*

Surface impoundments and tanks shall not be located in unstable areas unless the owner or operator demonstrates that engineering measures have been incorporated in the facility's design to ensure that the integrity of the liners, monitoring

system and structural components will not be disrupted. The owner or operator shall place the demonstration in the application for a permit.

(3) *Surface impoundments and tanks - Design standards.*

(a) The owner or operator of a surface impoundment shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the design standards of this subsection. In determining pond capacity, volume calculations shall be based on the facility design, monthly water balance, and precipitation data. All surface impoundments shall be designed and constructed to meet the following requirements:

(i) Have a liner consisting of a minimum 30-mil thickness geomembrane overlying a structurally stable foundation to support the liners and the contents of the impoundment. (HDPE geomembranes used as primary liners or leak detection liners shall be at least 60-mil thick to allow for proper welding.) The jurisdictional health department may approve the use of alternative designs if the owner or operator can demonstrate during the permitting process that the proposed design will prevent migration of solid waste constituents or leachate into the ground or surface waters at least as effectively as the liners described in this subsection.

(ii) Have a ground water monitoring system which complies with the requirements of WAC 173-350-500 or a leak detection layer. If a leak detection layer is used, it shall consist of an appropriate drainage layer underlain by a geomembrane of at least 30-mil thickness.

(iii) Have embankments and slopes designed to maintain structural integrity under conditions of a leaking liner and capable of withstanding erosion from wave action, overfilling, or precipitation.

(iv) Have freeboard equal to or greater than eighteen inches to provide protection against wave action, overfilling, or precipitation. During the permitting process the jurisdictional health department may reduce the freeboard requirement provided that other specified engineering controls are in place which prevent overtopping.

(v) When constructed with a single geomembrane liner, the liner shall be tested using an electrical leak location evaluation capable of detecting a hole 3 millimeters in its longest dimension or other equivalent postconstruction test method prior to being placed in service. Results of the test shall be submitted with the construction record drawings.

(vi) Surface impoundments that have the potential to impound more than ten-acre feet (three million two hundred fifty-nine thousand gallons) of liquid measured from the top of the embankment and which would be released by a failure of the containment embankment shall be reviewed and approved by the dam safety section of the department.

(vii) No surface impoundment liner shall be constructed such that the bottom of the lowest component is less than five feet (one and one-half meters) above the seasonal high level of ground water unless the owner or operator can demonstrate during the permitting procedure that the proposed design will not be affected by contact with ground water. All surface impoundment liners shall be constructed such that the bottom of the lowest component is above the seasonal high level of ground water. For the purpose of this section, ground water includes any water-bearing unit which is horizontally and vertically extensive, hydraulically recharged, and volumetrically significant.

(b) The owner or operator of a tank used to store or treat liquid or semisolid wastes meeting the definition of solid waste or leachate, shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the following design standards:

(i) Tanks and ancillary equipment shall be tested for tightness using a method acceptable to the jurisdictional health department prior to being covered, enclosed or placed in use. If a tank is found not to be tight, all repairs necessary to remedy the leak(s) in the system shall be performed and verified to the satisfaction of the jurisdictional health department prior to the tank being covered or placed in use.

(ii) Below ground tanks and other tanks where all or portions of the tank are not readily visible shall be designed to resist buoyant forces in areas of high ground water and shall either be:

(A) Retested for tightness at a minimum of once every two years; or

(B) Equipped with a leak detection system capable of detecting a release from the tank;

(iii) For tanks or components in which the external shell of a metal tank or any metal component will be in contact with the soil or water, a determination shall be made by a corrosion expert of the type and degree of external corrosion protection that is needed to ensure the integrity of the tank during its operating life. This determination shall be included with design information submitted with the permit application;

(iv) Above ground tanks shall be equipped with secondary containment constructed of, or lined with, materials compatible with the waste being stored and capable of containing the volume of the largest tank within its boundary plus the precipitation from the twenty-five-year storm event as defined in WAC 173-350-100;

(v) Areas used to load or unload tanks shall be designed to contain spills, drippage and accidental releases during loading and unloading of vessels;

(vi) Tanks and piping shall be protected from impact by vehicles or equipment through use of curbing, grade separation, bollards or other appropriate means;

(vii) Tanks shall be structurally suited for the proposed use; and

(viii) Tanks, valves, fittings and ancillary piping shall be protected from failure caused by freezing.

(4) *Surface impoundments and tanks - Operating standards.* The owner or operator of a surface impoundment or tank shall:

(a) Operate the facility to:

(i) Prevent overfilling of surface impoundments or tanks and maintain required freeboard;

(ii) Control access to the site;

(iii) Control nuisance odors for wastes or liquids with the potential to create nuisance odors; and

(iv) Control birds at impoundments storing wastes capable of attracting birds.

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(b) Inspect surface impoundments, tanks and associated piping, pumps and hoses as needed, but at least weekly, to ensure they are meeting the operational standards, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. In addition, surface impoundments shall have regular liner inspections. Their frequency and methods of inspection shall be specified in the plan of operation and shall be based on the type of liner, expected service life of the material, and the site-specific service conditions. The inspections shall be conducted at least once every five years, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. The jurisdictional health department shall be given sufficient notice and have the opportunity to be present during liner inspections.

(c) Maintain daily operating records on the quantity and the types of waste removed from the surface impoundment or tank. Facility inspection reports shall be maintained in the operating record. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be kept for a minimum of five years and shall be available for inspection upon request by the jurisdictional health department.

(d) Shall prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st. The annual report shall detail the facility's activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Results of ground water monitoring in accordance with WAC 173-350-500;

(iv) Results of leak detection system monitoring, if applicable; and

(v) Any additional information required by the jurisdictional health department as a condition of the permit.

(e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of how wastes are handled on-site during the facility's active life;

(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs. This description shall include:

(A) The ground water monitoring system, if required;

(B) The overfilling prevention equipment, including details of filling and emptying techniques;

(C) The liners and embankments, tank piping and secondary containment;

(D) Safety and emergency plans;

(E) The forms used to record weights and volumes; and

(F) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(5) *Surface impoundments and tanks - Ground water monitoring requirements.*

(a) Surface impoundments not equipped with a leak detection layer are subject to the ground water monitoring requirements of WAC 173-350-500.

(b) Surface impoundments equipped with a leak detection layer and tanks are not subject to the ground water monitoring requirements of this chapter; however, surface impoundments must meet the requirements provided under WAC 173-350-040(5).

(6) *Surface impoundments and tanks - Closure requirements.* The owner or operator of a surface impoundment or tank shall:

(a) Notify the jurisdictional health department sixty days in advance of closure. All waste from the surface impoundment or tank shall be removed to a facility that conforms with the applicable regulations for handling the waste.

(b) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include the methods of removing waste.

(7) *Surface impoundments and tanks - Financial assurance requirements.* There are no specific financial assurance requirements for surface impoundments or tanks subject to this chapter; however, surface impoundments and tanks must meet the requirements provided under WAC 173-350-040(5).

(8) *Surface impoundments and tanks - Permit application contents.*

(a) The owner or operator of a surface impoundment or tank shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(i) Engineering reports/plans and specifications that address the design standards of subsection (3) of this section;

(ii) A plan of operation meeting the requirements of subsection (4) of this section;

(iii) For surface impoundments not equipped with a leak detection layer, hydrogeologic reports and plans that address the requirements of subsection (5) of this section;

(iv) A closure plan meeting the requirements of subsection (6) of this section.

(9) *Surface impoundments and tanks - Construction records.* The owner or operator of a surface impoundment or tank shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

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NEW SECTION

WAC 173-350-350 Waste tire storage and transportation. (1) *Waste tire storage and transportation - Applicability.* This section is applicable to all:

(a) Facilities that store waste tires in quantities of greater than eight hundred automobile tires or the combined weight equivalent of sixteen thousand pounds of all types of waste tires. This section is not applicable to the storage of waste tires in an enclosed building or in mobile containers used to transport waste tires.

(b) Persons engaged in the business of transporting waste tires except for:

(i) Any person transporting five tires or less;

(ii) Any person transporting used tires back to a retail outlet for repair or exchange;

(iii) Any waste hauler regulated by chapter 81.77 RCW, Solid waste collection companies;

(iv) The United States, the state of Washington or any local government, or contractors hired by these entities, when involved in the cleanup of illegal waste tire piles; and

(v) Tire retailers associated with retreading facilities who use company-owned vehicles to transport waste tires for the purposes of retreading or recycling.

(2) *Waste tire storage and transportation - Transportation prohibitions and enforcement.*

(a) No person shall enter into a contract for transportation of waste tires with an unlicensed waste tire transporter.

(b) Waste tires shall only be delivered to a facility that has obtained the required permits or licenses for storage, processing, or disposal of waste tires.

(c) Any person subject to this section who transports or stores waste tires without a valid waste tire carrier license or waste tire storage license issued by the Washington state department of licensing shall be subject to the penalty provisions of RCW 70.95.560.

(3) *Waste tire storage and transportation - Carrier license requirements.*

(a) All persons subject to this section engaged in the business of transporting waste tires are required to obtain a waste tire carrier license from the Washington state department of licensing.

(b) Application forms for a waste tire carrier license will be available at unified business identifier service centers located throughout the state. Unified business identifier service locations include:

(i) The field offices of the department of revenue and the department of labor and industries;

(ii) The tax offices of employment security;

(iii) The Olympia office of the secretary of state; and

(iv) The business license service office of the Washington state department of licensing.

(c) An application for a waste tire carrier license and a cab card for one vehicle shall include a two hundred fifty dollar application fee, fifty dollars of which shall be nonrefundable. Each additional vehicle cab card to be used by the licensee requires an additional fifty dollar fee. The application shall include:

(i) A performance bond in the sum of ten thousand dollars in favor of the state of Washington; or

(ii) In lieu of the bond, an applicant may submit other financial assurance acceptable to the department.

(d) The refundable portion of application fees may be returned to the applicant if the application is withdrawn before the department has approved or denied the application.

(e) A waste tire carrier license shall be valid for one year from the date of approval.

(4) *Waste tire storage and transportation - Location standards.* There are no specific location standards for waste tire storage sites subject to this chapter; however, waste tire storage sites must meet the requirements provided under WAC 173-350-040(5).

(5) *Waste tire storage and transportation - Design standards.* The owner or operator of a waste tire storage area shall prepare engineering reports/plans and specifications to address the design standards of this subsection. The maximum number of tires to be stored on site and the individual pile locations and sized shall be provided. The facility shall be designed so that:

(a) The size of any individual pile of waste tires shall be limited to:

(i) A maximum area of five thousand square feet;

(ii) A maximum volume of fifty thousand cubic feet; and

(iii) A maximum height of ten feet;

(b) A clear space of at least forty feet between each pile of waste tires shall be provided. The clear space shall not contain flammable or combustible material or vegetation;

(c) Tire storage shall not be located within ten feet of any property line or building and shall not exceed six feet in height within twenty feet of any property line or building; and

(d) Public access shall be limited.

(6) *Waste tire storage and transportation - Operating standards.* The owner or operator of a waste tire storage facility shall:

(a) Operate the facility to:

(i) Have communication capabilities to immediately summon fire, police, or other emergency service personnel in the event of an emergency;

(ii) Control public access in a manner sufficient to prevent arson, unauthorized vehicular traffic and illegal dumping of wastes;

(iii) Manage waste tires in such a way that it is protected from any material or conditions which may cause them to ignite;

(iv) Limit the total quantity of waste tires stored on-site at any time to the amount permitted by the jurisdictional health department;

(v) Provide on-site fire control equipment sufficient to extinguish any fire reasonably possible from one individual pile of waste tires. Fire control equipment may include, but is not limited to:

(A) Automatic sprinkler protection;

(B) Fire hydrants, hoses and ancillary equipment;

(C) Portable fire extinguishers; and

(D) Material-handling equipment capable of moving tires during fire fighting operations;

(vi) Provide vector control; and

(vii) Issue written receipts upon receiving loads of waste tires;

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(b) Inspect and maintain the facility to prevent malfunctions, deterioration, operator errors and discharges that may lead to the release of wastes to the environment or cause a threat to human health. Inspections shall be as needed, but at least weekly, to ensure it is meeting the operational standards, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

(c) Maintain daily operating records including:

(i) The numbers of tires received and removed from the site. Quantities may be measured by:

(A) Actual number of tires; or

(B) Weight, provided the operator documents the approximate number of tires included in each load; or

(C) Volume in cubic yards, provided the operator documents the approximate number of tires included in each load;

(ii) Facility inspection reports;

(iii) Significant deviations from the plan of operation;

(iv) Records shall be kept for a minimum of five years and shall be available upon request by the jurisdictional health department;

(d) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall detail the facility activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity of tires, in tons;

(iv) Annual quantity of tires removed from the facility and end use, in tons;

(v) Total tons of tires remaining at the facility at year's end;

(vi) Applicable financial assurance reviews and audit findings in accordance with WAC 173-350-600; and

(vii) Any additional information required by the jurisdictional health department as a condition of the permit;

(e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of how waste tires are to be handled onsite during the active life including:

(A) Transportation and routine storage; and

(B) Procedures for ensuring that all waste tires received by the facility have been transported in accordance with this section;

(ii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iii) Safety, fire and emergency plans addressing the following:

(A) Procedures for the use of communications equipment to immediately report emergencies to the fire department, police, or emergency service personnel;

(B) A list of all emergency equipment at the facility including the location and a brief description of its capabilities;

(C) Procedures for fire fighting and the operation of fire control equipment;

(D) Employee training and emergency duty assignments;

(E) Procedures for and frequency of fire drills;

(iv) The forms used to record weights and volumes; and

(v) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(7) *Waste tire storage and transportation - Ground water monitoring requirements.* There are no specific ground water monitoring requirements for waste tire storage sites; however, waste tire storage sites must meet the requirements provided under WAC 173-350-040(5).

(8) *Waste tire storage and transportation - Closure requirements.* The owner or operator of a facility that stores waste tires shall:

(a) Notify the jurisdictional health department, and where applicable the financial assurance instrument provider, one hundred eighty days in advance of closure;

(b) Commence implementation of the closure plan, in part or whole, within thirty days after receipt of the final waste tires;

(c) Provide certification that the site has been closed in accordance with the approved closure plan to the jurisdictional health department; and

(d) Develop, keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum the closure plan shall include:

(i) Projected time intervals that identify when partial closure is to be implemented, and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs, from the approved financial assurance instrument; and

(ii) Methods of waste tire removal.

(e) The jurisdictional health department shall notify the owner or operator, the department and the financial assurance instrument provider, of the date when the jurisdictional health department has verified that the facility has been closed in accordance with the specifications of the approved closure plan.

(9) *Waste tire storage and transportation - Financial assurance requirements.*

(a) The owner or operator shall establish a financial assurance mechanism in accordance with WAC 173-350-600 for closure in accordance with the approved closure plan. The funds shall be sufficient for hiring a third party to remove the maximum number of tires permitted to be stored at the facility and deliver the tires to a facility permitted to accept the tires.

(b) Nothing in this section shall prohibit the application of funds from an existing bond as required under RCW 70.95.555, to the total amount required for financial assurance, provided the bond can be used for the activities described in (a) of this subsection.

(c) No owner or operator shall commence or continue operations at the site until a financial assurance instrument

has been provided for closure activities in conformance with WAC 173-350-600.

(10) *Waste tire storage and transportation - Solid waste permit requirements.* The owner or operator shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(a) Engineering reports/plans and specifications that address the design standards of subsection (5) of this section;

(b) A plan of operation addressing the requirements of subsection (6) of this section;

(c) A closure plan meeting the requirements of subsection (8) of this section; and

(d) Documentation as needed to meet the financial assurance requirements of subsection (9) of this section.

(11) *Waste tire storage and transportation - Storage site license requirements.*

(a) In order to obtain a waste tire storage license, the facility owner or operator shall first obtain a solid waste handling permit for the storage of waste tires from the jurisdictional health department.

(b) Application forms for a waste tire storage site owner license are available at unified business identifier service locations located throughout the state. Unified business identifier service locations include:

(i) The field offices of the department of revenue and the department of labor and industries;

(ii) The tax offices of employment security;

(iii) The Olympia office of the secretary of state; and

(iv) The business license service office of the Washington state department of licensing.

(c) An application for a waste tire storage site owner license shall include a two hundred fifty dollar application fee for each facility, fifty dollars of which shall be nonrefundable. The refundable portion of application fees may be returned to the applicant under the following conditions:

(i) The department determines that a solid waste permit would meet the substantive requirements of RCW 70.95.555 and determines that a license is not required; or

(ii) The applicant withdraws the application before the department has approved or denied the application.

(d) A waste tire storage site license shall be valid for one year from the date of approval.

NEW SECTION

WAC 173-350-360 Moderate risk waste handling. (1) *Moderate risk waste handling - Applicability.*

(a) This section is applicable to:

(i) Any facility that accepts segregated solid waste categorized as moderate risk waste (MRW), as defined in WAC 173-350-100;

(ii) Persons transporting MRW using only a bill of lading (MRW that is not shipped using a uniform hazardous waste manifest) who store MRW for more than ten days at a single location; and

(iii) Mobile systems and collection events.

(b) This section is not applicable to:

(i) Persons transporting MRW managed in accordance with the requirements for shipments of manifested dangerous waste under WAC 173-303-240;

(ii) Universal waste regulated under chapter 173-303 WAC; and

(iii) Conditionally exempt small quantity generators managing their own wastes in compliance with the performance standards of WAC 173-350-040 and 173-303-070 (8)(b).

(2) *Mobile systems and collection events.* In accordance with RCW 70.95.305, the operation of mobile systems and collection events are subject solely to the requirements of (a) through (n) of this subsection and are exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with the applicable requirements for a moderate risk waste handling facility. In addition, violations of the terms and conditions of this subsection may be subject to the penalty provisions of RCW 70.95.315. Owners and operators of mobile systems and collection events shall:

(a) Notify the department and the jurisdictional health department of the intent to operate a mobile system or collection event at least thirty days prior to commencing operations. The notification shall include a description of the types and quantities of MRW to be handled;

(b) Manage mobile systems or collection events in compliance with the performance standards of WAC 173-350-040;

(c) Record the weights or gallons of each type of MRW collected, number of households and conditionally exempt small quantity generators served, and type of final disposition (e.g., reuse, recycled, treatment, energy recovery, or disposal). Records shall be maintained for a period of five years and will be made available to the department or jurisdictional health department on request;

(d) Ensure that the MRW at a mobile system or collection event is handled in a manner that:

(i) Prevents a spill or release of hazardous substances to the environment;

(ii) Prevents exposure of the public to hazardous substances; and

(iii) Results in delivery to a facility that meets the performance standards of WAC 173-350-040;

(e) Ensure that incompatible wastes are not allowed to come into contact with each other;

(f) Ensure that containers holding MRW remain closed except when adding or removing waste in order to prevent a release of MRW through evaporation or spillage if overturned;

(g) Ensure that containers holding MRW have legible labels and markings that identify the waste type;

(h) Ensure that containers holding MRW are maintained in good condition (e.g., no severe rusting or apparent structural defects);

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(i) Ensure that personnel are familiar with the chemical nature of the materials and the appropriate mitigating action necessary in the event of fire, leak or spill;

(j) Control public access and prevent unauthorized entry;

(k) Prepare and submit a copy of an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report shall detail the collection activities during the previous calendar year and shall include the following information:

(i) Name of owner or operator, and locations of all collection sites;

(ii) Calendar year covered by the report;

(iii) Annual quantity and type of MRW, in pounds or gallons by waste type;

(iv) Number of households and CESQGs served;

(v) Type of final disposition (e.g., reuse, recycled, treatment, energy recovery, or disposal); and

(vi) Any additional information required by written notification of the department;

(l) Allow inspections by the department or the jurisdictional health department at reasonable times;

(m) Notify the department and the jurisdictional health department of any failure to comply with the terms and conditions of this subsection within twenty-four hours; and

(n) Mobile collection systems using truck or trailers with concealed construction, permanently attached to a chassis may require a commercial coach insignia if subject to chapter 296-150C WAC, administered by the department of labor and industries.

(3) *Limited MRW facilities and product take-back centers.* In accordance with RCW 70.95.305, the operation of limited MRW facilities is subject solely to the requirements of (a) through (i) of this subsection and is exempt from solid waste handling permitting. Product take-back centers are only subject to (b), (e) and (f) of this subsection. An owner or operator that does not comply with the terms and conditions of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with the applicable requirements for an MRW facility. In addition, violations of the terms and conditions of this subsection may be subject to the penalty provisions of RCW 70.95.315. Owners and operators of limited MRW facilities shall:

(a) Notify the department and the jurisdictional health department within thirty days prior to operation of the intent to operate a limited MRW facility with a description of the type and quantity of MRW to be handled;

(b) Ensure waste at a limited MRW facility or product take-back center is handled in a manner that:

(i) Prevents a spill or release of hazardous substances to the environment;

(ii) Prevents exposure of the public to hazardous substances; and

(iii) Results in delivery to a facility that meets the performance standards of WAC 173-350-040;

(c) Ensure that containers and tanks holding MRW are maintained in good condition (e.g., no severe rusting or apparent structural defects);

(d) Provide secondary containment for containers and tanks capable of storing fifty-five gallons or more of liquid MRW;

(e) Ensure the facility meets the performance standards of WAC 173-350-040;

(f) Notify the department and the jurisdictional health department of any failure to comply with the terms and conditions of this subsection within twenty-four hours of knowledge of an incident;

(g) Allow inspections by the department and jurisdictional health department at reasonable times;

(h) Maintain records of the amount and type of MRW received, and the final disposition of the MRW by amount and type; and

(i) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall cover the facility's activities during the previous calendar year and shall include the following information:

(A) Name and address of the facility;

(B) Calendar year covered by the report;

(C) Annual quantity and type of MRW, in pounds or gallons by waste type;

(D) Number of households and CESQGs served;

(E) Type of final disposition (e.g., reuse, recycled, treatment, energy recovery, or disposal); and

(F) Any additional information required by written notification of the department.

(4) *Moderate risk waste facilities - Location standards.* There are no specific location standards for moderate risk waste facilities subject to this chapter; however, moderate risk waste facilities must meet the requirements provided under WAC 173-350-040(5).

(5) *Moderate risk waste facilities - Design standards.*

(a) The owner or operator of a moderate risk waste facility shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the following design standards. Each MRW facility shall:

(i) Be surrounded by a fence, walls, or natural features and provided with a lockable door or gate to control public and animal access;

(ii) Be constructed of materials that are chemically compatible with the MRW handled;

(iii) Provide secondary containment to capture and contain releases and spills, and facilitate timely cleanup in areas where MRW is handled. All secondary containment shall:

(A) Have sufficient capacity to:

(I) Contain ten percent of volume of all containers or tanks holding liquid or the total volume of the largest container holding liquids in the area, whichever is greater;

(II) Provide additional capacity to hold the precipitation from a twenty-five-year storm as defined in WAC 173-350-100, in uncovered areas; and

(III) Provide additional capacity to hold twenty minutes of flow from an automatic fire suppression system, where such a suppression system exists;

(B) Be segregated for incompatible wastes; and

(C) Have a base underlying the containers which is free of cracks or gaps and is sufficiently impervious to contain

leaks, spills, accumulated precipitation, or fire suppression materials until the collected material is detected and removed. The base shall be sloped or the containment system shall otherwise be designed and operated to drain and remove liquids resulting from leaks, spills, precipitation, or fire suppression unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(iv) Be accessible by all-weather roads;

(v) Prevent run-on and control runoff from a twenty-five-year storm, as defined in WAC 173-350-100;

(vi) Provide a sign at the site entrance that identifies the facility and shows at least the name of the site, and if applicable, hours during which the site is open for public use, and acceptable materials;

(vii) Provide sufficient ventilation to remove toxic vapors and dust from the breathing zone of workers and prevent the accumulation of flammable or combustible gases or fumes that could present a threat of fire or explosion;

(viii) Be constructed with explosion-proof electrical wiring, fixtures, lights, motors, switches and other electrical components as required by local fire code or the department of labor and industries;

(ix) Provide electrical grounding in areas where flammable and combustible liquids are consolidated to allow for bonding to consolidation equipment; and

(x) Provide protection of the MRW handling areas from wind, rain or snow.

(b) The owner or operator of a tank used to store or treat MRW shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the following design standards:

(i) Tanks and ancillary equipment shall be tested for tightness using a method acceptable to the jurisdictional health department prior to being covered, enclosed or placed in use. If a tank is found not to be tight, all repairs necessary to remedy the leak(s) in the system shall be performed and verified to the satisfaction of the jurisdictional health department prior to the tank being covered or placed in use;

(ii) Below ground tanks shall be designed to resist buoyant forces in areas of high ground water and shall either be:

(A) Retested for tightness at a minimum of once every two years; or

(B) Equipped with a leak detection system capable of detecting a release from the tank;

(iii) For tanks or components in which the external shell of a metal tank or any metal component will be in contact with the soil or water, a determination shall be made by a corrosion expert of the type and degree of external corrosion protection that is needed to ensure the integrity of the tank during its operating life. This determination shall be included with design information submitted with the permit application;

(iv) Areas used to load or unload tanks shall be designed to contain spills, drippage and accidental releases during loading and unloading of vessels;

(v) Tanks and piping shall be protected from impact by vehicles or equipment through use of curbing, grade separation, bollards or other appropriate means;

(vi) Tanks shall be structurally suited for the proposed use; and

(vii) Tanks, valves, fittings and ancillary piping shall be protected from failure caused by freezing.

(c) Prefabricated structures with concealed construction shall meet the requirements of chapter 296-150F WAC, Factory-built housing and commercial structures, administered by the department of labor and industries.

(6) *Moderate risk waste facilities - Operating standards.* The owner or operator of a MRW facility shall:

(a) Manage MRW handling activities and facilities so that:

(i) Each storage area is marked with signs to clearly show the type of MRW to be stored in that area;

(ii) Incompatible MRW and materials shall not be mixed together or allowed to come into contact with each other;

(iii) MRW shall be compatible with the containment system;

(iv) Containers or tanks are closed except when adding or removing MRW in order to prevent a release of MRW through evaporation or spillage if overturned;

(v) All containers or tanks have visible and legible labels or markings that identify the MRW type and are visible for inspection;

(vi) Containers of MRW shall be stored in a manner that allows for easy access and inspection. Drums containing MRW shall have at least one side with a minimum of thirty inches clear aisle space;

(vii) Containers holding MRW are maintained in good condition including, but not limited to, no severe rusting or apparent structural defects;

(viii) Uniform hazardous waste manifests are prepared and used at the point where possession of the MRW is given to a commercial registered dangerous waste transporter for shipments of MRW destined for out-of-state locations. This shall be completed in accordance with WAC 173-303-180;

(ix) Public access is restricted to areas identified in the plan of operation and unauthorized entry is prevented;

(x) Communication capabilities are provided to summon fire, police, or emergency service personnel;

(xi) Flammable or explosive gases do not exceed ten percent of the lower explosive limit in the area where MRW is handled. An explosive gas monitoring program shall be implemented to ensure that this standard is achieved;

(xii) MRW is delivered to a facility that meets the performance standards of WAC 173-350-040;

(xiii) Personnel responsible for routine inspections and operations are familiar with the chemical nature of the materials and the appropriate mitigating action necessary in the event of fire, leak or spill; and

(xiv) The jurisdictional health department and the department are notified of any spills or discharges of MRW to the environment.

(b) Ensure that routine and annual inspections are conducted as follows:

(i) Routine inspections shall be conducted at least weekly or once each operating day, whichever is more frequent, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. Routine inspections shall be performed for:

(A) Operating hazards;

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(B) Presence of operable safety equipment;

(C) Container integrity; and

(D) General facility condition;

(ii) Annual inspections shall be conducted to determine the condition of:

(A) Secondary containment systems including all readily accessible below floor space, sumps, and tanks for deterioration and evidence of containment failure; and

(B) All ventilation and flammable vapor monitoring systems.

(c) Maintain daily operating records of the weights or gallons of each type of MRW collected and the number of households and CESQGs served. Facility inspection reports shall be maintained in the operating record, including at least the date and time of the inspection, the name and signature of the inspector, a notation of observations made, and the date and nature of any needed repairs or remedial action. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be kept for a minimum of five years and shall be available for inspection at the request of the jurisdictional health department.

(d) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall detail the facility's activities during the previous calendar year and must include the following information:

(i) Name and address of the facility and locations of all collection sites;

(ii) Calendar year covered by the report;

(iii) Annual quantity and type of MRW, in pounds or gallons;

(iv) Number of households and CESQGs served;

(v) Type of final disposition (e.g., reuse, recycled, treatment, energy recovery, or disposal) by type of MRW;

(vi) Applicable financial assurance reviews and audit findings in accordance with WAC 173-350-600; and

(vii) Any additional information required by the jurisdictional health department as a condition of the permit.

(e) Develop, keep and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include the following:

(i) A description of the types of solid wastes to be handled at the facility;

(ii) A description of how MRW will be handled on-site during the active life of the facility including:

(A) Methods for managing and/or identifying unknown wastes;

(B) Procedures for managing wastes that arrive in corroded or leaking containers or when MRW is left at the gate when the facility is unattended;

(C) Protocol for sorting, processing and packaging MRW;

(D) Procedures to protect containers of MRW susceptible to damage from weather and temperature extremes;

(E) Maximum quantities of MRW to be safely stored in each area at any time;

(F) Waste acceptance protocol to preclude and redirect fully regulated dangerous waste and any unacceptable waste types, such as explosives and/or radioactives; and

(G) For facilities that offer material exchanges, a procedure for determining what MRW is suitable for exchange and how the materials exchange will be operated;

(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety and emergency plans including:

(A) A list of all on-site emergency equipment with its capability, purpose, and training requirements;

(B) A description of actions to take if leaks in containers, tanks, or containment structures are suspected or detected and for other releases (e.g., failure of runoff containment system, gases generated due to chemical reactions or rapid volatilization);

(v) The forms used to record weights and volumes; and

(vi) Other such details to demonstrate that the facility will be operated in accordance with this subsection and as required by the jurisdictional health department.

(7) *Moderate risk waste facilities - Ground water monitoring requirements.* There are no specific ground water monitoring requirements for MRW facilities subject to this chapter; however, moderate risk waste facilities must meet the requirements provided under WAC 173-350-040(5).

(8) *Moderate risk waste facilities - Closure requirements.* The owner or operator of a moderate risk waste facility shall:

(a) Notify the jurisdictional health department, and where applicable, the financial assurance instrument provider, no later than one hundred eighty days prior to the projected date of the final receipt of MRW, of the intent to implement the closure plan in part or whole. The facility shall close in a manner that:

(i) Minimizes the need for further maintenance;

(ii) Removes all MRW and ensures delivery of the MRW to a facility that conforms with the applicable regulations for handling the waste;

(iii) Decontaminates all areas where MRW has been handled, including, but not limited to, secondary containment, buildings, tanks, equipment, and property; and

(iv) Prepares the facility for remedial measures after closure, if required.

(b) Commence closure activities in part or whole within thirty days following the receipt of the final volume of MRW. Waste shall not be accepted for disposal or for use in closure.

(c) At facility closure completion, in part or whole, submit the following to the jurisdictional health department:

(i) Certification by the owner or operator, and a professional engineer licensed in the state of Washington that the site has been closed in accordance with the approved closure plan; and

(ii) A closure report signed by the facility owner or operator and the certifying engineer that describes:

(A) Actions taken to determine if there has been a release to the environment; and

(B) The results of all inspections conducted as part of the closure procedure.

(d) Keep and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include:

(i) A description of the activities and procedures that will be used to ensure compliance with this subsection;

(ii) An estimate of the maximum volume of MRW on-site at any time during the active life of the facility; and

(iii) Closure cost estimates and projected fund withdrawal intervals from the financial assurance instrument, if such an instrument is required by subsection (9) of this section.

(e) The jurisdictional health department shall notify the owner or operator, the department and the financial assurance instrument provider, of the date when the jurisdictional health department has verified that the facility has been closed in accordance with the specifications of the approved closure plan.

(9) *Moderate risk waste facilities - Financial assurance requirements.*

(a) The owner or operator of any fixed moderate risk waste facility that stores more than nine thousand gallons of MRW on-site, excluding used oil, is required to establish financial assurance in accordance with WAC 173-350-600.

(b) Proof of financial assurance shall be provided to the jurisdictional health department prior to the acceptance of any MRW. The financial assurance instrument shall provide sufficient funds to guarantee that all closure requirements are met. In the event that hazardous substances are released to the environment and site remediation is necessary, additional financial assurance shall be provided in order that site remediation can be accomplished.

(c) Nothing in this section shall prevent an owner or operator from including the cost of MRW facility financial assurance in an instrument established for a colocated permitted solid waste facility so long as there are adequate funds available for both closure activities and the instrument identifies the commitment of funds for both activities.

(10) *Moderate risk waste facilities - Permit application contents.* The owner or operator of a MRW facility shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be submitted in accordance with the requirements established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(a) Engineering reports/plans and specifications that address the design standards of subsection (5) of this section;

(b) A plan of operation meeting the requirements of subsection (6) of this section;

(c) A closure plan meeting the requirements of subsection (8) of this section; and

(d) Documentation as needed to meet the financial assurance requirements of subsection (9) of this section.

(11) *Moderate risk waste facilities - Construction records.* The owner or operator of a moderate risk waste facility shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

NEW SECTION

WAC 173-350-400 Limited purpose landfills. (1) *Limited purpose landfills - Applicability.* These standards apply to all landfills except:

(a) Municipal solid waste landfills regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills;

(b) Inert waste landfills regulated under WAC 173-350-410;

(c) Special incinerator ash landfills regulated under chapter 173-306 WAC, Special incinerator ash management standards;

(d) Dangerous waste landfills regulated under chapter 173-303 WAC, Dangerous waste regulations; and

(e) Chemical waste landfills used for the disposal of polychlorinated biphenyls (PCBs) regulated under Title 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

(2) *Limited purpose landfills - Location standards.* All limited purpose landfills shall be located to meet the following requirements:

(a) No landfill shall be located over a Holocene fault, in subsidence areas, or on or adjacent to an unstable slope or other geologic features which could compromise the structural integrity of the facility.

(b) No landfill's active area shall be located closer than one thousand feet to a down-gradient drinking water supply well, unless the owner or operator can demonstrate that a minimum of ninety days will occur between the time that a contaminant is detected and the time the contaminant can reach the nearest down-gradient drinking water supply well. Such demonstrations shall be prepared by a licensed professional in accordance with the requirements of chapter 18.220 RCW and shall be included in the permit application. The demonstration shall be based on the details of the sampling and analysis plan and the hydrogeologic properties of the hydrostratigraphic unit.

(c) No landfill's active area shall be located in a channel migration zone as defined in WAC 173-350-100 or within two hundred feet measured horizontally, of a stream, lake, pond, river, or saltwater body, nor in any wetland nor any public land that is being used by a public water system for watershed control for municipal drinking water purposes in accordance with WAC 248-54-660(4). All facilities shall conform to location restrictions established in local shoreline management plans adopted pursuant to chapter 90.58 RCW.

(d) No landfill shall be located within ten thousand feet of any airport runway currently used by turbojet aircraft or five thousand feet of any airport runway currently used by

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only piston-type aircraft unless the federal aviation administration grants a waiver. This requirement is only applicable where such landfill is used for disposing of wastes where a bird hazard to aircraft would be created.

(e) All landfills shall comply with the location standards specified in RCW 70.95.060.

(3) *Limited purpose landfills - Design standards.*

(a) This section applies to landfills with considerable variations in waste types, site conditions, and operational controls. All landfills shall be designed and constructed to meet the design standards of this subsection, the performance standards of WAC 173-350-040, and shall be appropriate for and compatible with the waste, the site, and the operation. The owner or operator of a limited purpose landfill shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the design standards of this subsection. An owner or operator shall be able to demonstrate during the permitting process that the design of a proposed landfill will mitigate threats to human health and the environment. When evaluating a landfill design, the jurisdictional health department shall consider the following factors:

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(i) Waste characterization;

(ii) Soil conditions;

(iii) Hydrogeologic conditions;

(iv) Hydraulic conditions;

(v) Contaminant fate and transport;

(vi) Topography;

(vii) Climate;

(viii) Seismic conditions;

(ix) The total capacity of the facility and each landfill unit;

(x) Anticipated leachate characteristics and quantity;

(xi) Operational controls; and

(xii) Environmental monitoring systems.

(b) Liner system design.

(i) Liner system performance standard. Limited purpose landfills shall be constructed in accordance with a design that:

(A) Will prevent the contamination of the hydrostratigraphic units identified in the hydrogeologic assessment of the facility at the relevant point of compliance as specified during the permitting process; and

(B) Controls methane and other explosive gases generated by the facility to ensure they do not exceed:

(I) Twenty-five percent of the lower explosive limit for the gases in facility structures (excluding the gas control or recovery system components);

(II) The lower explosive limit in soil gases or in ambient air for the gases at the property boundary or beyond; and

(III) One hundred parts per million by volume of hydrocarbons (expressed as methane) in off-site structures.

(ii) The jurisdictional health department may allow a limited purpose landfill to be designed and constructed without a liner system if the owner or operator can demonstrate during the permitting process that:

(A) The contaminant levels in the waste and leachate are unlikely to pose an adverse impact to the environment; and

(B) The ability of natural soils to provide a barrier or reduce the concentration of contaminants provides sufficient protection to meet the performance standards of WAC 173-350-040; and

(C) Explosive gases generated by the facility will not exceed:

(I) Twenty-five percent of the lower explosive limit for the gases in facility structures (excluding the gas control or recovery system components);

(II) The lower explosive limit in soil gases or in ambient air for the gases at the property boundary or beyond; and

(III) One hundred parts per million by volume of hydrocarbons (expressed as methane) in off-site structures.

(iii) Liner separation from ground water. No landfill liner system shall be constructed such that the bottom of the lowest component is less than ten feet (three meters) above the seasonal high level of ground water, unless a hydraulic gradient control system has been installed which prevents ground water from contacting the liner. For the purpose of this section, ground water includes any water-bearing unit which is horizontally and vertically extensive, hydraulically recharged, and volumetrically significant as to harm or endanger the integrity of the liner at any time.

(iv) Hydraulic gradient control system performance standard. When a hydraulic gradient control system is to be incorporated into a landfill design, a demonstration shall be made during the permit process that the hydraulic gradient control system can be installed to control ground water fluctuations and maintain separation between the controlled seasonal high level of ground water in the identified water-bearing unit and the bottom of the lowest liner system component. The hydraulic gradient control system shall not have negative impacts on waters of the state or impede the capability to collect samples representative of the quality of ground water at the relevant point of compliance. The demonstration shall include:

(A) A discussion in the geologic and hydrogeologic site characterization showing the effects from subsoil settlement, changes in surrounding land uses, climatic trends or other impacts affecting ground water levels during the active life, closure and post-closure periods of the landfill;

(B) A discussion showing potential impacts of the gradient control operation to existing quality and quantity of ground water or surface waters. This discussion shall include potential impacts to water users and instream flow and levels of surface waters in direct hydrologic contact or continuity with the hydraulic gradient control system. Any currently available ground or surface water quality data for hydrostratigraphic units, springs, or surface waters in direct hydrologic contact or continuity with the hydraulic gradient control system shall be included;

(C) Conceptual engineering drawings of the proposed landfill and a discussion as to how the hydraulic gradient control system will protect or impact the structural integrity and performance of the liner system;

(D) Preliminary engineering drawings of the hydraulic gradient control system;

(E) Design specifications for the proposed ground and surface water monitoring systems; and

(F) A discussion of the potential impacts from the gradient control system on the capability of collecting ground water samples that will represent the quality of ground water passing the relevant point of compliance.

(v) Presumptive liner design. Limited purpose landfills designed and constructed with the following composite liner are presumed to meet the performance standard of (b)(i) of this subsection. An alternative liner system design shall be used when the nature of the waste, the disposal facility, or other factors are incompatible with the presumptive liner. The presumptive liner design consists of the following two components:

(A) A lower component consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(B) An upper component consisting of a high-density polyethylene (HDPE) geomembrane with a minimum of 60-mil thickness. The geomembrane shall be installed in direct and uniform contact with the lower component.

(c) Leachate collection and control system design. Except as provided in (b)(ii) of this section, limited purpose landfills shall be constructed in accordance with a design that:

(i) Provides for collection and removal of leachate generated in the landfill;

(ii) Is capable of maintaining less than a one-foot head of leachate over the liner system and less than a two-foot head in leachate sump areas;

(iii) Includes a monitoring system capable of collecting representative samples of leachate generated in the landfill; and

(iv) Provides for leachate storage, treatment, or pretreatment to meet the requirements for permitted discharge under chapter 90.48 RCW, Water pollution control, and the Federal Clean Water Act.

(d) Run-on/runoff control system design. Limited purpose landfills shall be constructed in accordance with a design that:

(i) Will prevent flow onto the active portion of the landfill during the peak discharge from a twenty-five-year storm, as defined in WAC 173-350-100;

(ii) Will prevent unpermitted discharges from the active portion of the landfill resulting from a twenty-five-year storm, as defined in WAC 173-350-100; and

(iii) When located in a one hundred-year floodplain, the entrance and exit roads, and landfill practices do not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain or result in washout of solid waste, to pose a hazard to human life, wildlife, land or water resources.

(e) Final closure system design.

(i) Final closure performance standard. Limited purpose landfills shall be closed in accordance with a design that:

(A) Prevents exposure of waste;

(B) Minimizes infiltration (at a minimum, the design will prevent the generation of significant quantities of leachate to eliminate the need for leachate removal by the end of the post-closure period);

(C) Prevents erosion from wind and water;

(D) Is capable of sustaining native vegetation;

(E) Addresses anticipated settlement, with a goal of achieving no less than two to five percent slope after settlement;

(F) Provides sufficient stability and mechanical strength and addresses potential freeze-thaw and desiccation;

(G) Provides for the management of run-on and runoff, preventing erosion or otherwise damaging the closure cover;

(H) Minimizes the need for post-closure maintenance;

(I) Provides for collection and removal of methane and other gases generated in the landfill. Landfill gas shall be purified for sale, used for its energy value, or flared when the quantity and quality of landfill gases will support combustion. Landfill gases may be vented when they will not support combustion. The collection and removal system shall include a monitoring system capable of collecting representative samples of gases generated in the landfill; and

(J) Meets the requirements of regulations, permits and policies administered by the jurisdictional air pollution control authority or the department under chapter 70.94 RCW, Washington Clean Air Act and Section 110 of the Federal Clean Air Act.

(ii) Presumptive final closure cover. Limited purpose landfills designed and constructed with the following closure cover are presumed to meet the performance standards in (e)(i)(A) through (D) of this subsection. An alternative final closure cover shall be used when the nature of the waste, the disposal facility or other factors are incompatible with the presumptive final closure cover system. The presumptive final closure cover consists of the following components:

(A) An antierosion layer consisting of a minimum of two feet (60 cm) of earthen material of which at least twelve inches (30 cm) of the uppermost layer is capable of sustaining native vegetation, seeded with grass or other shallow rooted vegetation; and

(B) A geomembrane with a minimum of 30-mil (.76 mm) thickness, or a greater thickness that is commensurate with the ability to join the geomembrane material and site characteristics such as slope, overlaying a competent foundation.

(f) Water balance and ground water contaminant fate and transport modeling. Any modeling performed for evaluating a landfill design shall meet the following performance standards:

(i) All water balance analysis shall be performed using:

(A) The Hydrologic Evaluation of Landfill Performance (HELP) Model; or

(B) Alternate methods approved by the jurisdictional health department. Alternate methods shall have supporting documentation establishing its ability to accurately represent the water balance within the landfill unit.

(ii) Any ground water and contaminant fate and transport modeling shall be conducted by a licensed professional in accordance with the requirements of chapter 18.220 RCW and meet the following performance standards:

(A) The model shall have supporting documentation that establishes the ability of those methods to represent ground water flow and contaminant transport under the conditions at the site;

(B) The model shall be calibrated against site-specific field data;

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(C) A sensitivity analysis shall be conducted to measure the model's response to changes in the values assigned to major parameters, specific tolerances, and numerically assigned space and time discretizations;

(D) The value of the model's parameters requiring site-specific data shall be based upon actual field or laboratory measurements; and

(E) The values of the model's parameters that do not require site-specific data shall be supported by laboratory test results or equivalent methods documenting the validity of the chosen parameter values.

(g) Seismic impact zones. Limited purpose landfills located in seismic impact zones shall be designed and constructed so that all containment structures, including liners, leachate collection systems, surface water control systems, gas management, and closure cover systems are able to resist the maximum horizontal acceleration in lithified earth materials for the site.

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(h) The owner or operator of limited purpose landfills located in an unstable area shall demonstrate that engineering measures have been incorporated into the landfill's design to ensure that the integrity of the structural components of the landfill will not be disrupted. The owner or operator shall place the demonstration in the application for a permit. The owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

(i) On-site or local soil conditions that may result in significant differential settling;

(ii) On-site or local geologic or geomorphologic features; and

(iii) On-site or local human-made features or events (both surface and subsurface).

(i) Limited purpose landfills shall be designed to provide a setback of at least one hundred feet between the active area and the property boundary. The setback shall be increased if necessary to:

(i) Control nuisance odors, dust, and litter;

(ii) Provide a space for the placement of monitoring wells, gas probes, run-on/runoff controls, and other design elements; or

(iii) Provide sufficient area to allow proper operation of the landfill and access to environmental monitoring systems and facility structures.

(4) *Limited purpose landfills - Operating standards.* The owner or operator of a limited purpose landfill shall:

(a) Operate the facility to:

(i) Control public access and prevent unauthorized vehicular traffic, illegal dumping of wastes, and keep animals out by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment. A lockable gate shall be required at each entry to the landfill;

(ii) Provide approach and exit roads of all-weather construction, with traffic separation and traffic control on-site, and at the site entrance;

(iii) Ensure that no liquid waste or liquids are placed in disposal facilities;

(iv) Provide on-site fire protection as determined by the local and state fire control jurisdiction. Landfills disposing of wastes that can support combustion shall have a method to control subsurface fires;

(v) Ensure that at least two landfill personnel are on-site with one person at the active face when the site is open to the public for disposal facilities with a permitted capacity of greater than fifty thousand cubic yards per year;

(vi) Provide communication between employees working at the landfill and management offices, on-site and off-site, sufficient to handle emergencies;

(vii) Control fugitive dust;

(viii) Perform no open burning unless permitted by the jurisdictional air pollution control agency or the department under chapter 70.94 RCW, Washington Clean Air Act;

(ix) Collect scattered litter as necessary to prevent vector harborage, a fire hazard, aesthetic impacts, or adversely affect wildlife or its habitat;

(x) Prohibit scavenging;

(xi) Ensure that reserve operational equipment shall be available to maintain and meet these standards; and

(xii) Ensure that operations do not endanger any containment or monitoring structures such as liners, leachate collection systems, surface water control systems, gas management, cover systems and monitoring wells.

(b) Operate the facility in compliance with the following operating standards unless a demonstration can be made during the permitting process that due to the nature, source of the waste, or quality of the leachate generated, these standards are not necessary for the protection of human health or the environment:

(i) Implement a program at the facility for detecting and preventing the disposal of dangerous waste fully regulated under chapter 173-303 WAC, municipal solid waste and other prohibited wastes. This program shall include, at a minimum:

(A) Random inspections of incoming loads unless the owner or operator takes other steps (for example, instituting source controls restricting the type of waste received) to ensure that incoming loads do not contain prohibited wastes. Random inspections shall include:

(I) Discharging a random waste load onto a suitable surface, or portion of the tipping area. A suitable surface shall be chosen to avoid interference with operations, so that sorted waste can be distinguished from other loads of uninspected waste, to avoid litter, and to contain runoff;

(II) The contents of the load shall be visually inspected prior to actual disposal of the waste. The facility owner or operator shall return prohibited waste to the hauler, arrange for disposal of prohibited wastes at a facility permitted to manage those wastes, or take other measures to prevent disposal of the prohibited waste at the facility;

(B) Maintaining records of inspections, or the results of other procedures if appropriate;

(C) Training facility personnel to recognize regulated dangerous waste, prohibited polychlorinated biphenyls (PCB) wastes and other prohibited wastes; and

(D) Immediate notification of the department and the jurisdictional health department if a regulated dangerous waste or prohibited PCB waste is discovered at the facility.

(ii) Thoroughly compact the solid waste before succeeding layers are added except for the first lift over a liner.

(iii) Cover disposed waste to control disease vectors, fires, nuisance odors, blowing litter, and scavenging. Putrescible waste shall be covered at the end of each operating day, or at more frequent intervals if necessary. The jurisdictional health department may grant a temporary waiver, not to exceed three months, from the requirement of this subsection if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical. Materials used for cover shall be:

(A) At least six inches (15 cm) of earthen material, such as soils; or

(B) Alternative materials or an alternative thickness other than at least six inches (15 cm) of earthen material as approved by the jurisdictional health department when the owner or operator demonstrates that the alternative material or thickness will control vectors, fires, nuisance odors, blowing litter, scavenging, provide adequate access for heavy vehicles, and will not adversely affect gas or leachate composition and controls.

(iv) Prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment; and

(v) Implement a program at the facility to control and monitor explosive gases and to respond to the detection of explosive gases in a manner that ensures protection of human health. This program shall include, at a minimum:

(A) Ensure that explosive gases generated by the facility do not exceed:

(I) Twenty-five percent of the lower explosive limit for the gases in facility structures (excluding the gas control or recovery system components);

(II) The lower explosive limit in soil gases or in ambient air for the gases at the property boundary or beyond; and

(III) One hundred parts per million by volume of hydrocarbons (expressed as methane) in off-site structures;

(B) A routine explosive gas-monitoring program to ensure that all standards are met. The minimum frequency for monitoring is quarterly. The type and frequency of monitoring shall be determined based on the following factors:

(I) Soil conditions;

(II) The hydrogeologic conditions surrounding the facility;

(III) The hydraulic conditions surrounding the facility; and

(IV) The location of facility structures and property boundaries;

(C) If explosive gas levels exceed those of this subsection take all necessary steps to ensure protection of human health including:

(I) Notifying the jurisdictional health department;

(II) Monitoring off-site structures;

(III) Monitoring explosive gas levels daily, unless otherwise authorized by the jurisdictional health department;

(IV) Evacuation of buildings affected by landfill gas until determined to be safe for occupancy;

(V) Within seven calendar days of the explosive gas levels detection, placing in the operating record the explosive gas levels detected and a description of the steps taken to protect human health and provide written notification to the jurisdictional health department; and

(VI) Within sixty days of the explosive gas levels detection, implementing a remediation plan for the explosive gas releases, describing the nature and extent of the problem and the remedy. This shall be sent to the jurisdictional health department for approval as an amendment to the plan of operation. A copy of the remediation plan shall be placed in the operating record;

(D) Construction and decommissioning of all gas monitoring and extraction wells in a manner that protects ground water and meets the requirements of chapter 173-160 WAC, Minimum standards for construction and maintenance of wells;

(c) Inspect and maintain the facility to prevent malfunctions and deterioration, operator errors, and discharges that may cause or lead to the release of wastes to the environment or cause a threat to human health. The inspections shall be at least weekly, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process. The owner or operator shall keep an inspection report or summary including at least the date and time of inspection, the printed name and the signature of the inspector, a notation of observations made, and the date and nature of any repairs or corrective actions;

(d) Maintain daily operating records on the weights (or volumes), number of vehicles entering and the types of wastes received. Facility inspection reports shall be maintained in the operating record. Significant deviations from the plan of operation shall be noted on the operating record. Records shall be maintained for a minimum of five years and shall be available upon request by the jurisdictional health department;

(e) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st of each year. The annual report shall cover landfill activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity and type of waste accepted in tons or cubic yards with an estimate of density in pounds per cubic yard;

(iv) Results of ground water monitoring in accordance with WAC 173-350-500;

(v) Applicable financial assurance reviews and audit findings in accordance with WAC 173-350-600; and

(vi) Any additional information required by the jurisdictional health department as a condition of the permit;

(f) Develop, keep, and abide by a plan of operation approved as part of the permitting process. The plan shall describe the operation of the facility and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall contain:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of how solid wastes are to be handled on-site during its active life including:

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(A) The acceptance criteria that will be applied to the waste;

(B) Procedures for ensuring only the waste described will be accepted;

(C) Procedures for handling unacceptable wastes; and

(D) Unloading and staging areas, transportation, routine filling, compaction, grading, cover or other vector controls, and housekeeping;

(iii) A description of how equipment, structures and other systems, including leachate collection, gas collection, run-on/runoff controls, and hydraulic gradient control systems, are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety and emergency plans including;

(A) Procedures for fire (including subsurface fires) prevention, a description of fire protection equipment available on-site and actions to take if there is a fire or explosion;

(B) Actions to take if leaks are detected or for other releases, such as failure of runoff containment system, if such systems are required;

(v) The forms for recording weights and volumes; and

(vi) Other such details to demonstrate that the landfill will be operated in accordance with this subsection and as required by the jurisdictional health department.

(5) *Limited purpose landfills - Ground water monitoring requirements.* Limited purpose landfills are subject to the ground water monitoring requirements of WAC 173-350-500.

(6) *Limited purpose landfills - Closure requirements.* The following closure requirements apply in full to facilities with limited purpose landfills:

(a) The owner or operator shall notify the jurisdictional health department, and where applicable, the financial assurance instrument provider, one hundred eighty days in advance of closure of the facility, or any portion thereof. The facility, or any portion thereof, shall close in a manner that:

(i) Minimizes the need for further maintenance;

(ii) Controls, minimizes, or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated runoff, or waste decomposition products to the ground, ground water, surface water, and the atmosphere; and

(iii) Prepares the facility, or any portion thereof, for the post-closure period.

(b) The owner or operator shall commence implementation of the closure plan in part or whole within thirty days after receipt of the final volume of waste and/or attaining the final landfill elevation at part of or at the entire landfill as identified in the approved facility closure plan unless otherwise specified in the closure plan.

(c) The owner or operator shall not accept waste, including inert wastes, for disposal or for use in closure except as identified in the closure plan approved by the jurisdictional health department.

(d) The owner or operator shall develop, keep, and abide by a closure plan approved by the jurisdictional health department as part of the permitting process. At a minimum, the closure plan shall include the following information:

(i) A description of the final closure cover, designed in accordance with subsection (3)(e) of this section, the methods and procedures to be used to install the closure cover, sources of borrow materials for the closure cover, and a schedule or description of the time required for completing closure activities;

(ii) Projected time intervals at which sequential partial closure and final closure are to be implemented;

(iii) A description of the activities and procedures that will be used to ensure compliance with (a) through (g) of this subsection; and

(iv) Identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs, from the approved financial assurance instrument.

(e) The owner or operator shall submit final engineering closure plans, in accordance with the approved closure plan and all approved amendments, for review, comment, and approval by the jurisdictional health department.

(f) When landfill closure is completed in part or whole, the owner or operator shall submit the following to the jurisdictional health department:

(i) Landfill closure plan sheets signed by a professional engineer registered in the state of Washington and modified as necessary to represent as-built changes to final closure construction for the landfill, or a portion thereof, as approved in the closure plan; and

(ii) Certification by the owner or operator, and a professional engineer registered in the state of Washington, that the landfill, or a portion thereof has been closed in accordance with the approved closure plan.

(g) The owner or operator shall record maps and a statement of fact concerning the location of the disposal facility as part of the deed with the county auditor not later than three months after closure.

(h) The jurisdictional health department shall notify the owner or operator, the department, and the financial assurance instrument provider, of the date when the jurisdictional health department has verified that the facility, or a portion thereof, has been closed in accordance with the specifications of the approved closure plan and the closure requirements of this section, at which time the post-closure period shall commence.

(7) *Limited purpose landfills - Post-closure requirements.* The following post-closure requirements apply in full to facilities with limited purpose landfills:

(a) The owner or operator shall provide post-closure activities to allow for continued facility maintenance and monitoring of air, land, and water for a period of twenty years, or as long as necessary for the landfill to stabilize and to protect human health and the environment. For disposal facilities, post-closure care includes at least the following:

(i) Maintaining the integrity and effectiveness of any final closure cover, including making repairs to the closure cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, maintaining the vegetative cover, and preventing run-on and runoff from eroding or otherwise damaging the final closure cover;

(ii) General maintenance of the facility and facility structures for their intended use;

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(iii) Monitoring ground water, surface water, leachate, or other waters in accordance with the requirements of WAC 173-350-500 and the approved monitoring plan, including remedial measures if applicable, and maintaining all monitoring systems;

(iv) Monitoring landfill gas and maintaining and operating the gas collection and control systems;

(v) Maintaining, operating, and monitoring hydraulic gradient controls systems if applicable;

(vi) Monitoring settlement; and

(vii) Any other activities deemed appropriate by the jurisdictional health department.

(b) The owner or operator shall commence post-closure activities for the facility, or portion thereof, after completion of closure activities outlined in subsection (6) of this section. The jurisdictional health department may direct that post-closure activities cease until the owner or operator receives a notice to proceed with post-closure activities.

(c) The owner or operator shall develop, keep, and abide by a post-closure plan approved by the jurisdictional health department as a part of the permitting process. The post-closure plan shall:

(i) Address facility maintenance and monitoring activities for at least a twenty-year period or until the landfill becomes stabilized (i.e., little or no settlement, gas production or leachate generation), and monitoring of ground water, surface water, gases and settlement can be safely discontinued; and

(ii) Project time intervals at which post-closure activities are to be implemented, and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The owner or operator shall complete post-closure activities for the facility, or portion thereof, in accordance with the approved post-closure plan and schedule, or the plan shall be so amended with the approval of the jurisdictional health department. The jurisdictional health department may direct facility post-closure activities, in part or completely, to cease until the post-closure plan has been amended and has received written approval by the health department.

(e) When post-closure activities are complete, the owner or operator shall submit a certification to the jurisdictional health department, signed by the owner or operator, and a professional engineer registered in the state of Washington stating why post-closure activities are no longer necessary.

(f) If the jurisdictional health department finds that post-closure monitoring has established that the landfill is stabilized, the health department may authorize the owner or operator to discontinue post-closure maintenance and monitoring activities.

(g) The jurisdictional health department shall notify the owner or operator, the department, and the financial assurance instrument provider, of the date when the jurisdictional health department has verified that the facility has completed post-closure activities in accordance with the specifications of the approved post-closure plan.

(8) *Limited purpose landfills - Financial assurance requirements.*

(a) Financial assurance is required for all limited purpose landfills.

(b) Each owner or operator shall establish a financial assurance mechanism in accordance with WAC 173-350-600 that will accumulate funds equal to the closure and post-closure cost estimates over the life of the landfill, or over the life of each landfill unit if closed discretely.

(c) No owner or operator shall commence or continue disposal operations in any part of a facility subject to this section until a financial assurance instrument has been provided for closure and post-closure activities in conformance with WAC 173-350-600.

(9) *Limited purpose landfills - Permit application contents.* The owner or operator shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(a) Demonstrations that the facility meets the location standards of subsection (2) of this section;

(b) Documentation that all owners of property located within one thousand feet of the facility property boundary have been notified that the proposed facility may impact their ability to construct water supply wells, in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells;

(c) Engineering reports/plans and specifications that address the design standards of subsection (3) of this section;

(d) A plan of operation meeting the requirements of subsection (4) of this section;

(e) Hydrogeologic reports and plans that address the requirements of subsection (5) of this section;

(f) A closure plan meeting the requirements of subsection (6) of this section;

(g) A post-closure plan meeting the requirements of subsection (7) of this section; and

(h) Documentation as needed to meet the financial assurance requirements of subsection (8) of this section.

(10) *Limited purpose landfills - Construction records.* The owner or operator of a limited purpose landfill shall provide copies of the construction record drawings for engineered facilities at the site and a report documenting facility construction, including the results of observations and testing carried out as part of the construction quality assurance plan, to the jurisdictional health department and the department. Facilities shall not commence operation until the jurisdictional health department has determined that the construction was completed in accordance with the approved engineering report/plans and specifications and has approved the construction documentation in writing.

NEW SECTION

WAC 173-350-410 Inert waste landfills. (1) *Inert waste landfills - Applicability.* These standards apply to landfills that receive only inert wastes, as identified pursuant to WAC 173-350-990, including facilities that use inert wastes as a component of fill. In accordance with RCW 70.95.305,

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facilities with a total capacity of two hundred fifty cubic yards or less of inert wastes are categorically exempt from solid waste handling permitting and other requirements of this section, provided that the inert waste landfill is operated in compliance with the performance standards of WAC 173-350-040. An owner or operator that does not comply with the performance standards of WAC 173-350-040 is required to obtain a permit from the jurisdictional health department, and may be subject to the penalty provisions of RCW 70.95.315.

(2) *Inert waste landfills - Location standards.* All inert waste landfills shall be located to meet the following requirements. No inert waste landfill's active area shall be located:

(a) On an unstable slope;

(b) Closer than ten feet from the facility property line;

(c) Closer than one hundred feet to a drinking water supply well; or

(d) In a channel migration zone as defined in WAC 173-350-100, or within one hundred feet measured horizontally, of a stream, lake, pond, river, or saltwater body, nor in any wetland nor any public land that is being used by a public water system for watershed control for municipal drinking water purposes in accordance with WAC 248-54-660(4).

(3) *Inert waste landfills - Design standards.* The owner or operator of an inert waste landfill shall prepare engineering reports/plans and specifications to address the design standards of this subsection. The existing site topography, including the location and approximate thickness and nature of any existing waste, the vertical and horizontal limits of excavation and waste placement, final closure elevation and grades, and the design capacity of each landfill unit, total design capacity, and future use of the facility after closure, shall be included. Inert waste landfills shall be designed and constructed to:

(a) Ensure that all waste is above the seasonal high level of ground water. For the purpose of this section, ground water includes any water-bearing unit which is horizontally and vertically extensive, hydraulically recharged, and volumetrically significant;

(b) Maintain a stable site; and

(c) Manage surface water, including run-on prevention and runoff conveyance, storage, and treatment, to protect the waters of the state;

(4) *Inert waste landfills - Operating standards.* The owner or operator of an inert waste landfill shall:

(a) Operate the facility to:

(i) Control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes;

(ii) Implement a program at the facility capable of detecting and preventing noninert wastes from being accepted or mixed with inert waste;

(iii) Handle all inert waste in a manner that is in compliance with the performance standards of WAC 173-350-040;

(iv) Handle all inert waste in a manner that controls fugitive dust and is protective of waters of the state; and

(v) Prevent unstable conditions resulting from their activities;

(b) Inspect and maintain the facility to prevent malfunctions and deterioration, operator errors and discharges that may cause a threat to human health. Inspections shall be as needed, but at least weekly, to ensure meeting operational standards, unless an alternate schedule is approved by the jurisdictional health department as part of the permitting process;

(c) Maintain daily operating records of the quantities of inert waste disposed. In addition, record and retain information that documents that all wastes landfilled meet the criteria for inert waste. Facility inspection reports shall be maintained in the operating record. Significant deviations from the plan of operation shall be noted in the operating record. Records shall be maintained for minimum of five years and shall be available upon request by the jurisdictional health department;

(d) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st on forms supplied by the department. The annual report shall detail the facility's activities during the previous calendar year and shall include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity and type of waste disposed in tons or cubic yards with an estimate of density in pounds per cubic yard; and

(iv) Any additional information required by the jurisdictional health department as a condition of the permit;

(e) Develop, keep, and abide by a plan of operation approved as part of the permitting process. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the jurisdictional health department. If necessary, the plan shall be modified with the approval, or at the direction of the jurisdictional health department. Each plan of operation shall include:

(i) A description of the types of solid waste to be handled at the facility;

(ii) A description of how solid wastes are to be handled on-site during its active life including:

(A) Acceptance criteria that will be applied to the waste;

(B) Procedures for ensuring only the waste described will be accepted;

(C) Procedures for handling unacceptable wastes; and

(D) Procedures for transporting and routine filling and grading;

(iii) A description of how equipment, structures and other systems are to be inspected and maintained, including the frequency of inspection and inspection logs;

(iv) Safety and emergency plans;

(v) The forms used to record weights and volumes; and

(vi) Other such details to demonstrate that the facility will meet the requirements of this subsection and as required by the jurisdictional health department.

(5) *Inert waste landfills - Ground water monitoring standards.* There are no specific ground water monitoring requirements for inert waste landfills subject to this chapter; however, inert waste landfills must meet the requirements provided under WAC 173-350-040(5).

(6) *Inert waste landfills - Closure requirements.* The owner or operator of an inert waste landfill shall:

(a) Notify the jurisdictional health department sixty days in advance of closure of the facility;

(b) Close the inert waste landfill unit by leveling the wastes to the extent practicable, or as appropriate for the proposed future use, and fill all voids which could pose a physical threat for persons, or which provide disease vector harborages. The inert waste landfills shall be closed in a manner to control fugitive dust and protect the waters of the state; and

(c) Record maps and a statement of fact concerning the location of the landfill as part of the deed with the county auditor not later than three months after closure.

(7) *Inert waste landfills - Financial assurance requirements.* There are no specific financial assurance requirements for inert waste landfills subject to this chapter; however, inert waste landfills must meet the requirements provided under WAC 173-350-040(5).

(8) *Inert waste landfills - Permit application contents.* The owner or operator shall obtain a solid waste permit from the jurisdictional health department. All applications for permits shall be submitted in accordance with the procedures established in WAC 173-350-710. In addition to the requirements of WAC 173-350-710 and 173-350-715, each application for a permit shall contain:

(a) Engineering reports/plans and specifications that address the design standards of subsection (3) of this section;

(b) A plan of operation that meets the requirements of subsection (4) of this section; and

(c) Documentation that all owners of property located within one thousand feet of the facility property boundary have been notified that the proposed facility may impact their ability to construct water supply wells, in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

NEW SECTION

WAC 173-350-490 Other methods of solid waste handling. (1) *Other methods of solid waste handling - Applicability.* This section applies to other methods of solid waste handling not specifically identified elsewhere in this regulation, nor excluded from this regulation.

(2) *Other methods of solid waste handling - Requirements.* Owners and operators of solid waste handling facilities subject to this section shall:

(a) Comply with the requirements in WAC 173-350-040; and

(b) Obtain a permit in accordance with the provisions of WAC 173-350-700 from the jurisdictional health department. Permit applications shall be submitted in accordance with the provisions of WAC 173-350-710 and shall include information required in WAC 173-350-715, and any other information as may be required by the jurisdictional health department.

NEW SECTION

WAC 173-350-500 Ground water monitoring. (1) *Ground water monitoring - Professional qualifications.* All reports, plans, procedures, and design specifications required by this section shall be prepared by a licensed professional in accordance with the requirements of chapter 18.220 RCW.

(2) *Ground water monitoring - Site characterization.* A site proposed for solid waste activities shall be characterized for its geologic and hydrogeologic properties and suitability for constructing, operating, and monitoring a solid waste facility in accordance with all applicable requirements of this chapter. The site characterization report shall be submitted with the permit application and shall include at a minimum the following:

(a) A summary of local and regional geology and hydrology, including:

(i) Faults;

(ii) Zones of joint concentrations;

(iii) Unstable slopes and subsidence areas on-site;

(iv) Areas of ground water recharge and discharge;

(v) Stratigraphy; and

(vi) Erosional and depositional environments and facies interpretation(s);

(b) A site-specific borehole program including description of lithology, soil/bedrock types and properties, preferential ground water flow paths or zones of higher hydraulic conductivity, the presence of confining unit(s) and geologic features such as fault zones, cross-cutting structures, etc., and the target hydrostratigraphic unit(s) to be monitored. Requirements of the borehole program include:

(i) Each boring will be of sufficient depth below the proposed grade of the bottom liner to identify soil, bedrock, and hydrostratigraphic unit(s);

(ii) Boring samples shall be collected from five-foot intervals at a minimum and at changes in lithology. Representative samples shall be described using the unified soil classification system following ASTM D2487-85 and tested for the following if appropriate:

(A) Particle size distribution by sieve and hydrometer analyses in accordance with approved ASTM methods (D422 and D1120); and

(B) Atterburg limits following approved ASTM method D4318;

(iii) Each lithologic unit on-site will be analyzed for:

(A) Moisture content sufficient to characterize the unit using ASTM method D2216; and

(B) Hydraulic conductivity by an in situ field method or laboratory method. All samples collected for the determination of permeability shall be collected by standard ASTM procedures;

(iv) All boring logs shall be submitted with the following information:

(A) Soil and rock descriptions and classifications;

(B) Method of sampling;

(C) Sample depth, interval and recovery;

(D) Date of boring;

(E) Water level measurements;

(F) Standard penetration number following approved ASTM method D1586-67;

(G) Boring location; and

(H) Soil test data;

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(v) All borings not converted to monitoring wells or piezometers shall be carefully backfilled, plugged, and recorded in accordance with WAC 173-160-420;

(vi) During the borehole drilling program, any on-site drilling and lithologic unit identification shall be performed under the direction of a licensed professional in accordance with the requirements of chapter 18.220 RCW who is trained to sample and identify soils and bedrock lithology;

(vii) An on-site horizontal and vertical reference datum shall be established during the site characterization. The standards for land boundary surveys and geodetic control surveys and guidelines for the preparation of land descriptions shall be used to establish borehole and monitoring well coordinates and casing elevations from the reference datum;

(viii) Other methods, including geophysical techniques, may be used to supplement the borehole program to ensure that a sufficient hydrogeologic site characterization is accomplished;

(c) A site-specific flow path analysis that includes:

(i) The depths to ground water and hydrostratigraphic unit(s) including transmissive and confining units; and

(ii) Potentiometric surface elevations and contour maps, direction and rate of horizontal and vertical ground water flow;

(d) Identification of the quantity, location, and construction (where available) of private and public wells within a two thousand-foot radius, measured from the site boundaries;

(e) Tabulation of all water rights for ground water and surface water within a two thousand-foot (610 m) radius, measured from site boundaries;

(f) Identification and description of all surface waters within a one-mile (1.6 km) radius, measured from site boundaries;

(g) A summary of all previously collected site ground water and surface water analytical data, and for expanded facilities, identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges to date;

(h) Calculation of a site water balance;

(i) Conceptual design of ground water and surface water monitoring systems, and where applicable a vadose zone monitoring system, including proposed construction and installation methods for these systems;

(j) Description of land use in the area, including nearby residences;

(k) A topographic map of the site and drainage patterns, including an outline of the waste management area, property boundary, the proposed location of ground water monitoring wells, and township and range designations; and

(l) Geologic cross sections.

(3) *Ground water monitoring - System design.*

(a) The ground water monitoring system design and report shall be submitted with the permit application and shall meet the following criteria:

(i) A sufficient number of monitoring wells shall be installed at appropriate locations and depths to yield representative ground water samples from those hydrostratigraphic units which have been identified in the site characterization as the earliest potential contaminant flowpaths;

(ii) Represent the quality of ground water at the point of compliance, and include at a minimum:

(A) A ground water flow path analysis which supports why the chosen hydrostratigraphic unit is capable of providing an early warning detection of any ground water contamination.

(B) Documentation and calculations of all of the following information:

(I) Hydrostratigraphic unit thickness including confining units and transmissive units;

(II) Vertical and horizontal ground water flow directions including seasonal, man-made, or other short-term fluctuations in ground water flow;

(III) Stratigraphy and lithology;

(IV) Hydraulic conductivity; and

(V) Porosity and effective porosity.

(b) Upgradient monitoring wells (background wells) shall meet the following performance criteria:

(i) Shall be installed in ground water that has not been affected by leakage from a landfill unit; or

(ii) If hydrogeologic conditions do not allow for the determination of an upgradient monitoring well, then sampling at other monitoring wells which provide representative background ground water quality may be allowed.

(c) Downgradient monitoring wells (compliance wells) shall meet the following performance criteria:

(i) Represent the quality of ground water at the point of compliance;

(ii) Be installed as close as practical to the point of compliance;

(iii) When physical obstacles preclude installation of ground water monitoring wells at the relevant point of compliance at the landfill unit or solid waste facility, the downgradient monitoring system may be installed at the closest practical distance hydraulically downgradient from the relevant point of compliance that ensures detection of ground water contamination in the chosen hydrostratigraphic unit.

(d) All monitoring wells shall be constructed in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells, and chapter 173-162 WAC, Regulation and licensing of well contractors and operators.

(e) The owner or operator shall notify the jurisdictional health department and the department of any proposed changes to the design, installation, development, and decommission of any monitoring wells, piezometers, and other measurement, sampling, and analytical devices. Proposed changes shall not be implemented prior to the jurisdictional health department's written approval. Upon completing changes, all documentation, including date of change, new monitoring well location maps, boring logs, and monitoring well diagrams, shall be submitted to the jurisdictional health department and shall be placed in the operating record.

(f) All monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(4) *Ground water monitoring - Sampling and analysis plan.*

(a) The ground water monitoring program shall include consistent sampling and analysis procedures that are designed to provide monitoring results that are representative of ground water quality at the upgradient and downgradient monitoring wells. In addition to monitoring wells, facilities with hydraulic gradient control and/or leak detection systems will provide representative ground water samples from those systems. The owner or operator shall submit a compliance sampling and analysis plan as part of the permit application. The plan shall include procedures and techniques for:

(i) Sample collection and handling;

(ii) Sample preservation and shipment;

(iii) Analytical procedures;

(iv) Chain-of-custody control;

(v) Quality assurance and quality control;

(vi) Decontamination of drilling and sampling equipment;

(vii) Procedures to ensure employee health and safety during well installation and monitoring; and

(viii) Well operation and maintenance procedures.

(b) Facilities collecting leachate shall include leachate sampling and analysis as part of compliance monitoring.

(c) The ground water monitoring program shall include sampling and analytical methods that are appropriate for ground water samples. The sampling and analytical methods shall provide sufficient sensitivity, precision, selectivity and limited bias such that changes in ground water quality can be detected and quantified. All samples shall be sent to an accredited laboratory for analyses in accordance with chapter 173-50 WAC, Accreditation of environmental laboratories.

(d) Ground water elevations shall be measured in each monitoring well immediately prior to purging, each time ground water is sampled. The owner or operator shall determine the rate and direction of ground water flow each time ground water is sampled. All ground water elevations shall be determined by a method that ensures measurement to the one hundredth of a foot (3 mm) relative to the top of the well casing.

(e) Ground water elevations in wells that monitor the same landfill unit shall be measured within a period of time short enough to avoid any ground water fluctuations which could preclude the accurate determination of ground water flow rate and direction.

(f) The owner or operator shall establish background ground water quality in each upgradient and downgradient monitoring well. Background ground water quality shall be based upon a minimum of eight independent samples. Samples shall be collected for each monitoring well and shall be analyzed for parameters required in the permit for the first year of ground water monitoring. Each independent sampling event shall be no less than one month after the previous sampling event.

(g) Ground water quality shall be determined at each monitoring well at least quarterly during the active life of the solid waste facility, including closure and the post-closure period. More frequent monitoring may be required to protect downgradient water supply wells. Ground water monitoring shall begin after background ground water quality has been established. The owner or operator may propose an alternate ground water monitoring frequency. Ground water monitoring frequency must be no less than semiannually. The owner or operator must apply for a permit modification or must apply during the renewal process for changes in ground water monitoring frequency making a demonstration based on the following information:

(i) A characterization of the hydrostratigraphic unit(s) including the unsaturated zone, transmissive and confining units and include the following:

(A) Hydraulic conductivity; and

(B) Ground water flow rates;

(ii) Minimum distance between upgradient edge of the solid waste handling unit and downgradient monitoring wells (minimum distance of travel); and

(iii) Contaminant fate and transport characteristics.

(h) All facilities shall test for the following parameters:

(i) Field parameters:

(A) pH;

(B) Specific conductance;

(C) Temperature;

(D) Static water level;

(ii) Geochemical indicator parameters:

(A) Alkalinity (as Ca CO_3);

(B) Bicarbonate (HCO_3);

(C) Calcium (Ca);

(D) Chloride (Cl);

(E) Iron (Fe);

(F) Magnesium (Mg);

(G) Manganese (Mn);

(H) Nitrate(NO_3);

(I) Sodium (Na);

(J) Sulfate (SO_4);

(iii) Leachate indicators:

(A) Ammonia (NH_3-N);

(B) Total organic carbon (TOC);

(C) Total dissolved solids (TDS).

(i) Based upon the site specific waste profile and also the leachate characteristics for lined facilities, the owner or operator shall propose additional constituents to include in the monitoring program. The jurisdictional health department shall specify the additional constituents in the solid waste permit.

(j) Testing shall be performed in accordance with "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*," U.S. EPA Publication SW-846, or other testing methods approved by the jurisdictional health department.

(k) Maximum contaminant levels (MCL) for ground water are those specified in chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington.

(5) *Ground water monitoring - Data analysis, notification and reporting.*

(a) The results of monitoring well sample analyses as required by subsection (4)(h) and (i) of this section shall be evaluated using an appropriate statistical procedure(s), as approved by the jurisdictional health department during the permitting process, to determine if a significant increase over background has occurred. The statistical procedure(s) used shall be proposed in the sampling and analysis plan and be designed specifically for the intended site, or prescriptive sta-

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tistical procedures from appropriate state and federal guidance may be used.

(b) If statistical analyses determine a significant increase over background:

(i) The owner or operator shall:

(A) Notify the jurisdictional health department and the department of this finding within thirty days of receipt of the sampling data. The notification shall indicate what parameters or constituents have shown statistically significant increases;

(B) Immediately resample the ground water for the parameter(s) showing statistically significant increase in the monitoring well(s) where the statistically significant increase has occurred;

(C) Establish a ground water protection standard using the ground water quality criteria of chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington. Constituents for which the background concentration level is higher than the protection standard, the owner or operator shall use background concentration for constituents established in the facility's monitoring record.

(ii) The owner or operator may demonstrate that a source other than a landfill unit or solid waste facility caused the contamination, or the statistically significant increase resulted from error in sampling, analyses, statistical evaluation, or natural variation in ground water quality. If such a demonstration cannot be made and the concentrations or levels of the constituents:

(A) Meet the criteria established by chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington, the owner or operator shall:

(I) Assess and evaluate sources of contamination; and

(II) Implement remedial measures in consultation with the jurisdictional health department and the department.

(B) Exceed the criteria established by chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington, the owner or operator shall:

(I) Characterize the chemical composition of the release and the contaminant fate and transport characteristics by installing additional monitoring wells;

(II) Assess and, if necessary, implement appropriate intermediate measures to remedy the release. The measures shall be approved by the jurisdictional health department and the department; and

(III) Evaluate, select, and implement remedial measures as required by chapter 173-340 WAC, the Model Toxics Control Act cleanup regulation, where applicable. The roles of the jurisdictional health department and the department in remedial action are further defined by WAC 173-350-900.

(c) The owner or operator shall submit a copy of an annual report to the jurisdictional health department and the department by April 1st of each year. The jurisdictional health department may require more frequent reporting based on the results of ground water monitoring. The annual report shall summarize and interpret the following information:

(i) All ground water monitoring data, including laboratory and field data for the sampling periods;

(ii) Statistical results and/or any statistical trends including any findings of any statistical increases for the year and time/concentration series plots;

(iii) A summary of concentrations above the maximum contaminant levels of chapter 173-200 WAC;

(iv) Static water level readings for each monitoring well for each sampling event;

(v) Potentiometric surface elevation maps depicting ground water flow rate and direction for each sampling event, noting any trends or changes during the year;

(vi) Geochemical evaluation including cation-anion balancing and trilinear and/or stiff diagraming for each sampling event noting any changes or trends in water chemistry for each well during the year; and

(vii) Leachate analyses where appropriate for each sampling event.

NEW SECTION

WAC 173-350-600 Financial assurance requirements. (1) *Financial assurance requirements - Applicability.* This section is applicable to:

(a) Waste tires storage facilities regulated under WAC 173-350-350;

(b) Private facility means a privately owned facility maintained on private property solely for the purpose of managing waste generated by the entity owning the site.

(c) Limited purpose landfills regulated under WAC 173-350-400.

(2) *Financial assurance requirements - Definitions.* For the purposes of this section, the following definitions apply:

(a) Public facility means a publicly or privately owned facility that accepts solid waste generated by other persons.

(b) Private facility means a privately owned facility maintained on private property solely for the purpose of managing waste generated by the entity owning the site.

(3) *Financial assurance requirements - Instrument options.* Financial assurance options are available, based on facility type as defined in WAC 173-350-600(2), ownership and permittee. Contents of all instruments must be acceptable to the jurisdictional health department. The following instrument options exist:

(a) Reserve accounts that are managed as either:

(i) Cash and investments accumulated and restricted for activities identified in the closure or post-closure plans, with the equivalent amount of fund balance reserved in the fund; or

(ii) Cash and investments held in a nonexpendable trust fund.

(b) Trust funds to receive, manage and disburse funds for activities identified in the approved closure and post-closure plans. Trust funds shall be established with an entity that has authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(c) Surety bond(s) issued by a surety company listed as acceptable in Circular 570 of the United States Treasury Department. A standby trust fund for closure or post-closure shall also be established by the owner or operator to receive any funds that may be paid by the operator or surety company. The surety shall become liable for the bond obligation if the owner or operator fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least one

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hundred twenty days after the owner or operator, the jurisdictional health department and the department have received notice of cancellation. If the owner or operator has not provided alternate financial assurance acceptable under this section within ninety days of the cancellation notice, the surety shall pay the amount of the bond into the standby closure or post-closure trust account. The following types of surety bonds are options:

(i) Surety bond; or

(ii) Surety bond guaranteeing that the owner or operator will perform final closure or post-closure activities.

(d) Irrevocable letter of credit issued by an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. Standby trust funds for closure and post-closure shall also be established by the owner or operator to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit shall be irrevocable and issued for a period of at least one year, and renewed annually, unless the issuing institution notifies the owner or operator, the jurisdictional health department and the department at least one hundred twenty days before the current expiration date. If the owner or operator fails to perform activities according to the closure or post-closure plan and permit requirements, or if the owner or operator fails to provide alternate financial assurance acceptable to the jurisdictional health department within ninety days after notification that the letter of credit will not be extended, the jurisdictional health department may require that the financial institution provide the funds from the letter of credit to the jurisdictional health department to be used to complete the required closure and post-closure activities;

(e) Insurance policies issued by an insurer who is licensed to transact the business of insurance or is eligible as an excess or surplus line insurer in one or more states, the content of which:

(i) Guarantees that the funds will be available to complete those activities identified in the approved closure or post-closure plans;

(ii) Guarantees that the insurer will be responsible for paying out funds for those activities;

(iii) Provides that the insurance is automatically renewable and that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium;

(iv) Provides that if there is a failure to pay the premium, the insurer may not terminate the policy until at least one hundred twenty days after the notice of cancellation has been received by the owner or operator, the jurisdictional health department and the department;

(v) Provides that termination of the policy may not occur and the policy shall remain in full force and effect if:

(A) The jurisdictional health department determines the facility has been abandoned;

(B) Closure has been ordered by the jurisdictional health department or a court of competent jurisdiction;

(C) The owner or operator has been named as debtor in a voluntary or involuntary proceeding under Title 11 U.S.C., Bankruptcy; or

(D) The premium due is paid;

(vi) The owner or operator is required to maintain the policy in full force and until an alternative financial assurance guarantee is provided or when the jurisdictional health department has verified that closure, and/or post-closure, as appropriate, have been completed in accordance with the approved closure or post-closure plan;

(vii) For purposes of this rule, "captive" insurance companies as defined in WAC 173-350-100, are not an acceptable insurance company.

(f) Financial Test/corporate guarantee allows for a private corporation meeting the financial test to provide a corporate guarantee those activities identified in the closure and post-closure plans will be completed.

(i) To qualify, a private corporation owner or operator shall meet the criteria of either option A or B:

(A) Option A - to pass the financial test under this option the private corporation shall have:

(I) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates;

(III) Tangible net worth of at least ten million dollars; and

(IV) Assets in the United States amounting to at least ninety percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates.

(B) Option B - to pass this alternative financial test, the private corporation shall have:

(I) A current rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates;

(III) Tangible net worth of at least ten million dollars; and

(IV) Assets in the United States amounting to at least ninety percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) The owner or operator's chief financial officer shall provide a corporate guarantee that the corporation passes the financial test at the time the closure plan is filed. This corporate guarantee shall be reconfirmed annually ninety days after the end of the corporation's fiscal year by submitting to the jurisdictional health department a letter signed by the chief financial officer that:

(A) Provides the information necessary to document that the owner or operator passes the financial test;

(B) Guarantees that the funds to finance closure and post-closure activities according to the closure or post-closure plan and permit requirements are available;

(C) Guarantees that closure and post-closure activities will be completed according to the closure or post-closure plan and permit requirements;

(D) Guarantees that within thirty days if written notification is received from the jurisdictional health department that the owner or operator no longer meets the criteria of the

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financial test, the owner or operator shall provide an alternative form of financial assurance consistent with the requirements of this section;

(E) Guarantees that the owner or operator's chief financial officer will notify in writing the jurisdictional health department and the department within fifteen days any time that the owner or operator no longer meets the criteria of the financial test or is named as debtor in a voluntary or involuntary proceeding under Title 11 U.S.C., Bankruptcy;

(F) Acknowledges that the corporate guarantee is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guarantee;

(G) Attaches a copy of the independent certified public accountant's report on examination of the owner or operator's financial statements for the latest completed fiscal year; and

(H) Attaches a special report from the owner or operator's independent certified public accountant (CPA) stating that the CPA has reviewed the information in the letter from the owner or operator's chief financial officer and has determined that the information is true and accurate.

(iii) The jurisdictional health department may, based on a reasonable belief that the owner or operator no longer meets the criteria of the financial test, require reports of the financial condition at any time in addition to the annual report. The jurisdictional health department will specify the information required in the report. If the jurisdictional health department finds, on the basis of such reports or other information, that the owner or operator no longer meets the criteria of the financial test, the owner or operator shall provide an alternative form of financial assurance consistent with the requirements of this section, within thirty days after notification by the jurisdictional health department.

(iv) If the owner or operator fails to perform final closure and, where required, provide post-closure care of a facility covered by the guarantee in accordance with the approved closure and post-closure plans, the guarantor will be required to complete the appropriate activities.

(v) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator, the jurisdictional health department and the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the owner or operator, the jurisdictional health department and the department.

(vi) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the jurisdictional health department within ninety days after receipt of a notice of cancellation of the guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(4) *Financial assurance requirements - Eligible financial assurance instruments.* The financial assurance instruments identified in subsection (3) of this section are available for use based on facility category and whether the permittee is a public or private entity as follows:

(a) For a public facility, as defined in subsection (2) of this section, when the permittee is a public entity, the following options are available:

(i) Reserve account;

(ii) Trust account;

(iii) Surety bond (payment or performance); or

(iv) Insurance;

(b) For a public facility as defined in subsection (2) of this section, where the permittee is a private entity, the following options are available:

(i) Trust account;

(ii) Surety bond (payment or performance);

(iii) Letter of credit; or

(iv) Insurance;

(c) For private facilities as defined in subsection (2) of this section, the following options are available:

(i) Trust account;

(ii) Surety bond (payment or performance);

(iii) Letter of credit;

(iv) Insurance; or

(v) Financial test/corporate guarantee.

(5) *Financial assurance requirements - Cost estimate for closure.* The owner or operator shall:

(a) Prepare a written closure cost estimate as part of the facility closure plan. The closure cost estimate shall:

(i) Be in current dollars and represent the cost of closing the facility;

(ii) Provide a detailed written estimate, in current dollars, of the cost of hiring a third party to close the facility at any time during the active life when the extent and manner of its operation would make closure the most expensive in accordance with the approved closure plan;

(iii) Project intervals for withdrawal of closure funds from the closure financial assurance instrument to complete the activities identified in the approved closure plan;

(iv) Not reduce by allowance for salvage value of equipment, solid waste, or the resale value of property or land;

(b) Prepare a new closure cost estimate in accordance with (a) of this subsection whenever:

(i) Changes in operating plans or facility design affect the closure plan; or

(ii) There is a change in the expected year of closure that affects the closure plan;

(c) Review the closure cost estimate by March 1st of each calendar year. The review shall be submitted to the jurisdictional health department, with a copy to the department, by April 1st of each calendar year stating that the review was completed and the findings of the review. The review will examine all factors, including inflation, involved in estimating the closure cost. Any cost changes shall be factored into a revised closure cost estimate and submit the revised cost estimate to the jurisdictional health department for review and approval. The jurisdictional health department shall evaluate each cost estimate for completeness, and may accept, or require a revision of the cost estimate in accordance with its evaluation.

(6) *Financial assurance requirements - Cost estimate for post-closure.* The owner or operator shall:

(a) Prepare a written post-closure cost estimate as part of the facility post-closure plan. The post-closure cost estimate shall:

(i) Be in current dollars and represent the total cost of completing post-closure activities for the facility for a twenty-year post-closure period or a time frame determined by the jurisdictional health department;

(ii) Provide a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the facility in compliance with the post-closure plan;

(iii) Project intervals for withdrawal of post-closure funds from the post-closure financial assurance instrument to complete the activities identified in the approved post-closure plan; and

(iv) Not reduce by allowance for salvage, value of equipment, or resale value of property or land.

(b) Prepare a new post-closure cost estimate for the remainder of the post-closure care period in accordance with (a) of this subsection, whenever a change in the post-closure plan increases or decreases the cost of post-closure care.

(c) During the operating life of the facility, the owner or operator must review the post-closure cost estimate by March 1st of each calendar year. The review will be submitted to the jurisdictional health department, with a copy to the department by April 1st of each calendar year stating that the review was completed and the finding of the review. The review shall examine all factors, including inflation, involved in estimating the post-closure cost estimate. Any changes in costs shall be factored into a revised post-closure cost estimate. The new estimate shall be submitted to the jurisdictional health department for approval. The jurisdictional health department shall evaluate each cost estimate for completeness, and may accept, or require a revision of the cost estimate in accordance with its evaluation.

(7) *Financial assurance requirements - Closure/post-closure financial assurance account establishment and reporting.*

(a) Closure and post-closure financial assurance funds generated shall be provided to the selected financial assurance instrument at the schedule specified in the closure and post-closure plans, such that adequate closure and post-closure funds will be generated to ensure full implementation of the approved closure and post-closure plans.

(b) The facility owner or operator with systematic deposits shall establish a procedure with the financial assurance instruments trustee for notification of nonpayment of funds to be sent to the jurisdictional health department and the department.

(c) The owner or operator shall file with the jurisdictional health department, no later than April 1st of each year, an annual audit of the financial assurance accounts established for closure and post-closure activities, and a statement of the percentage of user fees, as applicable, diverted to the financial assurance instruments, for the previous calendar year:

(i) For facilities owned and operated by municipal corporations, the financial assurance accounts shall be audited according to the audit schedule of the office of state auditor. A certification of audit completion and summary findings shall be filed with the jurisdictional health department and the department, including during each of the post-closure care years.

(ii) For facilities not owned or operated by municipal corporations:

(A) Annual audits shall be conducted by a certified public accountant licensed in the state of Washington. A certification of audit completion and summary findings shall be filed with the jurisdictional health department and the department, including during each of the post-closure care years.

(B) The audit shall also include, as applicable, calculations demonstrating the proportion of closure or post-closure, completed during the preceding year as specified in the closure and post-closure plans.

(d) Established financial assurance accounts shall not constitute an asset of the facility owner or operator.

(e) Any income accruing to the established financial assurance account(s) will be used at the owner's discretion upon approval of the jurisdictional health department.

(8) *Financial assurance requirements - Fund withdrawal for closure and post-closure activities.*

(a) The owner or operator will withdraw funds from the closure and/or post-closure financial assurance instrument as specified in the approved closure/post-closure plans;

(b) If the withdrawal of funds from the financial assurance instrument exceeds by more than five percent the withdrawal schedule stated in the approved closure and/or post-closure plan over the life of the permit, the closure and/or post-closure plan shall be amended.

(c) After verification by the jurisdictional health department of facility closure, excess funds remaining for closure in a financial assurance account shall be released to the facility owner or operator.

(d) After verification by the jurisdictional health department of facility post-closure, excess funds remaining for post-closure in a financial assurance account shall be released to the facility owner or operator.

NEW SECTION

WAC 173-350-700 Permits and local ordinances. (1) *Permit required.*

(a) No solid waste storage, treatment, processing, handling or disposal facility shall be maintained, established, substantially altered, expanded or improved until the person operating or owning such site has obtained a permit or permit deferral from the jurisdictional health department or a beneficial use exemption from the department pursuant to the provisions of this chapter. Facilities operating under categorical exemptions established by this chapter shall meet all the conditions of such exemptions or will be required to obtain a permit under this chapter. Persons dumping or depositing solid waste without a permit in violation of this chapter shall be subject to the penalty provisions of RCW 70.95.240.

(b) Permits issued under this chapter are not required for remedial actions performed by the state and/or in conjunction with the United States Environmental Protection Agency to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or

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remedial actions taken by others to comply with a state and/or federal cleanup order or consent decree.

(c) Any jurisdictional health department and the department may enter into an agreement providing for the exercise by the department of any power that is specified in the contract and that is granted to the jurisdictional health department under chapter 70.95 RCW, Solid waste management—Reduction and recycling. However, the jurisdictional health department shall have the approval of the legislative authority or authorities it serves before entering into any such agreement with the department.

(2) *Local ordinances.* Each jurisdictional health department shall adopt local ordinances implementing this chapter not later than one year after the effective date of this chapter, and shall file the ordinances with the department within ninety days following local adoption. Local ordinances shall not be less stringent than this chapter, but may include additional requirements.

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NEW SECTION

WAC 173-350-710 Permit application and issuance. (1) *Permit application process.*

(a) Any owner or operator required to obtain a permit shall apply for a permit from the jurisdictional health department. All permit application filings shall include two copies of the application.. An application shall not be considered complete by the jurisdictional health department until the information required under WAC 173-350-715 has been submitted.

(b) The jurisdictional health department may establish reasonable fees for permits, permit modifications, and renewal of permits. All permit fees collected by the health department shall be deposited in the account from which the health department's operating expenses are paid.

(c) Once the jurisdictional health department determines that an application for a permit is complete, it shall:

(i) Refer one copy to the appropriate regional office of the department for review and comment;

(ii) Investigate every application to determine whether the facilities meet all applicable laws and regulations, conform to the approved comprehensive solid waste management plan and/or the approved hazardous waste management plan, and comply with all zoning requirements; and

(d) Once the department has received a complete application for review, it shall:

(i) Ensure that the proposed site or facility conforms with all applicable laws and regulations including the minimum functional standards for solid waste handling;

(ii) Ensure that the proposed site or facility conforms to the approved comprehensive solid waste management plan and/or the approved hazardous waste management plan; and

(iii) Recommend for or against the issuance of each permit by the jurisdictional health department within forty-five days of receipt of a complete application.

(e) Application procedures for statewide beneficial use exemptions and permit deferrals are contained in WAC 173-350-200 and 173-350-710(8), respectively.

(2) *Permit issuance.*

(a) When the jurisdictional health department has evaluated all pertinent information, it may issue or deny a permit. Every solid waste permit application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department. Every permit issued by a jurisdictional health department shall contain specific requirements necessary for the proper operation of the permitted site or facility.

(b) Every permit issued shall be valid for a period not to exceed five years at the discretion of the jurisdictional health department.

(c) Jurisdictional health departments shall file all issued permits with the appropriate regional office of the department no more than seven days after the date of issuance.

(d) The department shall review the permit in accordance with RCW 70.95.185 and report its findings to the jurisdictional health department in writing within thirty days of permit issuance.

(e) The jurisdictional health department is authorized to issue one permit for a location where multiple solid waste handling activities occur, provided all activities meet the applicable requirements of this chapter.

(3) *Permit renewals.*

(a) Prior to renewing a permit, the health department shall conduct a review as it deems necessary to ensure that the solid waste handling facility or facilities located on the site continue to:

(i) Meet the solid waste handling standards of the department;

(ii) Comply with applicable local regulations; and

(iii) Conform to the approved solid waste management plan and/or the approved hazardous waste management plan.

(b) A jurisdictional health department shall approve or deny a permit renewal within forty-five days of conducting its review.

(c) Every permit renewal shall be valid for a period not to exceed five years at the discretion of the jurisdictional health department.

(d) The department shall review the renewal in accordance with RCW 70.95.190 and report its findings to the jurisdictional health department in writing.

(e) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid.

(4) *Permit modifications.* Any significant change to the operation, design, capacity, performance or monitoring of a permitted facility may require a modification to the permit. The following procedures shall be followed by an owner or operator prior to making any change in facility operation, design, performance or monitoring:

(a) The facility owner or operator shall consult with the jurisdictional health department regarding the need for a permit modification;

(b) The jurisdictional health department shall determine whether the proposed modification is significant. Upon such a determination, the owner or operator shall make application

for a permit modification, using the process outlined in subsections (1) through (3) of this section; and

(c) If a proposed change is determined to not be significant and not require a modification to the permit, the department shall be notified.

(5) *Inspections.*

(a) At a minimum, annual inspections of all permitted solid waste facilities shall be performed by the jurisdictional health department, unless otherwise specified in this chapter.

(b) All facilities and sites shall be physically inspected prior to issuing a permit, permit renewal or permit modification.

(c) Any duly authorized representative of the jurisdictional health department may enter and inspect any property, premises or place at any reasonable time for the purpose of determining compliance with this chapter, and relevant laws and regulations. Findings shall be noted and kept on file. A copy of the inspection report or annual summary shall be furnished to the site operator.

(6) *Permit suspension and appeals.*

(a) Any permit for a solid waste handling facility shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste handling facility is being operated in violation of this chapter.

(b) Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste handling facility, it shall:

(i) Upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request;

(ii) Provide notice of the hearing to all interested parties including the county or city having jurisdiction over the site and the department; and

(iii) Within thirty days after the hearing, notify the applicant or the holder of the permit in writing of the determination and the reasons therefore. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the board a notice of appeal within thirty days after receipt of notice of the determination of the health officer.

(c) If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment.

(d) Procedures for appealing beneficial use exemption determinations are contained in WAC 173-350-200 (5)(g).

(7) *Variances.*

(a) Any person who owns or operates a solid waste handling facility subject to a solid waste permit under WAC 173-350-700, may apply to the jurisdictional health department for a variance from any section of this chapter. No variance shall be granted for requirements specific to chapter 70.95 RCW, Solid waste management—Reduction and recycling. The application shall be accompanied by such information as the jurisdictional health department may require. The jurisdictional health department may grant such variance, but only after due notice or a public hearing if requested, if it finds that:

(i) The solid waste handling practices or location do not endanger public health, safety or the environment; and

(ii) Compliance with the section from which variance is sought would produce hardship without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section until the jurisdictional health department has considered the relative interests of the applicant, other owners of property likely to be affected by the handling practices and the general public.

(c) Any variance or renewal shall be granted within the requirements of subsections (1) through (3) of this section and for time period and conditions consistent with the reasons therefore, and within the following limitations:

(i) If the variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement, or control of pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternative measures that the jurisdictional health department may prescribe;

(ii) The jurisdictional health department may grant a variance conditioned by a timetable if:

(A) Compliance with this chapter will require spreading of costs over a considerable time period; and

(B) The timetable is for a period that is needed to comply with the chapter.

(d) An application for a variance, or for the renewal thereof, submitted to the jurisdictional health department shall be approved or disapproved by the jurisdictional health department within ninety days of receipt unless the applicant and the jurisdictional health department agree to a continuance.

(e) No variance shall be granted by a jurisdictional health department except with the approval and written concurrence of the department prior to action on the variance by the jurisdictional health department.

(8) *Permit deferral.*

(a) A jurisdictional health department may, at its discretion and with the concurrence of the department, waive the requirement that a solid waste permit be issued for a facility under this chapter by deferring to other air, water or environmental permits issued for the facility which provide an equivalent or superior level of environmental protection.

(b) The requirement to obtain a solid waste permit from the jurisdictional health department shall not be waived for any transfer station, landfill, or incinerator that receives municipal solid waste destined for final disposal.

(c) Any deferral of permitting or regulation of a solid waste facility granted by the department or a jurisdictional health department prior to June 11, 1998, shall remain valid and shall not be affected by this subsection.

(d) Any person who owns or operates an applicable solid waste handling facility subject to obtaining a solid waste per-

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mit may apply to the jurisdictional health department for permit deferral. Two copies of an application for permit deferral shall be signed by the owner or operator and submitted to the jurisdictional health department. Each application for permit deferral shall include:

(i) A description of the solid waste handling units for which the facility is requesting deferral;

(ii) A list of the other environmental permits issued for the facility;

(iii) A demonstration that identifies each requirement of this chapter and a detailed description of how the other environmental permits will provide an equivalent or superior level of environmental protection;

(iv) Evidence that the facility is in conformance with the approved comprehensive solid waste management plan and/or the approved hazardous waste management plan;

(v) Evidence of compliance with chapter 197-11 WAC, SEPA rules; and

(vi) Other information that the jurisdictional health department or the department may require.

(e) The jurisdictional health department shall notify the applicant if it elects not to waive the requirement that a solid waste permit be issued for a facility under this chapter. If the jurisdictional health department elects to proceed with permit deferral, it shall:

(i) Forward one copy of the complete application to the department for review;

(ii) Notify the permit issuing authority for the other environmental permits described in (d)(ii) of this subsection and allow an opportunity for comment; and

(iii) Determine if the proposed permit deferral provides an equivalent or superior level of environmental protection.

(f) The department shall provide a written report of its findings to the jurisdictional health department and recommend for or against the permit deferral. The department shall provide its findings within forty-five days of receipt of a complete permit deferral application or inform the jurisdictional health department as to the status with a schedule for its determination.

(g) No solid waste permit deferral shall be effective unless the department has provided written concurrence. All requirements for solid waste permitting shall remain in effect until the department has provided written concurrence.

(h) When the jurisdictional health department has evaluated all information, it shall provide written notification to the applicant and the department whether or not it elects to waive the requirement that a solid waste permit be issued for a facility under this chapter by deferring to other environmental permits issued for the facility. Every complete permit deferral application shall be approved or denied within ninety days after its receipt by the jurisdictional health department or the owner or operator shall be informed as to the status of the application with a schedule for final determination.

(i) The jurisdictional health department shall revoke any permit deferral if it or the department determines that the other environmental permits are providing a lower level of environmental protection than a solid waste permit. Jurisdictional health departments shall notify the facility's owner or operator of intent to revoke the permit deferral and direct the owner or operator to take measures necessary to protect human health and the environment and to comply with the permit requirements of this chapter.

(j) Facilities which are operating under the deferral of solid waste permitting to other environmental permits shall:

(i) Allow the jurisdictional health department, at any reasonable time, to inspect the solid waste handling units which have been granted a permit deferral;

(ii) Notify the jurisdictional health department and the department whenever changes are made to the other environmental permits identified in (d)(ii) of this subsection. This notification shall include a detailed description of how the changes will affect the facility's operation and a demonstration, as described in (d)(iii) of this subsection, that the amended permits continue to provide an equivalent or superior level of environmental protection to the deferred solid waste permits. If the amended permits no longer provide an equivalent or superior level of environmental protection, the facility owner or operator shall close the solid waste handling unit or apply for a permit from the jurisdictional health department;

(iii) Notify the jurisdictional health department and the department within seven days of discovery of any violation of, or failure to comply with, the conditions of the other environmental permits identified in (d)(ii) of this subsection;

(iv) Prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1st as required under the appropriate annual reporting section of this chapter;

(v) Operate in accordance with any other written conditions that the jurisdictional health department deems appropriate; and

(vi) Shall take any measures deemed necessary by the jurisdictional health department when the permit deferral has been revoked.

NEW SECTION

WAC 173-350-715 General permit application requirements. (1) Every permit application shall be on a format supplied by the department and shall contain the following information:

(a) Contact information for the facility owner, and the facility operator and property owner if different, including contact name, company name, mailing address, phone fax, and e-mail;

(b) Identification of the type of facility that is to be permitted;

(c) Identification of any other permit (local, state or federal) in effect at the site;

(d) A vicinity plan or map (having a minimum scale of 1:24,000) that shall show the area within one mile (1.6 km) of the property boundaries of the facility in terms of the existing and proposed zoning and land uses within that area, residences, and access roads, and other existing and proposed man-made or natural features that may impact the operation of the facility;

(e) Evidence of compliance with chapter 197-11 WAC, SEPA rules;

(f) Information as required under the appropriate facility permit application subsection of this chapter; and

(g) Any additional information as requested by the jurisdictional health department or the department.

(2) Engineering plans, reports, specifications, programs, and manuals submitted to the jurisdictional health department or the department shall be prepared and certified by an individual licensed to practice engineering in the state of Washington, in an engineering discipline appropriate for the solid waste facility type or activity.

(3) Signature and verification of applicants:

(a) All applications for permits shall be accompanied by evidence of authority to sign the application and shall be signed by the owner or operator as follows:

(i) In the case of corporations, by a duly authorized principal executive officer of at least the level of vice-president; in the case of a partnership or limited partnership, by:

(A) A general partner;

(B) Proprietor; or

(C) In case of sole proprietorship, by the proprietor;

(ii) In the case of a municipal, state, or other government entity, by a duly authorized principal executive officer or elected official.

(b) Applications shall be signed or attested to by, or on behalf of, the owner or operator, in respect to the veracity of all statements therein; or shall bear an executed statement by, or on behalf of, the owner or operator to the effect that false statements made therein are made under penalty of perjury.

(c) The signature of the applicant shall be notarized on the permit application form.

NEW SECTION

WAC 173-350-900 Remedial action. When the owner or operator of a solid waste facility is subject to remedial measures in compliance with chapter 173-340 WAC, the Model Toxics Control Act, the roles of the jurisdictional health department and the department shall be as follows:

(1) The jurisdictional health department:

(a) May participate in all negotiations, meetings, and correspondence between the owner and operator and the department in implementing the model toxics control action;

(b) May comment upon and participate in all decisions made by the department in assessing, choosing, and implementing a remedial action program;

(c) Shall require the owner or operator to continue closure and post-closure activities as appropriate under this chapter, after remedial action measures are completed; and

(d) Shall continue to regulate all solid waste facilities during construction, operation, closure and post-closure, that are not directly impacted by chapter 173-340 WAC.

(2) The department shall carry out all the responsibilities assigned to it by chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act.

NEW SECTION

WAC 173-350-990 Criteria for inert waste. (1) *Criteria for inert waste - Applicability.* This section provides the criteria for determining if a solid waste is an inert waste. Dangerous wastes regulated under chapter 173-303 WAC, Dangerous waste regulation, PCB wastes regulated under 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, and asbestos-containing waste regulated under federal 40 CFR Part 61 rules are not inert waste. For the purposes of determining if a solid waste meets the criteria for an inert waste a person shall:

(a) Apply knowledge of the waste in light of the materials or process used and potential chemical, physical, biological, or radiological substances that may be present; or

(b) Test the waste for those potential substances that may exceed the applicable criteria. A jurisdictional health department may require a person to test a waste to determine if it meets the applicable criteria. Such testing may be required if the jurisdictional health department has reason to believe that a waste does not meet the applicable criteria or has not been adequately characterized. Testing shall be performed in accordance with:

(i) *"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,"* U.S. EPA Publication SW-846; or

(ii) Other testing methods approved by the jurisdictional health department.

(2) *Criteria for inert waste - Listed inert wastes.* For the purpose of this chapter, the following solid wastes are inert wastes, provided that the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

(a) Cured concrete that has been used for structural and construction purposes, including embedded steel reinforcing and wood, that was produced from mixtures of Portland cement and sand, gravel or other similar materials;

(b) Asphaltic materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of petroleum asphalt and sand, gravel or other similar materials. Waste roofing materials are not presumed to be inert;

(c) Brick and masonry that have been used for structural and construction purposes;

(d) Ceramic materials produced from fired clay or porcelain;

(e) Glass, composed primarily of sodium, calcium, silica, boric oxide, magnesium oxide, lithium oxide or aluminum oxide. Glass presumed to be inert includes, but is not limited to, window glass, glass containers, glass fiber, glasses resistant to thermal shock, and glass-ceramics. Glass containing significant concentrations of lead, mercury, or other toxic substance is not presumed to be inert; and

(f) Stainless steel and aluminum.

(3) *Criteria for inert waste - Inert waste characteristics.* This subsection provides the criteria for determining if a solid waste not listed in subsection (2) of this section is an inert waste. Solid wastes meeting the criteria below shall have comparable physical characteristics and comparable or lower level of risk to human health and the environment as those listed in subsection (2) of this section.

(a) Inert waste shall have physical characteristics that meet the following criteria. Inert waste shall:

(i) Not be capable of catching fire and burning from contact with flames;

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(ii) Maintain its physical and chemical structure under expected conditions of storage or disposal including resistance to biological and chemical degradation; and

(iii) Have sufficient structural integrity and strength to prevent settling and unstable situations under expected conditions of storage or disposal.

(b) Inert waste shall not contain chemical, physical, biological, or radiological substances at concentrations that exceed the following criteria. Inert waste shall not:

(i) Be capable of producing leachate or emissions that have the potential to negatively impact soil, ground water, surface water, or air quality;

(ii) Pose a health threat to humans or other living organisms through direct or indirect exposure; or

(iii) Result in applicable air quality standards to be exceeded, or pose a threat to human health or the environment under potential conditions during handling, storage, or disposal.

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WSR 03-03-044
PERMANENT RULES
DEPARTMENT OF AGRICULTURE
[Filed January 10, 2003, 4:15 p.m.]

Date of Adoption: January 10, 2003.

Purpose: Chapter 16-157 WAC sets standards for the certification of organic producers, processors, and handlers. The rule provides the application, inspection, sampling, fee schedule and certification criteria for obtaining organic and transitional certification. The rule adopts the 2001 National Organic Program. Fees are increased to recover the full cost of the program as required by statute.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-157-100, 16-157-110, 16-157-200 and 16-157-280; and amending WAC 16-157-020, 16-157-030, 16-157-220 through 16-157-270, and 16-157-290.

Statutory Authority for Adoption: Chapter 15.86 RCW.

Adopted under notice filed as WSR 02-22-088 on November 5, 2002; and WSR 02-24-006 on November 21, 2002.

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 10, 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.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 15.86.070(2) as amended. Reference chapter 220, Laws of 2002, legislative permission was granted to exceed the fiscal growth factor requirements.

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

January 10, 2003
William E. Brookreson
for Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-020 Adoption of the National Organic Program. The 2001 National Organic Program final rule, ((~~subparts A, C, D, E, sections 205.102 through 205.105, and sections 205.600 through 205.606~~)) 7 CFR Part 205, effective April 21, 2001, is adopted by reference as Washington state standards for the production and handling of organic crops, livestock and processed food products. The ((~~applicable sections of the~~)) 2001 National Organic Program final rule may be obtained from the department.

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-030 Definitions. As used in this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his or her duly authorized representative.

(3) ((~~"Distribute" means to offer for sale, hold for sale, sell, barter, deliver, or supply materials in this state.~~

~~(4)~~)) "Facility" includes, but is not limited to, any premises, plant, establishment, facilities and the appurtenances thereto, in whole or in part, where organic food is prepared, handled, or processed in any manner for resale or distribution to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer.

(((~~(5) "Growing medium" means the material utilized by fungi as a substrate for growth.~~

~~(6) "Growing medium amendment" means a nutritional supplement added to the growing medium to enhance vigor and yields.~~

~~(7) "Handle" means to sell, arrange the sale of, represent, process, distribute or package organic food products.~~

~~(8) "Handler" means any person who sells, arranges the sale of, represents, processes, distributes, or packs organic food products.~~

~~(9) "Label" means all written, printed, or graphic material on the immediate container or accompanying or representing the product.~~

~~(10) "Labeling" means all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers, or (b) accompanying or representing such article.~~

~~(11)~~)) (4) "New applicant" means any person that applies for organic certification for the first time, or when previous certification status has expired for at least one year.

(((~~(12) "Organic food product" means any agricultural product, including fruit, vegetable, meat, dairy, beverage and grocery, that is marketed using the term organic or any derivative of the term organic in its labeling or advertising, including using the term organic on the principal display panel, ingredients list or other locations on the label.~~

~~(13) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any other member, officer, or employee thereof or assignee for the benefit of creditors.~~

~~(14) "Principal display panel" means that portion of the package label that is most likely seen by the consumer at the time of purchase.~~

~~(15)~~)) (5) "Processor" means any handler engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, slaughtering or otherwise processing organic food.

(((~~(16) "Producer" means any person or organization who or which grows, raises or produces an agricultural product.~~

~~(17) "Prohibited" means any material or practice which does not meet the required criteria or standards for use in the production or handling of organic or transitional agricultural products.~~

~~(18)~~)) (6) "Renewal applicant" means any person that has received organic certification from the department in the previous year.

(((~~(19) "Retail facility" means any facility, in whole or in part, that sells organic food products directly to consumers.~~

~~(20)~~)) (7) "Retailer" means any handler that sells organic food products directly to consumers.

(((~~(21)~~)) (8) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

(((~~(22)~~)) (9) "Site" means a defined field, orchard, block, pasture, paddock, garden, circle, plot or other designated area.

(((~~(23) "Spawn" means a medium that has been colonized with the desired fungal mycelia. It is used to inoculate growing medium.~~

~~(24)~~)) (10) "Transitional ((~~food~~)) product" means any agricultural product that (a) is marketed using the term transitional in its labeling and advertising and (b) satisfies all of the requirements of organic ((~~food~~)) except that it has had no applications of prohibited substances within one year prior to the harvest of the crop.

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-220 Producer fee schedule. Producers who wish to apply for the organic food certification program must apply to the department each year.

(1) The cost per application shall be based on the following fee schedule.

(a) Renewal applicants -

Application fees ((~~are~~)) must be based on the previous calendar year's sales of organic food. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the producer for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the producer may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1, ((~~shall~~)) must pay a late fee of ((~~fifty~~)) seventy-five dollars. Renewal applicants that are adding additional sites to their organic certification must pay a new site fee of fifty dollars for each additional site.

(b) New applicants -

Application fees ((~~shall~~)) must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the producer for the additional fee. In the event that the current calendar year's sales are less than the estimate, the producer may request a refund for the reduced fee. In addition, new applicants must pay a ((~~seventy-five~~)) one hundred dollar new applicant fee. New applicants that are seeking organic certification for more than one site must pay a site fee of fifty dollars for each additional site. The fee shall accompany the application.

SALES		ANNUAL FEE
$ 0	-	(($ 12,000 ..... $ 165
~~$ 12,001~~	-))	$ 15,000 ..... $ 200
$ 15,001	-	$ 20,000 ..... $ ((~~220~~)) 225
$ 20,001	-	$ 25,000 ..... $ ((~~275~~)) 280
$ 25,001	-	$ 30,000 ..... $ ((~~330~~)) 335
$ 30,001	-	$ 35,000 ..... $ ((~~385~~)) 390
$ 35,001	-	$ 42,500 ..... $ ((~~465~~)) 470
$ 42,501	-	$ 50,000 ..... $ ((~~550~~)) 560
$ 50,001	-	$ 65,000 ..... $ ((~~660~~)) 670
$ 65,001	-	$ 80,000 ..... $ ((~~825~~)) 835
$ 80,001	-	$100,000 ..... $ ((~~990~~)) 1,000
$100,001	-	$125,000 ..... $((~~1,100~~)) 1,150
$125,001	-	$150,000 ..... $((~~1,150~~)) 1,300
$150,001	-	$175,000 ..... $((~~1,320~~)) 1,450
$175,001	-	$200,000 ..... $((~~1,375~~)) 1,600
$200,001	-	$240,000 ..... $((~~1,540~~)) 1,750
$240,001	-	$280,000 ..... $((~~1,595~~)) 1,900
$280,001	-	$325,000 ..... $((~~1,650~~)) 2,050
$325,001	-	$375,000 ..... $((~~1,720~~)) 2,200
$375,001	-	$425,000 ..... $((~~2,200~~)) 2,450

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SALES		ANNUAL FEE
$425,001	- $500,000	$((~~2,300~~)) 2,700
$500,001	- $750,000	$((~~2,750~~)) 3,000
((~~$750,001 and up~~		$2,000 ~~plus 0.10% of gross organic sales~~))
$750,001	- $7,000,000	$2,200 plus 0.11% of gross organic sales
over	$7,000,000	$10,000

(2) Transitional acreage fee - In addition to the producer application fee, each applicant ((~~shall~~)) must pay a fee of five dollars per acre for the land for which they are requesting transitional certification.

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-230 Processor fee schedule. Processors who wish to apply for the organic food certification program must apply to the department each year. Producers that process their own organic products pay application and certification fees under WAC 16-157-220.

(1) **Application fee.**

(a) **Renewal applicants** - Application fees are ((~~one~~)) two hundred ((~~fifty~~)) dollars per facility. In addition, renewal applications postmarked after March 1, must pay a late fee of ((~~fifty~~)) seventy-five dollars.

(b) **New applicants** - Application fees are ((~~one~~)) two hundred ((~~fifty~~)) dollars per facility. In addition, new applicants must pay a ((~~seventy-five~~)) one hundred dollar new applicant fee.

(2) **Certification fee** - A certification fee based on the following fee schedule must accompany the application. Certification fees are assessments on the organic products in each category. New applicants must base certification fees on an estimate of sales in each category. Renewal applicants must base certification fees on the previous calendar year's sales in each category. Applicants may have food products in more than one category.

Category I - Organic food products: Products labeled as "organic" or "one hundred percent organic" are assessed ((~~at 0.275%~~)) 0.30% of the previous calendar year's sales for the first million dollars and ((~~0.10%~~)) 0.11% for sales above one million dollars.

Category II - Made with organic food products: Products labeled as "made with organic ingredients" are assessed ((~~0.175%~~)) 0.20% of the previous calendar year's sales for the first million dollars and ((~~0.06%~~)) 0.07% for sales above one million dollars.

Category III - Food products with organic ingredients: Products packaged for retail sales that limit their organic claims to the information panel are assessed ((~~0.10%~~)) 0.11% of the previous calendar year's sales for the first million dollars and ((~~0.30%~~)) 0.04% for sales above one million dollars.

Category IV - Custom organic food products: Products produced by processors who charge a service fee to organic manufacturers for processing organic food are assessed at ((~~0.35%~~)) 0.40% of the previous calendar year's service fees received for processing organic food for the first million dollars and ((~~0.10%~~)) 0.11% for service fees above one million dollars.

In the event that the current calendar year's sales (or service fees) exceed the previous year's sales (or service fees) or estimate of sales, the department may bill the applicant for the additional certification fee. In the event that the current calendar year's sales (or service fees) are less than the previous year's gross sales (or service fees) or estimate of sales, the applicant may request a refund for the reduced certification fee.

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-240 Handler fee schedule. Handlers who wish to apply for the organic food certification program must apply to the department each year. Handlers that process organic food products must apply for organic certification under WAC 16-157-230. Retailers who wish to apply for the organic food certification program must apply for organic certification under WAC 16-157-245. Producers that handle only their own organic products do not need to obtain separate certification as handlers. All other handlers of organic food products may apply for organic certification under this section.

(1) Renewal applicants. Application fees must be based on the previous calendar year's sales of organic food. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the handler for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the ((~~producer~~)) handler may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1 must pay a late fee of ((~~fifty~~)) seventy-five dollars.

(2) New applicants. Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the handler for the additional fee. In the event that the current calendar year's sales are less than the estimate, the handler may request a refund for the reduced fee. In addition, new applicants must pay a ((~~seventy-five~~)) one hundred dollar new applicant fee.

(3) The cost per facility must be based on the following fee schedule. The appropriate fee must accompany the application.

ORGANIC SALES			FEE
((~~Sales under $25,001~~)) $ 0	-	$ ~~25,000~~	$ ~~75~~
$ 50,001	-	$ 50,000	$ ((~~150~~)) 200
$ 75,001	-	$ 75,000	$ ((~~225~~)) 250
$ 100,001	-	$ 100,000	$ ((~~300~~)) 330
$ 200,001	-	$ 200,000	$ ((~~400~~)) 440
$ 300,001	-	$ 300,000	$ ((~~500~~)) 550
$ 400,001	-	$ 400,000	$ ((~~600~~)) 660
$ 500,001	-	$ 750,000	$ ((~~700~~)) 770
			$ ((~~900~~)) 990

ORGANIC SALES			FEE
$ 750,001	-	$ 1,000,000	$ ((~~1,000~~)) 1,100
$1,000,001	-	$ 1,250,000	$ ((~~1,250~~)) 1,375
$1,250,001	-	$ 1,500,000	$ ((~~1,500~~)) 1,650
$1,500,001	-	$ 2,000,000	$ ((~~2,000~~)) 2,200
$2,000,001	-	$ 2,500,000	$ ((~~2,500~~)) 2,750
$2,500,001	-	$ 3,000,000	$ ((~~3,000~~)) 3,300
$3,000,001	-	$ 4,000,000	$ ((~~3,500~~)) 3,850
$4,000,001	-	$ 5,000,000	$ ((~~4,000~~)) 4,400
$5,000,001	-	$ 6,000,000	$ ((~~5,000~~)) 5,500
$6,000,001	-	$ 7,000,000	$ ((~~6,000~~)) 6,600
$7,000,001	-	$ 8,000,000	$ ((~~7,000~~)) 7,700
$8,000,001	-	$ 9,000,000	$ ((~~8,000~~)) 8,800
$9,000,001	-	$10,000,000	$ ((~~9,000~~)) 9,900
over		$((~~10,000,001~~)) 10,000,000	$ ((~~10,000~~)) 11,000

NEW SECTION

WAC 16-157-245 Retailer fee schedule. Retailers who wish to apply for the organic food certification program must apply to the department each year.

(1) Renewal applicants. Application fees must be based on the previous calendar year's sales of organic products. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the retailer for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the retailer may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1 must pay a late fee of seventy-five dollars.

(2) New applicants. Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the retailer for the additional fee. In the event that the current calendar year's sales are less than the estimate, the retailer may request a refund for the reduced fee. In addition, new applicants must pay a one hundred dollar new applicant fee.

(3) The cost per facility must be based on the following fee schedule. The appropriate fee must accompany the application.

ORGANIC SALES			FEE
$ 0	-	$100,000	$330
$100,001	-	$500,000	$500
$500,001	-	$1,000,000	$750
$1,000,001	-	$2,000,000	$1,000
$2,000,001	-	$3,000,000	$1,500
$3,000,001	-	$4,000,000	$2,000
$4,000,001	-	$5,000,000	$2,250
over	-	$5,000,000	$2,500

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-250 Inspections. The director shall make at least one inspection and any additional inspections deemed necessary to each applicant each year to determine compliance with this chapter and chapter 15.86 RCW and rules adopted pursuant to chapter 15.86 RCW. This inspection may entail a survey of required records, examination of fields, facilities and storage areas, and any other information deemed necessary by the requirements of this chapter.

((~~Two inspections~~)) The annual on-site inspection and any additional inspections conducted for collecting samples or for surveillance within the state of Washington are provided for under the application and certification fees. Additional inspections, if necessary to determine compliance or requested, will be charged to the applicant at the rate of ((~~thirty~~)) forty dollars per hour plus mileage set at the rate established by the state office of financial management. Out-of-state inspections, if necessary or requested, shall be at the rate of ((~~$30~~)) $40/hr. plus transportation costs.

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-255 Sampling. A representative sample of the product may be tested for pesticide or other contaminants whenever the director deems it necessary for certification or maintenance of certification. ((~~One~~)) Sample analysis is provided under the application and certification fees. ((~~Additional samples, if required for certification or maintenance of certification by the director, or requested by the applicant, will be charged to the applicant at a rate established by the laboratory services division of the department of agriculture. If an additional visit must be arranged to obtain a sample, it will be charged at the rate of thirty dollars per hour plus mileage set at the rate established by the state office of financial management.~~))

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-260 Organic and transitional producer certification. (1) ((~~The conditions for obtaining organic and transitional producer certification are the following:~~

~~(a) Inspection of the applicant by the department of agriculture showed no use of prohibited materials or practices as defined in chapter 15.86 RCW or rules adopted thereunder; and~~

~~(b) Recordkeeping practices meet the requirements specified in rules adopted under chapter 15.86 RCW; and~~

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~~(c) Analysis of samples taken by the department of agriculture showed no prohibited substance usage or contamination; and~~

~~(d) No application of prohibited substances, as defined in chapter 16-154 WAC, has been applied to the site being certified for:~~

~~• At least three years prior to the harvest of organic food; or~~

~~• At least one year prior to the harvest of transitional food.~~))

Organic producers certified under this chapter may use the ((~~attached~~)) organic producer logo, found in WAC 16-157-275, to identify organic ((~~food~~)) products.

Transitional producers certified under this chapter may use the ((~~attached~~)) transitional producer logo, found in WAC 16-157-275, to identify transitional ((~~food~~)) products.

(2) ((~~For each site,~~)) The director must review the application, inspection report and results of any samples collected to determine that the producer has complied with the conditions for organic or transitional ((~~food~~)) certification ((~~on that site~~)). ((~~For each site,~~)) A certificate will be issued when the director determines that the producer has complied with the conditions for organic or transitional ((~~food~~)) producer certification ((~~on that site~~)).

(((~~(3) In no event shall organic food products be distributed or sold prior to the issuing of an organic food certificate by the department of agriculture for that year. New applicants and new sites must be inspected by the department before an organic food certificate is issued.~~

~~(4) Beginning in the year 2002, each site must meet the following conditions prior to the issuance of an organic food producer certificate for that site:~~

~~(a) The site must have been previously certified as organic; or~~

~~(b) The site must have been certified as second year transitional in the previous year; or~~

~~(c) The producer has documentation that verifies that the site was in pasture or not being farmed during the previous two years; or~~

~~(d) The department determines that the site was producing organic crops in the previous year and the producer was exempted from certification under RCW 15.86.090 (2)(b).~~

~~(5) Beginning in the year 2003, prior to the issuance of a second year transitional food producer certificate:~~

~~(a) The site must have been certified as first year transitional in the previous year; or~~

~~(b) The producer has documentation that verifies that the site was in pasture or not being farmed during the previous year; or~~

~~(c) The department determines that the site was producing first year transitional crops in the previous year and the producer was exempted from certification under RCW 15.86.090 (2)(b).~~))

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-270 Organic food processor and handler certification. (1) ((~~The conditions of organic food processor and handler certification are the following:~~

~~(a) Inspection of the processor or handler by the department of agriculture showed no use of prohibited materials or practices as defined in chapter 15.86 RCW or rules adopted thereunder; and~~

~~(b) Recordkeeping practices meet the requirements specified in rules adopted under chapter 15.86 RCW; and~~

~~(c) Analysis of samples taken by the department of agriculture showed no prohibited substance usage or contamination.~~

~~(2)~~)) The director must review the application, inspection report and results of any samples collected to determine that the processor or handler has complied with the conditions for organic food certification. An organic food certificate will be issued when the director determines that the processor or handler has complied with the conditions for organic food certification.

(((~~(3) In no event shall organic food products be processed or handled by a facility prior to the issuing of an organic food certificate by the department of agriculture for that year. New applicants must be inspected by the department before an organic food certificate is issued.~~

~~(4)~~)) (2) Processors certified under this chapter may use the ((~~attached~~)) organic processor logo, found in WAC 16-157-275, to identify organic ((~~food~~)) products processed by the facility.

(((~~(5)~~))) (3) Handlers certified under this chapter may use the ((~~attached~~)) organic handler logo, found in WAC 16-157-275, to identify organic ((~~food~~)) products handled by the facility.

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-290 Export and transaction certificates. (1) Organic export and transaction certificates are issued to verify that a specific shipment of organic food products has been produced, processed, and handled in accordance with ((~~chapter 15.86 RCW and rules adopted thereunder~~)) the 2001 National Organic Program, 7 CFR Part 205 or a foreign organic standard.

(2) Applications for export and transaction certificates must be submitted on forms furnished by the department. The applicant must furnish all information requested on the application. A separate application must be made for each export and transaction certificate.

(3) The fee for export and transaction certificates shall be ((~~thirty~~)) forty dollars per application.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-157-100	Land requirements.
WAC 16-157-110	Records.
WAC 16-157-200	Application for certification.
WAC 16-157-280	Decertification.

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WSR 03-03-045
PERMANENT RULES
DEPARTMENT OF AGRICULTURE
[Filed January 10, 2003, 4:15 p.m.]

Date of Adoption: January 10, 2003.

Purpose: The Washington State Department of Agriculture (WSDA) is amending chapter 16-160 WAC to be in compliance with the National Organic Program, Title 7 C.F.R. Part 205. Registration fees are increased to cover the cost of reviewing materials and maintaining the brand name materials list. Fee increases account for increases in the department's cost of registering materials.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-160-025; and amending WAC 16-160-010, 16-160-020, 16-160-035, 16-160-060, and 16-160-070.

Statutory Authority for Adoption: Chapter 15.86 RCW.

Adopted under notice filed as WSR 02-22-087 on November 5, 2002; and WSR 02-24-005 on November 21, 2002.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, 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.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 15.86.070(2) as amended. Reference chapter 220, Laws of 2002, legislative permission was granted to exceed the fiscal growth factor requirements.

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

January 10, 2003
William E. Brookreson
for Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-010 What is the purpose of this rule? This chapter specifies the review process and criteria for registering brand name materials used in organic food production, processing and handling. This chapter is promulgated pursuant to RCW 15.86.060 in which the director is authorized to adopt rules for the proper administration of chapter 15.86 RCW and ((~~establish a list of approved substances that may be used in the production, processing and handling of organic food and~~)) RCW 15.86.070 in which the director is authorized to adopt rules governing the certification of producers of organic food.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-020 Definitions. As used in this chapter:

(1) ((~~"Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.~~

~~(2)~~)) "Animal manure" means a material composed of excreta, with or without bedding materials and/or animal drugs and collected from poultry, ruminants or other animals except humans.

((~~(3)~~)) (2) "Applicant" means the person who submits an application to register a material pursuant to the provisions of this chapter.

((~~(4) "Approved generic material" means any material which is approved for use in organic food production, processing or handling under chapter 15.86 RCW (Organic food products) and rules adopted pursuant to chapter 15.86 RCW.~~

~~(5)~~)) (3) "Brand name material" means any material that is supplied, distributed or manufactured by a person.

((~~(6)~~)) (4) "Compost" means a material produced from a controlled process in which organic materials are digested aerobically or anaerobically by microbial action.

((~~(7)~~)) (5) "Crop production aid" means any substance, material, structure, or device, that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

((~~(8) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.~~

~~(9)~~)) (6) "Department" means the department of agriculture of the state of Washington.

((~~(10) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.~~

~~(11)~~)) (7) "Director" means the director of the department of agriculture or his or her duly authorized representative.

((~~(12)~~)) (8) "Distribute" means to offer for sale, hold for sale, sell, barter, deliver, or supply materials in this state.

((~~(13) "EPA" means the United States Environmental Protection Agency.~~

~~(14)~~)) (9) "Fertilizer" means any substance containing one or more recognized plant nutrients.

((~~(15) "Generic material" means any type, class or group of materials that is specified under chapter 15.86 RCW or rules adopted pursuant to chapter 15.86 RCW.~~

~~(16) "Genetic engineering" means techniques that alter the molecular or cell biology of an organism by means that are not possible under natural conditions or processes. Genetic engineering includes recombinant DNA, cell fusion, micro- and macro-encapsulation, gene deletion, and doubling, introducing a foreign gene, and changing the positions of genes. It does not include breeding, conjugation, fermentation, hybridization, in vitro fertilization and tissue culture.~~

~~(17) "Inert ingredient" means an ingredient which is not an active ingredient.~~

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((~~18~~))) (10) "Label" means the written, printed, or graphic matter on, or attached to, the material or its immediate container.

(((~~19~~))) (11) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a material, or advertisement, brochures, posters, television, and radio announcements used in promoting the distribution or sale of the material.

(((~~20~~))) (12) "Livestock production aid" means any substance, material, structure, or device, that is used to aid a producer in the production of livestock (e.g., parasiticides, medicines, feed additives).

(((~~21~~))) (13) "Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing or handling.

(((~~22~~))) (14) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids as defined in chapter 70.95 RCW.

(((~~23~~))) (15) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(((~~24~~))) (16) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any substance or mixture of substances intended to be used as a spray adjuvant; and

(d) Any other substances intended for such use as may be named by the director by regulation.

(((~~25) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculant, or soil amendments.~~

~~(26)~~))) (17) "Post-harvest material" means any substance, material, structure, or device, that is used in the post-harvest handling of agricultural products.

(((~~27~~))) (18) "Processing aid" means any material used in processing that does not become an ingredient in the food product (e.g., enzymes, boiler water additives, pressing aids, and filtering aids).

(((~~28) "Prohibited material" means any material which is prohibited for use in organic food production, handling, or processing under chapter 15.86 RCW (Organic food products) and rules adopted pursuant to chapter 15.86 RCW.~~

~~(29)~~))) (19) "Registered material" means any material that has applied for registration under this chapter, has met the criteria for approval and has been issued written approval by the department.

(((~~30~~))) (20) "Registrant" means the person registering any material pursuant to the provisions of this chapter.

(((~~31~~))) (21) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.

(((~~32~~))) (22) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect, and which is in a package or container separate from that of the pesticide with which it is to be used.

(((~~33) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.~~)))

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-035 Brand name materials list. The department maintains a list of registered materials ((~~and brand name materials that have been denied registration~~)) that are approved for use in organic food production, processing or handling. The list is provided to all producers, processors and handlers of organic food who apply for certification with the department. A registered material that appears on the brand name materials list has been reviewed to verify that all of its ingredients comply with organic standards.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-060 What criteria are used to determine if a brand name material is approved? The director reviews the information provided under WAC 16-160-040. A brand name material that meets the ((~~following criteria~~)) requirements under the 2001 National Organic Program final rule, section 205.105 and sections 205.600 through 205.606 will be registered.

(((~~(1) General requirements.~~

~~(a) Its composition is such as to warrant the proposed claims for it;~~

~~(b) Its labeling and other material required to be submitted comply with state and federal laws;~~

~~(c) It does not contain ingredients that are genetically engineered;~~

~~(d) It does not contain ingredients that appear on the EPA's List 1 or 2 of inert pesticide ingredients.~~

~~(2) Pesticide and spray adjuvants.~~

~~(a) The material does not contain ingredients that are prohibited under chapter 16-154 WAC; and~~

~~(b) The ingredients are approved under chapter 16-154 WAC; or~~

~~The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or~~

~~The ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or~~

~~The ingredients meet the following conditions:~~

~~(i) Would not be harmful to human health or the environment;~~

~~(ii) Are necessary to the production or handling of organic products; and~~

~~(iii) Are consistent with organic principles.~~

~~(3) Fertilizers, organic waste derived materials, compost, animal manures, soil amendments, and crop production aids.~~

~~(a) All fertilizers, organic waste derived materials, compost, animal manures and soil amendments must meet standards for allowable levels of nonnutritive substances under chapter 15.54 RCW. Washington application rates shall be used to ensure that the maximum acceptable cumulative metal additions to soil are not exceeded.~~

~~(b) All organic waste derived materials, compost and animal manures must consist of acceptable feedstocks. Acceptable feedstocks include materials approved under WAC 16-154-070. Prohibited feedstocks include mixed municipal solid waste, sewage sludge, biosolids, glossy paper, recycled gypsum, dangerous waste, special waste, waste or by product from processes that create organochlorines, cement kilns, secondary steel mills, waste categorically excluded from the dangerous waste regulations and other materials prohibited under this chapter. Applications for registering organic waste derived materials, composts and animal manures must include an inspection of the facility. Inspections of facilities entail an examination of the feedstocks and may entail an examination of any other information deemed necessary to the requirements of chapter 15.86 RCW and this chapter.~~

~~(c) The material does not contain ingredients that are prohibited under chapter 16-154 WAC.~~

~~(d) The ingredients are approved under chapter 16-154 WAC; or the ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or the ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or the ingredients meet the following conditions:~~

~~(i) Would not be harmful to human health or the environment;~~

~~(ii) Are necessary to the production of organic products; and~~

~~(iii) Are consistent with organic principles.~~

~~(4) Post harvest materials.~~

~~(a) The material does not contain ingredients that are prohibited under chapter 16-164 WAC or WAC 16-154-120; and~~

~~(b) The ingredients are approved under WAC 16-154-120 or chapter 16-164 WAC; or~~

~~The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-154 WAC; or~~

~~The ingredients appear on the EPA's List 4A or 4B of Inert Pesticide Ingredients; or~~

~~The ingredients meet the following conditions:~~

~~(i) Would not be harmful to human health or the environment;~~

~~(ii) Are necessary to the handling of the organic products; and~~

~~(iii) Are consistent with organic principles.~~

~~(5) Processing aids.~~

~~(a) The material does not contain ingredients that are prohibited under chapter 16-158 WAC; and~~

~~(b) The ingredients are approved under chapter 16-158 WAC; or~~

~~The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-158 WAC; or~~

~~The ingredients appear on the United States Food and Drug Administration list of food additives generally regarded as safe; or~~

~~The ingredients meet the following conditions:~~

~~(i) Would not be harmful to human health or the environment;~~

~~(ii) Are necessary to the processing of organic products; and~~

~~(iii) Are consistent with organic principles.~~

~~(6) Livestock production aids (parasiticides and medicines, vitamins, minerals, livestock feed additives).~~

~~(a) The material does not contain ingredients that are prohibited under chapter 16-162 WAC; and~~

~~(b) The ingredients are approved under chapter 16-162 WAC; or~~

~~The ingredients are naturally derived, except for those naturally derived materials prohibited under chapter 16-162 WAC; or~~

~~The ingredients appear on the United States Food and Drug Administration list of food additives generally regarded as safe; or~~

~~The ingredients meet the following conditions:~~

~~(i) Would not be harmful to human health or the environment;~~

~~(ii) Are necessary to the production or handling of the organic livestock products; and~~

~~(iii) Are consistent with organic principles.~~))

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-070 Application fees. Whenever the department receives an application for registration of materials under this chapter, the department may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials, and any other information deemed necessary to the requirements of this chapter.

The application fee for initial registration of a pesticide, spray adjuvant, processing aid or post-harvest material is ((~~two~~)) three hundred dollars per material. The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure, crop production aid, or livestock production aid is ((~~one~~)) two hundred dollars per material.

The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid or post-harvest material is ((~~one~~)) two hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amend-

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ment, organic waste derived material, compost, animal manure, crop production aid, or livestock production aid is ((~~fifty~~)) one hundred dollars per material.

Renewal registrations postmarked after October 31 pay a late fee of ((~~twenty~~)) thirty dollars ((~~per pesticide, spray adjuvant, processing aid or post harvest material; and ten dollars per fertilizer, soil amendment, organic waste derived material, compost, animal manure, crop production aid, or livestock production aid.~~

~~Additional~~)). Inspections, if required, will be billed at ((~~twenty~~)) forty dollars per hour plus mileage which shall be charged at the rate established by the state office of financial management.

((~~Additional~~)) Samples (((~~in addition to one sample provided for), if required shall cost an additional lab fee of one hundred ten dollars~~)), if required for registration, or requested by the applicant, will be charged to the applicant at a rate established by the laboratory services division of the department of agriculture. If an additional visit must be arranged, it shall be at ((~~twenty~~)) forty dollars per hour plus mileage which shall be charged at the rate established by the state office of financial management.

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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-160-025	What materials are approved for use in organic food production, processing and handling?

WSR 03-03-052
PERMANENT RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2001-10—Filed January 13, 2003, 11:27 a.m.]

Date of Adoption: January 13, 2003.

Purpose: Amend chapter 284-22 WAC. This rule making was initiated by a petition from the Governing Committee of the United States Longshore and Harbor Workers Assigned Risk Plan. The rules amend chapter 284-22 WAC to allow for distributions to participants. The information gathering process and minimum threshold for assessment are made more flexible. A process is created to assess insurers who do not report information in a timely manner.

Citation of Existing Rules Affected by this Order: Amending WAC 284-22-020, 284-22-050, 284-22-060, and 284-22-080.

Statutory Authority for Adoption: RCW 48.02.060 and 48.22.070.

Adopted under notice filed as WSR 02-14-154 on July 3, 2002.

Changes Other than Editing from Proposed to Adopted Version: Language in the last sentence of WAC 284-22-080(3) is changed to be consistent with language in WAC 284-22-060.

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 4, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

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

January 13, 2003
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 93-17, filed 9/24/93, effective 10/25/93)

WAC 284-22-020 Purpose. The purposes of the assigned risk plan are:

(1) To promote a strong and healthy maritime industry, within Washington state, by ensuring the continued availability of workers' compensation coverage required by the United States Longshore and Harbor Workers' Act and maritime employers' liability coverage incidental to such workers' compensation coverage for employers who are unable to purchase it through the normal insurance market.

(2) To provide a mechanism through which the ((~~underwriting results~~)) net income or loss of the assigned risk plan ((~~are~~)) is shared by authorized insurers writing primary or excess United States Longshore and Harbor Workers' insurance within Washington state and the Washington state industrial insurance fund.

AMENDATORY SECTION (Amending Order R 93-17, filed 9/24/93, effective 10/25/93)

WAC 284-22-050 Definitions. (1) "Administrator" means any organization designated by the assigned risk plan and approved by the commissioner to provide administrative support for the plan. Such support shall be defined by the governing committee in its operating plan. It may include, but is not limited to, acceptance, processing, and distribution of incoming applications to the servicing carrier(s), collection of and accounting for premium income, determination of assigned risk plan reserves, investment of assigned risk plan assets, collection of statistical data, actuarial assistance for rate making, development of policy contracts, and auditing the activities of servicing carrier(s) to ensure that the assigned risk plan's rules are being applied properly.

(2) "Applicant" means an employer, seeking coverage from the assigned risk plan, who has, in good faith, sought United States longshore and harbor workers' coverage from at least two of the authorized insurers writing such coverage in Washington and has been declined such coverage by all insurers from which it has sought coverage. "Applicant" does not include employers seeking coverage through the plan solely because of the lack of availability of maritime employers' liability coverage.

(3) "Authorized insurer" means any insurance company licensed to write workers' compensation insurance on a direct basis in this state.

(4) "Commissioner" means the commissioner of insurance of the state of Washington.

(5) "Governing committee" means the committee responsible for administering the assigned risk plan. It shall consist of thirteen members, who shall be appointed by the commissioner. The director of the department of labor and industries shall be one member. The remaining members shall be selected to insure equal representation of each of the following interest groups; authorized insurers writing primary or excess workers' compensation insurance, insurance producers, organized labor, and maritime employers.

(6) "Maritime employers' liability" means that liability imposed by 46 U.S.C. 688 (the Jones Act) and general maritime law for bodily injury including death of a master or member of the crew of any vessel.

(7) "Servicing carrier" means any authorized insurer designated by the assigned risk plan and approved by the commissioner and the United States Department of Labor to issue workers' compensation policies. It shall issue policies on behalf of the assigned risk plan, provide safety engineering, handle claims incurred by those covered by the assigned risk plan, provide premium audits, perform underwriting functions, and perform other duties as defined by the governing committee in its operating procedures.

(8) "State industrial insurance fund" means that entity defined in RCW 51.08.175 which provides primary workers' compensation insurance on a direct basis in this state.

(9) ((~~"Underwriting results" means the assigned risk plan's revenues less incurred claims plus net operating expenses, net of reinsurance, during its period of operation.~~

~~(10)~~)) "United States longshore and harbor workers' compensation coverage" means that workers' compensation coverage required of employers by the United States Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Secs. 901 through 950. It is hereinafter referred to as USL&H coverage.

(((~~(11)~~))) (10) "Written premium" means gross direct premiums (excluding premiums on risks written ceded to the assigned risk plan), within the state of Washington, charged during the first preceding calendar year with respect to United States Longshore and Harbor Workers' insurance, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

AMENDATORY SECTION (Amending Order R 93-17, filed 9/24/93, effective 10/25/93)

WAC 284-22-060 Participation. (1) Participation in the assigned risk plan is mandatory for all authorized insurers writing primary or excess United States Longshore and Harbor Workers' Act compensation insurance in Washington state, and for the state industrial insurance fund. ((~~Underwriting results shall be shared by the participants in accordance with the following ratio: The state industrial insurance fund, fifty percent; authorized insurers writing such United States Longshore and Harbor Workers' coverage, fifty percent.~~

~~(2) The amount of participation of each authorized insurer shall be based on the proportional share of its United States Longshore and Harbor Workers' compensation premium written within Washington to all such premium written within the appropriate category during the first preceding calendar year. However, the governing committee, subject to the commissioner's approval, and subject to the requirement that the amount assumed by all insurers within each category must be as stated in subsection (1) of this section, has the authority to allocate assessments in such a fashion that no authorized insurer shall be required to participate in the plan if the amount of an assessment shall be less than fifty dollars.~~

~~(3) Each authorized insurer writing United States Longshore and Harbor Workers' insurance shall by September 1 of each calendar year make a report to the governing committee identifying the amount of its written premium in the preceding year applying to United States Longshore and Harbor Workers' coverage and the amount applying to excess workers' compensation coverage.~~))

(2) Any assessments and distributions declared by the governing committee of the plan shall be allocated in accordance with RCW 48.22.070, fifty percent to the industrial insurance fund and fifty percent to the insurer participants as a group. Assessments and distributions shall be allocated amongst the eligible insurer participants according to their relative subject premium volumes as determined by the governing committee, subject to a reasonable de minimus premium threshold established by the governing committee for each assessment or distribution.

(3) For purposes of assessments and distributions, "subject premium" shall be for each authorized and eligible insurer its primary and excess written premiums for risks in the state of Washington covered under United States Longshore and Harbor Workers' Act compensation insurance, and maritime employer's liability insurance incidental to that workers' compensation insurance, for the relevant time periods as determined by the governing committee. If any insurer fails to provide its subject premium data in an accurate and timely manner upon request by the plan, the governing committee may, in its sole discretion, substitute that insurer's direct written premiums for workers' compensation reported or reportable in its statutory annual statement as statutory page fourteen data for the state of Washington, or the governing committee may, in its sole discretion, substitute a zero amount for that insurer.

(4) Timing and amount of assessments and distributions shall be at the discretion of the governing committee, subject to the commissioner's approval. Assessments shall be based

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upon a demonstrable need to obtain additional funds to safeguard the operations of the plan in a financially sound and responsible manner, including, but not limited to, fully funding all of the plan's current and long term financial obligations. The governing committee may request approval for distributions to plan participants from time to time, of surpluses incurred which exceed amounts deemed necessary by the governing committee to safeguard the operations of the plan in a financially sound and responsible manner, including, but not limited to, fully funding all of the plan's current and long term financial obligations. Notwithstanding any prior distributions which may have been approved or directed by the commissioner, if the plan has been terminated by the legislature, then the plan shall be required to distribute, in accordance with RCW 48.22.070, any surplus of funds after payment or provision for payment of all of the plan's liabilities.

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AMENDATORY SECTION (Amending Order R 92-12, filed 9/16/92, effective 10/17/92)

WAC 284-22-080 Approval by commissioner. (1) The commissioner shall approve the assigned risk plan's operating procedures if they provide for the fair, reasonable, and equitable administration of the assigned risk plan for all concerned.

(2) The commissioner shall approve rate and form filings made by the servicing carrier(s) on behalf of the plan using the same standards that would apply to an insurance program designed and filed with the commissioner by an authorized insurer.

(3) The commissioner shall approve the assigned risk plan's requests for interim and regular assessments, and requests for distributions from time to time, upon receipt of evidence that such assessments are necessary ((~~to insure its~~)), or such distributions are prudent, and that such assessments or distributions ensure the plan's continued operation in a financially sound and ((~~competent~~)) responsible manner.

WSR 03-03-054
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed January 13, 2003, 2:10 p.m.]

Date of Adoption: January 13, 2003.

Purpose: Chapter 308-420 WAC, regulating camping resorts, to amend, repeal or retain current rules, which may no longer be needed or need further written clarification as per the governor's directive on state rules review.

Citation of Existing Rules Affected by this Order: Amending WAC 308-420-020, 308-420-050, 308-420-060, 308-420-070, 308-420-090, 308-420-100, 308-420-140, 308-420-190, 308-420-200, 308-420-210 and 308-420-230; and repealing WAC 308-420-010, 308-420-080, and 308-420-130.

Statutory Authority for Adoption: RCW 19.105.530(1), 43.24.023.

Adopted under notice filed as WSR 02-24-073 on December 3, 2002.

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 11, Repealed 3.

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 11, Repealed 3.

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

January 13, 2003
Trudie Touchette
Acting Administrator

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-020 Definitions. (1) Words and terms used in these rules shall have the same meaning as each has in the Camping Resorts Act, (chapter 19.105 RCW).

(2) "Agency" means the department of licensing in the state of Washington.

(3) "Camping resort" shall be synonymous with "camping club," or "camp resort" whether or not structured as or involved with a common-interest entity, provided the method of structuring the project meets the definition of "camping resort" in RCW 19.105.300(1).

(4) "Camping resort program" means the rights and obligations of a purchaser and the methods and procedures for occupying or using camping resort facilities and properties, as established by the purchase contract and other written instruments, such as covenants, declarations, bylaws or rules.

(5) "Camping resort project" shall mean a camping resort and all of its parks, sites, properties and facilities, that are part of the program in which a purchaser receives use, occupancy, membership, or ownership rights.

(6) "Public offering statement" shall mean the written disclosures referred to in RCW 19.105.320 (1)(b) and 19.105.370.

(7) "Statement of record" shall mean all materials, not exclusive of others, including application forms, documents, exhibits, statements, the public offering statement, correspondence, and affidavits, filed with the agency, for registration purposes.

(8) ((~~"Resale camping resort contract" shall mean a camping resort contract offered or sold which is not the original offer, transfer or sale of such contract, and not a forfeited contract being reoffered by an operator.~~

~~(9) "Start-up camping resort contract" means a camping resort contract that is being offered or sold for the first time or a forfeited contract being resold by a camping resort operator.~~

~~(10)~~)) "Advance fees" shall mean fees, funds, or consideration of any description, collected for any purpose from buyers or sellers of resale camping resort contracts, prior to the time of settlement of a purchase transaction.

(((~~11~~))) (9) "Prospective purchaser" shall mean any person attending a sales presentation or touring a camping resort when such attendance results from an operator's solicitation or advertising.

(((~~12~~))) (10) "Right to use or multiple use camping resort" shall mean a camping resort where the fee title or leasehold interest to the land remains with the operator and memberships are sold in excess of one membership to each camping site and usage is subject to operator established rules.

(((~~13~~))) (11) "Common-interest camping resort" shall mean a member-owned entity which has the fee title or leasehold interest to the land in its own name and the memberships of the common interest entity are sold one membership to a specific camping site and the site usage is exclusive to the member.

(((~~14~~))) (12) "Undivided interest camping resort" shall mean a camping resort entity which conveys the fee title or leasehold interest to the land to the member, and the memberships are sold in excess of one membership to each camping site and their usage is subject to the operator's established rules.

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-050 Exemptions from registration—Noncommercial resale contract offerings. As provided in RCW 19.105.325(2), the director exempts from the registration requirements of chapter 19.105 RCW the offering and selling of resale camping resort contracts by a common interest entity, entirely owned and operated by the purchasers of the camping resort contracts, which markets no more than ten resale camping resort contracts during any one ((~~registration~~)) calendar year period, provided that any such offering or selling is noncommercial in nature and that registration is not necessary for the protection of purchasers. Noncommercial shall mean that the common-interest entity is not primarily in the business of offering or selling camping resort contracts.

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-060 Statement of record—Filings and information required upon application for registration of start-up camping resort projects and contract offerings. (1) An application for registration of a start-up contract offering shall be made by completing forms prepared for such purpose by the agency.

(2) The application, documents and information filed for registration purposes shall be referred to as the statement of record.

(3) The statement of record for a registration of a start-up contract offering shall include the following:

(a) The prescribed filing fee.

(b) The completed application forms.

(i) A copy of any criminal conviction, including a guilty plea, within the last ten years, or any conviction that resulted in the applicant having to register as a sex offender regardless of whether the conviction is over ten years old.

(ii) A copy of any civil or administrative judgment or order involving dishonesty, fraud, or violation of any act designed to protect consumers that names the applicant or any of the applicant's affiliates as a party.

(c) The draft of the proposed public offering statement.

(d) A sample or prototype of any documents to be signed or initialed by and that commits purchasers. Such documents shall contain the cancellation notice required in RCW 19.105.390.

(e) Copies of all recorded or unrecorded encumbrances, mortgages, liens, deeds, leases, contracts, and any amendments thereto, that affect camping resort projects.

(f) A preliminary title report, dated within ((~~ten~~)) thirty days of application, covering all of the acreages, park sites, and areas on which facilities are located.

(g) Financial statements and information as required by WAC 308-420-110.

(h) If the registrant is other than a natural person, copies of relevant articles of incorporation, bylaws, partnership, or joint venture documentation.

(i) Promotional materials, including advertising and contract forms covering travel programs, discount programs, programs for the use or occupancy of in-park trailers or mobiles and those providing memberships in other recreational programs, if such materials or programs are to be utilized to promote sales of camping resort contracts or are to be offered to contract owners as part of the camping resort programs.

(j) ((~~Rules and regulations governing the use and occupancy of project parks and facilities.~~

~~(k) A statement as required pursuant to RCW 19.105.320 (1)(d).~~

~~(l)~~)) Applications for and contracts of affiliation with any outside exchange or reciprocal-use entity.

(((~~(m) Information covering purchaser costs, rules, contract forms, and any fees required for purchaser use of operator-owned trailers, mobiles, tents, or other over-night accommodations, available for purchasers as an alternative to using the purchaser's own mobile units.~~

~~(n) A statement describing the operator's, an affiliate's, or successor's right to substitute, change, or withdraw from use all or a portion of the camping resort properties and the extent to which the camping resort operator, affiliates, or successors are obligated to replace the camping resort properties substituted or withdrawn within a reasonable period of time after such action, with substituted properties in the same general area, that are at least as desirable for the purpose of camping and outdoor recreation.~~

~~(i) If a nonaffiliate or any other person has the ability through existing agreements to exercise a right of withdrawal of camping resort properties in the program from use by the camping resort members, provide copies of any and all docu-~~

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~~mentation evidencing the ability to exercise such right of withdrawal.~~

~~(ii) If a withdrawal becomes effective on a specific date, provide a description of the means and method of withdrawal and state the date.~~

~~(o)~~)) (k) Whenever applicable to the structuring of the project, provide a copy or prototype of the following:

(i) Plats, maps, site plans, or surveys.

(ii) Water, sewerage, or land use authorizations or permits, or denial of permits of local jurisdictions.

(iii) ((~~A copy of any administrative, civil, or criminal proceeding involving theft, fraud, or dishonesty, or violations of any act designed to protect consumers or involving dishonest practices in any industry involving sales to consumers in which the applicant is or has within the past five years been a party.~~

~~(iv)~~)) Performance bonds, letters of credit, surety or guaranty agreements affecting the project or the program.

(((~~v~~))) (iv) Trust or escrow arrangements affecting the project.

(((~~vi) Market surveys or feasibility studies, if presently available.~~

~~(vii) Appraisals of market value of the project, if presently available.~~

~~(viii) Engineering studies or surveys of physical hazards such as earthquakes, floods, beach erosions, landslides, or volcanoes, if presently available.~~

~~(ix)~~)) (v) Covenants or declarations affecting camping resort properties.

(((~~x~~))) (vi) Agreements for the usage of amenities or facilities owned by persons other than operator.

(((~~p~~))) (l) If the project involves a common-interest entity copies or prototypes of the following:

(i) Declaration and bylaws.

(ii) Rules and regulations.

(iii) Membership certificate and proxy forms.

(iv) Evidences of title to any personal property owned or to be owned by the association or purchasers collectively.

(v) Agreements for managing the properties.

(vi) Agreements for payment or subsidizing the payment of project operational expenses during the term of registrant marketing.

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-070 The public offering statement—Form, content, and preparation. (1) The written disclosures provided for in RCW 19.105.320 (1)(b) and 19.105.370 shall be in a document to be known as the public offering statement.

(2) The public offering statement shall be prepared and promulgated in a form prescribed by the agency.

(3) ((~~The public offering statement shall consist of two parts:~~

~~(a) Part I, written disclosures, to be prepared by the applicant.~~

~~(b) Part II, attachments of exhibits provided by applicant in the statement of record, when required by the agency for the protection of purchasers, and a copy or prototype of the purchaser contract form(s).~~

~~(4) The applicant's disclosures for Part I of the public offering statement for a start-up camping resort contract offering shall be prepared in sections, captioned in bold print as follows:~~

~~(a) The camping resort operator: Information in this section is to include the name, address, and business telephone number of the operator, the common interest entity and a brief summary of the operator's experience in the camping resort business.~~

~~(b) The project. General information: Information in this section shall specify the location and provide a brief description of the park sites and significant facilities and recreation services already available for use by purchasers in each park site and the program.~~

~~(c) Facilities, amenities, park sites, and programs that are planned or promised: Information in this section is to cover that required in RCW 19.105.320 (1)(b)(iv) and (vi).~~

~~(d) Nature of the interest which you are purchasing: Information in this section is to cover that required in RCW 19.105.320 (1)(b)(iii). If the purchase contract, membership certificate, or project rules and regulations refer to or make use of the term(s) "club," "member," or "membership," describe whether or not any of the following are available to the purchasers:~~

~~(i) A membership in any common interest entity, nonprofit corporation or other form of common interest community.~~

~~(ii) Shares of stock that allow participation in any profits earned by the operator or its affiliates.~~

~~(iii) The right to vote for officers and directors.~~

~~(iv) The right to make decisions on how the project or program is managed.~~

~~(v) The right to vote for or against any proposed rule changes.~~

~~(vi) Attendance at membership meetings.~~

~~(e) Ownership of project properties and encumbrances, liens, and other conditions affecting ownership: Information provided in this section is to cover that required in RCW 19.105.320 (1)(b)(v).~~

~~(f) Purchaser protections—Assurances of future availability of the promised camping resort sites, facilities, and program. The information in this section is to be provided in bold print and include that information required by RCW 19.105.320 (1)(b)(xii) and (xiv) and a statement describing the operator's, or an affiliate's or successor's right to substitute, change, or withdraw from use all or a portion of the camping resort properties and the extent to which the camping resort operator, affiliates, or successors are obligated to replace the camping resort properties substituted or withdrawn within a reasonable period of time after such action, with substituted properties in the same general area, that are at least as desirable for the purpose of camping and outdoor recreation.~~

~~(g) Summary of purchasers rights to and restrictions for use of project sites and facilities: The information in this section is to include that information required pursuant to RCW 19.105.320 (1)(b)(v), (vii), and (xi).~~

~~(h) Restrictions on sale, transfer, or assignment of camping resort contracts, memberships, licenses, or deeds: The information in this section is to be provided in bold print, underlined, and to include in summary form, that information required pursuant to RCW 19.105.320 (1)(b)(x) and (xiii).~~

~~(i) Purchaser costs: The information in this section is to include that required pursuant to RCW 19.105.320 (1)(b)(ix).~~

~~(5) For applicants whose projects are structured as common interest entities, or that otherwise are involved with memberships in common interest entities which are to be responsible for management or ownership of camping resort properties, additional information is to be included in the public offering statement, pursuant to the requirements of RCW 19.105.320(vii), in a section headed "Governing documentation - The '_____' common interest entity."~~

~~(6)~~)) Prior to approval of a registration or promulgation of the proposed public offering statement by the applicant, the applicant's draft for the public offering statement shall be reviewed by the agency to determine its completeness and accuracy.

(((~~7~~))) (4) If the agency deems that sections or areas of the proposed public offering statement are incomplete, inaccurate, deceptive, or not presented in the proper format, the agency shall reject the proposed public offering statement and return it to the applicant for correction of noted deficiencies.

(((~~(8) Guidelines, instructions, and preprinted materials for preparing the public offering statement may be obtained from the agency.~~)))

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-090 The public offering statement—Delivery to prospective purchasers. (1) The operator or its agents shall provide all prospective purchasers with the agency-registered ((~~Part I of the~~)) public offering statement prior to the completion of a sales presentation or a camping resort tour whether or not such persons purchase a camping resort contract.

(2) ((~~Part II of the public offering statement shall be provided to actual purchasers.~~

(~~3~~))) Any person who requests of an operator or its agents, a public offering statement, shall be provided ((~~Part I of~~)) the public offering statement, whether or not such person has received a solicitation.

(((~~4~~))) (3) Any prospective purchaser who attends a sales presentation or tour of a camping resort, upon request of the prospective purchaser, shall be given a copy or prototype of the operator's camping resort contract, which the prospective purchaser may retain, whether or not there has been an actual purchase made. No fee shall be charged for this document.

(((~~5~~))) (4) No fee may be charged for the initial copy of the ((~~Part I of the~~)) public offering statement provided persons. A fee covering the operator's actual costs for production of the document may be charged for additional copies.

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-100 Purchaser cancellations of contracts—Prompt refund of funds and consideration. (1) "Promptly" with reference to the refund and return of a person's funds and consideration, referred to in RCW 19.105.390 shall be as follows:

(a) For cash, cashiers checks, money orders, credit card slips held and not processed and other similar consideration, the operator or its agents shall make refunds within ten business days of a demand.

(b) For credit card purchases where the operator has processed the credit card slip(s) to the care of the credit card company, the operator shall notify the credit card company of a credit to the account of the purchaser within three business days of a demand.

(c) Promissory notes and similar evidences of debt shall be voided and returned within three business days of demand.

(d) Within ten business days after demand, the operator or its agents shall give the purchaser evidence that the purchase commitment has been voided.

(2) No purchaser camping resort contract, promissory note or other evidences of debt may be sold, transferred, hypothecated or pledged by an operator until at least five business days after the termination of the statutory-prescribed cancellation term.

(3) No fees or charges may be made of a purchaser by an operator for use of written materials or camping resort facilities offered gratuitously prior to the cancellation request; however, nothing in this statement shall preclude an operator from requiring return of materials in the custody of a purchaser not ((~~constituting either Part I or Part II of~~)) including the public offering statement.

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-140 Receipt of written disclosures. The camping resort operator or salesperson shall obtain from each person that tours a camping resort or attends a sales presentation, a signed statement evidencing receipt of the ((~~appropriate parts(s) of the~~)) public offering statement. The operator shall retain each receipt for a period of at least three years from the date of signature thereon.

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-190 Renewals. (1) Pursuant to RCW 19.105.420 an application for renewal shall be made ((~~not less than thirty days prior to the expiration date of a registration,~~)) on a form to be provided by the agency.

(2) It shall be the applicant's responsibility to procure forms and file them with the agency.

(3) The renewal application shall include the following:

(a) Affidavits by the operator stating whether or not there have been any changes in the information and documentation previously submitted for purposes of registration.

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(b) Copies or prototypes of all amended, altered, or new documentation evidencing changes; the changes shall be underlined or referred to by footnotes.

(c) A draft of a proposed amended public offering statement evidencing changes; the changes shall be underlined or referred to by a cover letter calling the agency's attention to the proposed changes, additions to or deletions from the public offering statement previously accepted by the agency.

(d) A copy of all camping resort contract forms marked and underscored to reflect changes, additions or deletions.

(e) Financial statements and information as provided for in WAC 308-420-110 will be required to be submitted once every four years beginning from the original registration approval date or at any other time the department deems necessary to determine the financial stability of the company.

(f) Payment of fees as provided for in RCW 19.105.411.

(4) Failure of the renewal applicant to renew in a timely manner on or before the date of ((~~permit~~)) expiration, shall mean that the registration ((~~and permit have~~)) has expired. Upon expiration of registration the camping resort contracts are deemed not registered and the operator must register as a new applicant pursuant to the provisions of RCW 19.105.320 and WAC 308-420-060 and 308-420-070.

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AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-200 Salesperson registrations. (1) Each applicant for registration as a camping resort salesperson shall register on a form prescribed by the agency and pay a filing fee as provided by the director.

(2) Registration as a camping resort salesperson shall be renewed annually or at the time the salesperson obtains employment by a camping resort operator subsequent to a termination of a employment by a camping resort operator, by the filing of a form prescribed by the agency and payment of the proscribed fee.

(3) The following information shall be provided on the original application or renewal of a camping resort salesperson's registration:

(a) ((~~The applicant's date and place of birth.~~

~~(b) Proof of identity.~~

~~(c) Information covering employment for the prior five years.~~

~~(d) Information concerning any administrative action taken against permits, licenses or registrations in other professions, businesses or occupations.~~)) A copy of any criminal conviction, including a guilty plea, within the last ten years, or any conviction that resulted in the applicant having to register as a sex offender regardless of whether the conviction is over ten years old.

(b) A copy of any civil or administrative judgment or order involving dishonesty, fraud, or violation of any act designed to protect consumers that names the applicant as a party.

(4) Upon the occurrence of any material change in the information contained in the registrant's file, each salesperson registrant shall promptly file with the agency an amendment to the salesperson registration file stating the change(s). The following shall be material changes requiring notice to the agency:

(((~~a) Any termination of employment with a camping resort operator.~~

~~(b)~~)) No later than twenty business days, upon being named a defendant or a party in any administrative, civil or criminal proceeding ((~~involving theft, fraud or dishonesty or violation of any act designed to protect consumers, or involving unethical or dishonest practices in any industry involving sales to consumers or violations of chapter 19.105 RCW~~)), the salesperson applicant shall promptly provide to the agency a notice of the proceeding and a copy of the complaint.

(((~~c) A change of name.~~

~~(d) A change of residence or mailing address.~~))

(5) Each operator of a camping resort whose camping resort contracts are registered with the agency, shall upon the termination of employment of a camping resort salesperson provide the department with a notice of termination and to return to the department the salesperson registration within ten days of the termination.

(6) The operator is responsible for posting the salesperson registration ((~~in a conspicuous location~~)) visible to the public on the premises where the salesperson is employed.

(7) As a condition of continued registration the salesperson registrant shall comply with the following:

(a) During the entire term of the registration the registrant is to be employed or engaged by an operator that is registered with the agency as an offeror of camping resort contracts, and the salesperson shall be offering contracts on behalf of or in the employment of such operator-registrant. Upon termination of employment with a registered camping resort operator, the salesperson registration is deemed to have expired.

(b) ((~~The salesperson shall clearly identify himself or herself by full name, by means of a business card, lapel pin or by other means, upon contact with any prospective purchaser.~~

~~(c)~~)) The salesperson shall cooperate fully with the agency in any investigation of alleged violations by the registrant, salesperson, or others, of the Camping Resort Act or these rules.

(((~~(d)~~)) (c) It shall not be represented to any prospective purchaser that there is any form of a membership resale program for membership contracts being offered by the operator of the camping resort unless the same be true.

(8) Applications for registration or renewal that are for any reason defective or that are not legible shall be returned and the application shall be deemed not filed until the form is received by the agency with the deficiencies corrected.

(9) An application for renewal of a salesperson registration not filed in a timely manner or not received or acted upon by the agency prior to the expiration date shall be deemed by the agency as having expired. The salesperson must thereafter register as a new applicant for registration. Salespersons who have failed to make timely renewal applications shall not engage in camping resort activities. It is the salesperson's responsibility to secure the necessary forms and renew a registration in a timely manner. ((~~Applications for renewal should be forwarded to the agency by registered mail at least thirty days prior to expiration of the current registration.~~))

The agency shall not be responsible for applications lost in the mail or not timely received for other reasons.

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-210 Request for withdrawal of camping resort property. A camping resort operator may request ((~~an order~~)) written approval from the director for authority to withdraw any substantial camping or recreation portion of any camping resort property devoted to camping or recreational activities pursuant to RCW 19.105.380 (1)(q)(iv) by filing with the director a request ((~~90~~)) ninety days before the intended withdrawal date or such lesser time as the director may allow identifying the portion of the property to be withdrawn and stating the reasons for such withdrawal accompanied by copies of any materials or data supporting such reasons or the necessity for such withdrawal.

AMENDATORY SECTION (Amending WSR 91-01-082, filed 12/17/90, effective 1/17/91)

WAC 308-420-230 Rainchecks. (1) In the event rainchecks, in lieu of an offered item are provided to recipients, a report will be due to the agency by the 10th of each month, ((~~on a form furnished by the agency~~)) listing all rainchecks outstanding as of the last day of the preceding month and indicating deliveries of any previously reported rainchecked items.

(2) ((~~In regard to substitute items of greater value which are to be distributed to recipients, documentation establishing the local retail fair market value must be submitted to the agency prior to offering substitute items of greater value which are to be distributed to recipients.~~

~~(3)~~)) All gifts, prizes, awards, sweepstakes, premiums, free items or other items, with the exception of the major incentives with odds of 1:1,000 or greater must be available for display to the recipient prior to the sales presentation. In the event rainchecks are to be presented, this fact must be announced prior to the tour or sales presentation.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-420-010	Organization.
WAC 308-420-080	Signing of application and the permit.
WAC 308-420-130	Notice of termination of sales.

WSR 03-03-055
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed January 13, 2003, 2:14 p.m.]

Date of Adoption: January 13, 2003.

Purpose: Chapter 308-129 WAC, regulating sellers of travel. Due to a new law that was passed during the 2002 legislation the department felt it necessary to amend the current rule for further written clarification as per the governor's directive on state rules review.

Citation of Existing Rules Affected by this Order: Amending WAC 308-129-100 Applications—Conditions.

Statutory Authority for Adoption: RCW 19.138.170 and 43.24.023.

Adopted under notice filed as WSR 02-24-075 on December 3, 2002.

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.

January 13, 2003
Trudie Touchette
Acting Administrator

AMENDATORY SECTION (Amending WSR 00-11-047, filed 5/12/00, effective 6/12/00)

WAC 308-129-100 Applications—Conditions. Any person desiring to be registered as a seller of travel shall submit with the application form:

(1) ((~~If the applicant, within the past ten years, has been found guilty of a felony involving moral turpitude, a misdemeanor concerning fraud or conversion, or suffers a judgment in a civil action involving willful fraud, misrepresentation, or conversion, a copy of such conviction or judgment shall be included.~~

~~(2)~~)) A copy of any criminal conviction, including a guilty plea, within the last ten years, or any conviction that resulted in the applicant having to register as a sex offender regardless of whether the conviction is over ten years old.

(2) A copy of any civil or administrative judgment or order involving dishonesty, fraud, or violation of any act designed to protect consumers that names the applicant as a party.

(3) In lieu of the CPA/LPA/bank officer report required by RCW 19.138.110(5), an applicant may submit an affidavit

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or declaration signed under penalty of perjury setting out the information required by RCW 19.138.110(5).

(((~~3~~))) (4) Applicants who certify under penalty of perjury that they do not hold for more than five business days any non-exempt funds received from any person or entity for retail travel services shall not be required to report or maintain a trust account or other approved account under RCW 19.138.110(5).

(((~~4~~))) (5) A seller of travel applying to be licensed under chapter 19.138 RCW may submit a surety bond as described in RCW 19.138.140 (7)(a)(i) or other instrument approved by the department as described in RCW 19.138.140 (7)(a)(iv). The amount of the surety bond or other approved instrument shall be based upon the prior year's annual gross income of business conducted as outlined in the following scale:

Annual Gross Income of Business Conducted:	Amount of Surety Bond or other instrument approved by the department:
$199,999 and under	$10,000
$200,000 through $499,999	$20,000
$500,000 through $749,999	$30,000
$750,000 through $999,999	$40,000
$1,000,000 and above	$50,000

(((~~5~~))) (6) Sellers of travel companies upon application and renewal shall attest to their gross annual income of business conducted on a form provided by the department.

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WSR 03-03-064
PERMANENT RULES
PUBLIC EMPLOYMENT RELATIONS COMMISSION
[Filed January 14, 2003, 1:56 p.m.]

Date of Adoption: January 6, 2003.

Purpose: To implement: (a) Personnel System Reform Act of 2002 (PSRA) (chapter 41.80 RCW) providing collective bargaining rights for state civil service employees; (b) Initiative Measure No. 775 (I-775) (chapter 3, Laws of 2002) providing collective bargaining rights to individual providers under home care quality authority; (c) Faculty Collective Bargaining Act (FCBA) (chapter 41.76 RCW) providing collective bargaining rights to faculty at public four-year institutions of higher education; and (d) chapter 34, Laws of 2002, providing collective bargaining rights to teaching and research assistants at University of Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 391-08-001, 391-08-630, 391-08-670, 391-25-001, 391-25-002, 391-25-011, 391-35-001, 391-35-002, 391-45-001, 391-45-002, 391-55-001, 391-55-002, 391-55-200, 391-65-001, 391-65-002, 391-65-110, 391-95-001 and 391-95-010.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060.

Other Authority: WAC 391-08-630 is RCW 41.58.010 and [41.58].015; WAC 391-08-670 is RCW 34.05.220; WAC 391-25-011 is RCW 41.56.201; WAC 391-25-032 is RCW 41.59.070(3); WAC 391-25-036 is RCW 41.80.001 and [41.80].080; WAC 391-25-037 is RCW 41.76.020(2); WAC 391-25-051 is RCW 74.39A.240 and [74.39A].270; WAC 391-25-096 is RCW 41.80.070(2); WAC 391-25-136 and 391-25-496 is RCW 41.80.080; WAC 391-25-197, 391-25-217 and 391-24-427 is RCW 41.76.005(11); WAC 391-35-326 is RCW 41.80.005(4); WAC 391-35-327 is RCW 41.76.005 (5) and (10); WAC 391-35-346 is RCW 41.80.005(13) and [41.80].070(1); WAC 391-35-347 is RCW 41.76.005 (5) and (9); WAC 391-35-356 is RCW 41.80.005(6) and [41.80].070(1); WAC 391-55-200 is RCW 41.56.450, [41.56].475, [41.56].492, and 74.39A.270; WAC 391-65-110 is RCW 41.56.125; and WAC 391-95-010 is RCW 28B.52.045, 41.56.122, 41.59.100, 41.76.045, 41.80.100.

Adopted under notice filed as WSR 02-23-088 on November 20, 2002.

Changes Other than Editing from Proposed to Adopted Version: WAC 391-25-036(3) applies only to agreements negotiated under PSRA. Sentence added to WAC 391-25-136 requiring employer to send list (excluding employee addresses) to other parties at same time list is sent to agency. WAC 391-25-476 amended to provided list of voters to parties involved in election.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 22, Amended 16, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 5, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 18, Amended 18, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 18, Repealed 0.

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

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

January 14, 2003
Marvin L. Schurke
Executive Director

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-08-001 Application and scope of chapter 391-08 WAC. Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); ((~~and~~)) sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002

(RCW 41.06.340); and section 15, chapter 356, Laws of 2002 (RCW 41.76.060), to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and

(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-630 Agency structure—Substitution for executive director. (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full-time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The commission's professional staff is appointed pursuant to RCW 41.58.015(3). A "multifunctional" staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution services provided by the agency. Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may also delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.

(5) In the event the executive director is disqualified from participation in a decision, the most senior (in terms of length of service with this agency) ((~~member of the agency's mediation staff~~)) dispute resolution manager authorized to act as the designee of the executive director to make preliminary rulings on unfair labor practice cases under WAC 391-45-110, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director. Thereafter, this authority passes to the other dispute resolution managers in agency seniority order.

AMENDATORY SECTION (Amending WSR 00-24-044, filed 11/30/00, effective 1/1/01)

WAC 391-08-670 Decision numbering—Citation of cases—Indexing of decisions. (1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of two or three components, as follows:

(a) The first component, consisting of a number, indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency commenced operations on January 1, 1976.

(b) The second component (where appropriate) consisting of an alphabetic code in ascending alphabetical order, indicates the second and subsequent decisions issued in the case to which the numerical component was originally assigned.

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(c) The third component, consisting of a four-letter alphabetic code, indicates the statute under which the decision was issued:

"CCOL" indicates cases decided under chapter 28B.52 RCW((~~, which is titled: "~~))(Collective Bargaining—Academic Personnel in Community Colleges).((")

"EDUC" indicates cases decided under chapter 41.59 RCW((~~, which is titled: "~~))(Educational Employment Relations Act).((")

"FCBA" indicates cases decided under chapter 41.76 RCW (faculty at public four-year institutions of higher education).

"MRNE" (no longer in use) was formerly used to indicate cases decided under chapter 47.64 RCW, relating to the Washington state ferries system.

"PECB" indicates cases decided under chapter 41.56 RCW((~~, which is titled: "~~))(Public Employees' Collective Bargaining Act),((") including some cases involving port districts.

"PORT" indicates cases decided exclusively under chapter 53.18 RCW((~~, which is titled: "~~))(Employment Relations—Collective Bargaining and Arbitration((")), relating to port districts.

"PRIV" (((~~no longer in use) was formerly used to~~)) indicates cases decided under chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" indicates cases decided under RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act).

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency shall conform to the formats specified in this section:

GENERAL RULE: Citations shall list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in parenthesis).

Examples:

City of Roe, Decision 1234 (PECB, 1992)

City of Roe, Decision 1234-A (PECB, 1993)

City of Roe, Decision 1234-B (PECB, 1994)

EXCEPTION 1: For decisions being cited within the first year following their issuance, the full date of issuance may be set forth.

Example:

City of Roe, Decision 1234-C (PECB, December 15, 1995)

EXCEPTION 2: For decisions in which an employee organization or labor organization was named as the respondent in an unfair labor practice case, the citation shall list the name of the union (in parenthesis) following the name of the employer.

Example:

City of Roe (Doe Union), Decision 2345 (PECB, 1995)

(3) The agency encourages the publication and indexing of its decisions by private firms, but does not contribute financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.

(4) The agency uses a commercially published index of its decisions, along with commercially produced computer assisted research tools, in its own operations. The agency makes those indexes available to the public in its offices, to satisfy the requirements of RCW 42.17.260(5).

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission on petitions for investigation of questions concerning representation of employees under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070 and 391-25-090;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, and 391-25-670; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, and 391-25-250.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with num-

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bers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (((~~professional negotiations~~)) Collective Bargaining—Academic ((~~faculties of~~)) Personnel in Community Colleges ((~~districts~~))) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-25-011 Special provision—Optional coverage of classified employees of institutions of higher education under chapter 41.56 RCW. The commission acquires jurisdiction ((~~over~~)) under chapter 41.56 RCW with respect to bargaining units of classified employees of institutions of higher education defined in RCW 41.56.030(8) by a voluntary recognition process consisting of two stages completed prior to July 1, 2003.

(1) The commission acquires limited jurisdiction ((~~over a bargaining unit of classified employees of an institution of higher education as defined in RCW 41.56.030(8),~~)) under chapter 41.56 RCW upon the filing by the employer and an exclusive bargaining representative certified under chapter 41.06 RCW, of a notice of intent pursuant to RCW 41.56.201 (1)(a).

(a) The executive director shall docket a representation case to preserve a record of the transaction, but shall take no other steps to determine a question concerning representation under this chapter.

(b) The scope of bargaining and conduct of the parties in their negotiations for an initial collective bargaining agreement under chapter 41.56 RCW shall be regulated by the commission under chapter 391-45 WAC.

(c) During the parties' negotiations for an initial collective bargaining agreement under chapter 41.56 RCW, the Washington personnel resources board retains jurisdiction to determine appropriate bargaining units and to certify exclusive bargaining representatives under chapter 41.06 RCW.

(2) The commission acquires full jurisdiction under chapter 41.56 RCW over a bargaining unit ((~~of classified employees of an institution of higher education~~)) which has filed a notice of intent under this section, if the parties execute an initial collective bargaining agreement recognizing the notice of intent.

(a) The transfer of jurisdiction is effective on the first day of the month following the month during which the parties provide notice that they have executed an initial collective bargaining agreement under RCW 41.56.201 (1)(c).

(b) The executive director shall dismiss the representation case docketed upon the filing of the notice of intent, on the basis of "voluntary recognition."

(3) The jurisdiction of the commission under chapter 41.56 RCW ceases if the commission finds that the parties have reached an impasse in negotiations for an initial collective bargaining agreement under chapter 41.56 RCW.

(a) A finding of impasse shall not be made if unfair labor practice proceedings concerning the bargaining unit are pending under subsection (1)(b) of this section.

(b) The executive director shall dismiss the previously docketed representation case as "withdrawn."

(4) Collective bargaining agreements negotiated under this option shall be renewed, extended, or terminated in conformity with RCW 41.56.201(4).

NEW SECTION

WAC 391-25-032 Special provision—Educational employees. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date of the agreement or any renewals or extensions thereof as long as such renewals and extensions do not exceed three years.

NEW SECTION

WAC 391-25-036 Special provision—State civil service employees. For state civil service employees:

(1) The "window" period specified in WAC 391-25-030(1) shall be computed as not more than one hundred twenty nor less than ninety days prior to the stated expiration date of the collective bargaining agreement.

(2) The "protected" period specified in WAC 391-25-030 (1)(c) shall be computed as ninety days.

(3) The duration of any collective bargaining agreement negotiated under chapter 41.80 RCW shall not exceed one fiscal biennium.

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NEW SECTION

WAC 391-25-037 Special provision—Higher education faculty. If there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement; provided that in the event a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for more than three years, then a question concerning representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date or any subsequent anniversary date of the agreement.

NEW SECTION

WAC 391-25-051 Special provision—Individual providers under home care quality authority. This rule consolidates special rules applicable to individual providers under chapter 3, Laws of 2002, Initiative Measure No. 775 (I-775) passed by Washington voters in November of 2001. I-775 extended the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the Medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

(1) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by I-775, to require a ten percent showing of interest for either a petitioner or an intervenor.

(2) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by I-775.

(3) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of individual providers under I-775.

(4) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of individual providers under I-775.

(5) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by I-775.

(6) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by I-775.

(7) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by I-775.

(8) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by I-775.

(9) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by I-775.

(10) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by I-775.

(11) Any representation election for the bargaining unit affected by I-775 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to individual providers may describe the collective bargaining rights established by I-775 and agreements reached by a petitioning union and the employer concerning the election process;

(b) The notice and ballot materials supplied to individual providers shall be set forth in English and Spanish;

(c) The ballot materials supplied to individual providers shall include a card return-addressed to the commission, by which individual providers can request ballot materials in Cambodian, Korean, Mandarin, Russian, Tagalog, Ukrainian, or Vietnamese. Upon receipt of a request from an individual provider, the agency shall supply ballot materials to the individual provider in the requested language.

(d) At least twenty-four days shall be provided between the date on which ballot materials are mailed to individual providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in WAC 391-25-470 to WAC 391-25-140 shall be interpreted in light of subsection (2) of this section.

(12) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by I-775.

NEW SECTION

WAC 391-25-076 Special provision—State civil service employees. All representation cases pending before the Washington personnel resources board and/or the department of personnel on June 13, 2002, shall be transferred to and acted upon by the commission under this chapter. Documents filed in conformity with Washington personnel resources board and/or department of personnel rules prior to June 13, 2002, shall be acted upon by the commission unless a deficiency notice is issued and a period of at least twenty-one days is provided for a party to cure a noted defect.

NEW SECTION

WAC 391-25-096 Special provision—State civil service employees. (1) WAC 391-25-090 is inapplicable to bargaining units of state civil service employees.

(2) Where an employer claims that an employee organization previously certified as the exclusive bargaining representative of state civil service employees has become defunct or has abandoned representation of a bargaining unit, it may file a petition under WAC 391-25-070 to obtain a determination as to whether the employee organization continues to represent the bargaining unit. Instead of a showing of interest under WAC 391-25-110, the employer shall attach affidavits

and other documentation as may be available to it to demonstrate the existence of a good faith belief that the employee organization has become defunct or has abandoned representation of the bargaining unit. The documentation provided under this section shall not include signature documents provided to the employer by employees.

(3) An employee organization named in a petition filed under this section shall be given a reasonable opportunity to respond and rebut the allegations in the petition. Ongoing activity as exclusive bargaining representative may be demonstrated by evidence showing that the employee organization has been holding meetings of its members, collecting dues, electing or appointing officers and representatives for the purposes of dealing with the employer, processing grievances, negotiating collective bargaining agreements, or similar activities for and on behalf of employees in the bargaining unit.

(4) If it is determined that the employee organization is defunct or has abandoned its responsibilities for and on behalf of the employees in the bargaining unit, the executive director shall vacate the certification of the employee organization as exclusive bargaining representative. An order issued by the executive director shall be subject to appeal under WAC 391-25-660.

NEW SECTION

WAC 391-25-136 Special provision—State civil service employees. In addition to the information required by WAC 391-25-130, lists of state civil service employees provided in proceedings under RCW 41.06.340 and/or chapter 41.80 RCW shall also contain the job classification and work location of each employee. The employer shall send a copy of the list (excluding employee addresses) to all other parties in the case, at the same time as the list is sent to the agency.

NEW SECTION

WAC 391-25-137 Special provision—Higher education faculty. In addition to the information required by WAC 391-25-130, lists of higher education faculty provided in proceedings under chapter 41.76 RCW shall also contain the job classification and work location of each employee.

NEW SECTION

WAC 391-25-197 Special provision—Higher education faculty. The description of bargaining unit requirement of WAC 391-25-190 is limited to a single unit per employer under chapter 41.76 RCW.

NEW SECTION

WAC 391-25-216 Special provision—State civil service employees. WAC 391-25-210(2) shall not apply to state civil service employees covered by chapter 41.06 RCW. An intervenor may not seek a bargaining unit configuration other than that proposed by the original petition.

NEW SECTION

WAC 391-25-217 Special provision—Higher education faculty. (1) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single unit per employer under chapter 41.76 RCW.

(2) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the employer-wide bargaining units under chapter 41.76 RCW.

NEW SECTION

WAC 391-25-396 Special provision—State civil service employees. WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to state civil service employees.

NEW SECTION

WAC 391-25-416 Special provision—State civil service employees. As to state civil service employees, authorization documents signed and dated by employees in the bargaining unit no more than six months prior to the filing of the petition shall be honored for purposes of WAC 391-25-410.

NEW SECTION

WAC 391-25-427 Special provision—Higher education faculty. The unit determination election procedures in WAC 391-25-420 are inapplicable to the employer-wide bargaining units under chapter 41.76 RCW.

NEW SECTION

WAC 391-25-476 Special provision—State civil service employees. The requirement in WAC 391-25-470(2) that lists of voters be surrendered shall not apply to elections concerning state civil service employees covered by chapter 41.06 RCW. Upon request, the agency shall provide the parties involved in the election with the names of employees who voted.

NEW SECTION

WAC 391-25-496 Special provision—State civil service employees. If the executive director conducts an election involving state civil service employees by on-site balloting procedures, absentee ballots shall be allowed as prescribed in this section.

(1) Upon the request of an individual employee, the agency shall provide a notice and absentee ballot to the individual employee.

(2) To be counted, the absentee ballot must be received at the Olympia office of the commission:

(a) Directly from the employee or from the employee via the United States Postal Service; and

(b) Prior to the close of business on the last day the polls are open for the on-site election.

(3) Whenever absentee ballots are issued, the tally of ballots shall be delayed for one or more days after the last day on

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which the polls are open for the on-site election, and shall then be conducted in the commission's Olympia office in a manner which preserves the secrecy of the absentee ballots.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission on petitions for clarification of existing bargaining units under all chapters of the Revised Code of Washington (RCW) administered by the commission and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-35-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-35-210 and 391-35-250; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-35-070.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (((~~professional negotiations~~)) Collective Bargaining—Academic ((~~faculties of~~)) Personnel in Community Colleges ((~~districts~~))) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

NEW SECTION

WAC 391-35-026 Special provision—State civil service employees. In addition to the circumstances described in WAC 391-35-020, bargaining units of state civil service employees may be modified under this section until RCW 41.80.050 and 41.80.080 take effect on July 1, 2004.

(1) Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "divided" into separate units of supervisors and nonsupervisory employees under this section.

(a) A petition to have an existing unit divided may be filed by the exclusive bargaining representative, by the employer, or by those parties jointly.

(b) The separation of bargaining units shall be implemented on or before July 1, 2004.

(2) Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "perfected" under this section.

(a) A petition to have an existing bargaining unit perfected may be filed by the exclusive bargaining representative, or by the employer and exclusive bargaining representative jointly.

(b) All of the unit determination criteria set forth in RCW 41.80.070 shall be applicable to proceedings under this section. The history of bargaining in a unit configuration that is fragmentary and/or was based on narrower considerations shall not preclude creation of a "perfected" bargaining unit as to which a community of interests is demonstrated with regard to:

(i) The duties, skills and working conditions of all positions or classifications to be included in the "perfected" bargaining unit; and

(ii) The extent of organization and avoidance of unnecessary fragmentation shall be implemented to avoid stranding

of other positions or classifications in units so small as to prejudice their statutory bargaining rights; and

(iii) The required separation of supervisors and nonsupervisory employees is implemented based on the delegations of authority then in existence; and

(iv) Two or more existing bargaining units can be merged through the procedure set forth in this section; and

(v) The exclusive bargaining representative demonstrates that it has majority support among any employees to be accreted to the bargaining unit(s) being "perfected."

NEW SECTION

WAC 391-35-326 Special provision—State civil service employees. Confidential exclusions for state civil service employees shall be determined under RCW 41.80.005(4).

NEW SECTION

WAC 391-35-327 Special provision—Higher education faculty. Confidential exclusions for higher education faculty employees shall be determined under RCW 41.76.005 (5) and (10).

NEW SECTION

WAC 391-35-346 Special provision—State civil service employees. Supervisor exclusions for state civil service employees shall be determined under RCW 41.80.005(13) and 41.80.070(1).

NEW SECTION

WAC 391-35-347 Special provision—Higher education faculty. Administrator exclusions for higher education faculty employees shall be determined under RCW 41.76.005 (5) and (9).

NEW SECTION

WAC 391-35-356 Special provision—State civil service employees. (1) For employees covered by chapter 41.06 RCW who work less than full-time, it shall be presumptively appropriate to include those employees in the same bargaining unit with full-time employees performing similar work.

(2) The presumption set forth in this section is intended to avoid excessive fragmentation and a potential for conflicting work jurisdiction claims which would otherwise exist in separate units of full-time and less than full-time employees.

(3) The presumption set forth in this section shall be subject to modification by adjudication.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-45-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission on complaints charging unfair labor practices under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-45-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-45-350 and 391-45-390; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-45-070, 391-45-090, and 391-45-260.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-45-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

((~~(2)~~)) (3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

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(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (Private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

NEW SECTION

WAC 391-45-056 Special provision—State civil service employees. All unfair labor practice cases pending before the Washington personnel resources board and/or the department of personnel on June 13, 2002, shall be transferred to and acted upon by the commission under this chapter. Documents filed in conformity with Washington personnel resources board and/or department of personnel rules prior to June 13, 2002, shall be acted upon by the commission unless a deficiency notice is issued and a period of at least twenty-one days is provided for a party to cure a noted defect.

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AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-55-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission relating to the resolution of impasses occurring in collective bargaining under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-65 WAC, which regulates grievance arbitration proceedings.

(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW((,)) (port employees) (((~~Employment relations—Collective bargaining and arbitration),~~))) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

Special provisions relating to bargaining units eligible for interest arbitration ((~~for bargaining units under chapter 41.56 RCW~~)) are set forth beginning with WAC 391-55-200.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter. Special provisions relating to fact finding are set forth beginning with WAC 391-55-300.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-200 Interest arbitration—Certification of issues. (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(7), 41.56.475 ((~~or~~)), 41.56.492 or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) ((~~For a bargaining unit covered by RCW 41.56.030 (7) or 41.56.475~~)) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-65-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (((~~professional negotiations~~)) Collective Bargaining—Academic ((~~faculties of~~)) Personnel in Community Colleges ((~~districts~~))) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-110 Grievance arbitration—Conduct of proceedings. The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff shall be kept in the public files of the agency.

(2) The services of a member of the commission staff as arbitrator shall be subject to interruption for reassignment of the staff member to other functions of the agency having a higher priority.

(3) Except as provided in subsections (1) and (2) of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" ((~~adopted by the National Academy of Arbitrators, the American Arbitration Association and~~)) as last amended with approval of the Federal Mediation and Conciliation Service ((~~on May 29, 1985~~)).

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-95-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission on disputes concerning the right of nonassociation under the union security provisions of certain ((~~statutes~~)) chapters of the Revised Code of Washington

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(RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-95-270 and 391-95-290; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-95-170.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(5) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(6) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(7) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-010 Notice of union security obligation. (1) Whenever a collective bargaining agreement negotiated under the provisions of chapter 28B.52, 41.56, ((~~or~~)) 41.59, 41.76, or 41.80 RCW contains a union security provision, the exclusive bargaining representative shall provide each affected employee with a copy of the collective bargaining agreement, and shall specifically advise each employee of his or her obligations under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall be resolved through unit clarification proceedings under chapter 391-35 WAC, and shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of a union security provision shall be resolved through grievance arbitration or other procedures for interpretation or application of the collective bargaining agreement, and shall not be a subject of proceedings under this chapter.

WSR 03-03-070
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Juvenile Rehabilitation Administration)
[Filed January 15, 2003, 8:19 a.m.]

Date of Adoption: January 15, 2003.

Purpose: These rules describe the range of placements available in Juvenile Rehabilitation Administration (JRA).

Citation of Existing Rules Affected by this Order: Amending WAC 388-730-0010, 388-730-0060, 388-730-0065, 388-730-0070, and 388-730-0090.

Statutory Authority for Adoption: RCW 13.40.460.

Other Authority: RCW 72.05.150.

Adopted under notice filed as WSR 02-18-110 on September 4, 2002.

Changes Other than Editing from Proposed to Adopted Version: The change is technical in nature related to operations. "Regional administrator" was added to WAC 388-730-0070(6) and the phrase "or make readily available" was added to WAC 388-730-0070(6). The effect of the adopted rule is not substantially different from the rule as proposed.

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 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

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

January 3, 2003
Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 00-22-019, filed 10/20/00, effective 11/20/00)

WAC 388-730-0010 Definitions. As used in this chapter:

((~~(1)~~)) **"Community facility"** means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to an interagency agreement with the department is not a community facility.

((~~(2)~~)) **"Community placement eligibility requirements"** means requirements developed by JRA that must be met by a youth to demonstrate progress in treatment and low

public safety risk, which justify an institutional minimum or minimum security classification for the youth.

(((3))) **"Initial security classification assessment"** means a written instrument, developed by JRA and administered by diagnostic staff, to determine to what extent a juvenile is a threat to public safety for the purpose of determining the juvenile's security classification when the juvenile initially is committed to JRA.

(((4))) **"JRA"** means juvenile rehabilitation administration, department of social and health services.

(((5))) **"Juvenile"** means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(((6))) **"Program administrator"** means institution superintendent, regional administrator, or their designees.

(((7))) **"Residential treatment and care program"** means a single family residence operated for the care of juveniles committed to the department under RCW 13.40.185.

"Separate living unit" means sleeping quarters and areas used for daily living activities not specific to treatment and education programs located in a building, wing, or on a different floor which separates resident groups.

(((8))) **"Service provider"** means the entity that operates a community facility or is contracted to provide a residential treatment and care program.

(((9))) **"Specialized treatment program"** means a program that addresses additional rehabilitation needs such as sex offender treatment, drug/alcohol treatment, mental health interventions, gang intervention, gender/age specific intervention and other programs meeting specific rehabilitation needs of juveniles.

AMENDATORY SECTION (Amending WSR 00-22-019, filed 10/20/00, effective 11/20/00)

WAC 388-730-0060 Minimum security. (1) The provisions of WAC 388-730-0050 also apply to a juvenile classified as minimum security, except the juvenile must reside in a community facility, residential treatment and care program, or a community commitment program facility (CCP) rather than in an institution.

(2) Juveniles must not be placed in a community facility or residential treatment and care program until:

(a) Ten percent of the juvenile's sentence, and in no case less than thirty days, has been served in a secure facility; and

(b) All placement assessment requirements have been met.

(3) In addition to the provisions of WAC 388-730-0050 (3)(b)(iii), minimum security juveniles may be permitted unescorted participation in treatment programs in the community that do not involve the family for up to twelve hours per day.

AMENDATORY SECTION (Amending WSR 00-22-019, filed 10/20/00, effective 11/20/00)

WAC 388-730-0065 Special placement restrictions. Certain placement restrictions apply to community facilities and residential treatment and care programs that are commonly used by and under the jurisdiction of both JRA and the children's administration.

(1) When juveniles under commitment to JRA are assessed as a high to moderate risk for sexually aggressive behavior, they may not be placed in a community facility or residential treatment and care program with youths under the jurisdiction of children's administration unless:

(a) They are placed in a separate living unit solely for juveniles currently under the jurisdiction of JRA; or

(b) They are placed in a program that contracts specifically for the provision of services to sexually aggressive youth.

(2) Juveniles under commitment to JRA for a class A felony may not be placed in these community facilities unless:

(a) They are housed in a separate living unit solely for juveniles currently under the jurisdiction of JRA;

(b) They are placed in a community facility or residential treatment and care program that is a specialized treatment program and the juvenile is not assessed as sexually aggressive under RCW 13.40.470; or

(c) They are placed in a community facility or residential treatment and care program that is a specialized treatment program housing one or more sexually aggressive youth and the juvenile is not assessed as sexually vulnerable under RCW 13.40.470.

AMENDATORY SECTION (Amending WSR 00-22-019, filed 10/20/00, effective 11/20/00)

WAC 388-730-0070 Residential disciplinary standards. (1) Serious violations by a juvenile include:

(a) Escape or attempted escape;

(b) Violence toward others with intent to harm and/or resulting in significant bodily injury;

(c) Involvement in or conviction of a criminal offense under investigation by law enforcement or awaiting adjudication for behavior that occurred during current placement;

(d) Extortion or blackmail that threatens the safety or security of the facility or community;

(e) Setting or causing an unauthorized fire with intent to harm self, others, or property, or with reckless disregard for the safety of others;

(f) Possession or manufacture of weapons or explosives, or tools intended to assist in escape;

(g) Interfering with staff or service providers in performing duties relating to the security and/or safety of the facility or community;

(h) Intentional property damage in excess of one thousand five hundred dollars;

(i) Possession, use, or distribution of drugs or alcohol, or use of inhalants;

(j) Rioting or inciting others to riot;

(k) Refusal of urinalysis or search; or

(l) Other behaviors which threaten the safety or security of the facility, its staff, or residents or the community.

(2) Other violations by a juvenile placed in a community facility or residential treatment and care program include:

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(a) Unaccounted for time when a juvenile is away from the community facility or residential treatment and care program;

(b) Violation of conditions of authorized leave;

(c) Intimidation or coercion against any person;

(d) Misuse of medication such as hoarding medication or taking another person's medication;

(e) Self-mutilation, self tattooing, body piercing, or assisting others to do the same;

(f) Intentional destruction of property valued at less than fifteen hundred dollars;

(g) Fighting;

(h) Unauthorized withdrawal of funds with intent to commit other violations;

(i) Suspensions or expulsions from school or work;

(j) Violations of school, employment or volunteer work agreements related to custody and security concerns;

(k) Escape talk;

(l) Sexual contact or any other behavior, not defined as a serious violation, resulting in a referral to the department of licensing, child protective services, or law enforcement; or

(m) Lewd or disruptive behavior in the community.

(3) Juveniles must be held accountable when there is reasonable cause to believe they have committed a violation.

(a) Whenever a juvenile placed in a community facility or residential treatment and care program commits a serious violation, the juvenile must be returned to an institution. The JRA program administrator who receives a service provider report of a serious violation must make arrangements to transfer the juvenile to an institution as soon as possible. Juveniles may be placed in a secure JRA or contracted facility pending transportation to an institution.

(b) Sanctions for serious violations committed by juveniles in an institution, and additional sanctions for serious violations committed by juveniles returned to an institution, must include one or more of the following:

(i) Loss of privileges for up to thirty days;

(ii) Loss of program level; or

(iii) Room confinement up to seventy-two hours.

(c) Sanctions for serious violations may also include, but are not limited to, one or more of the following:

(i) Change in release date;

(ii) Referral for prosecution;

(iii) Transfer to an intensive management unit;

(iv) Increase in security classification;

(v) Reprimand and loss of points;

(vi) Restitution; or

(vii) Community service.

(d) Sanctions for violations listed in WAC 388-730-0070(2) may include transfer to a higher security facility and must include one or more of the following:

(i) Loss or privileges;

(ii) Loss of program level;

(iii) Room confinement up to seventy-two hours;

(iv) Change in release date;

(v) Reprimand and/or loss of points;

(vi) Additional restitution; or

(vii) Community service.

(4) When a sanction is imposed, the juvenile must also receive a counseling intervention to address the violation.

(5) If the proposed sanctions for any violation includes extending the juvenile's established release date, the juvenile must be entitled to:

(a) Notice of an administrative review to consider extension of the release date and a written statement of the incident;

(b) An opportunity to be heard before a neutral review chairperson;

(c) Present oral or written statements, and call witnesses unless testimony of a witness would be irrelevant, repetitive, unnecessary, or would disrupt the orderly administration of the facility;

(d) Imposition of the sanction only if the administrative review chairperson finds by a preponderance of the evidence that the serious violation did occur; and

(e) A written decision, stating the reasons for the decision, by the administrative review chairperson.

(6) Each superintendent, regional administrator and service provider must clearly post, or make readily available, the list of serious violations and possible sanctions in all living units.

(7) Each program administrator must adopt procedures for implementing the requirements of this section.

AMENDATORY SECTION (Amending WSR 00-22-019, filed 10/20/00, effective 11/20/00)

WAC 388-730-0090 Service provider penalty schedule. (1) Whenever a service provider contracts with the JRA to operate a community facility or residential treatment and care program, the contracted service provider must report any known violation as required in WAC 388-730-0080.

(2) If the contracted service provider fails to report violations within the prescribed time frames, the JRA must impose one or more of the following remedies:

(a) Imposition of a corrective action plan to be completed as determined by the program administrator.

(b) Imposition of the following monetary penalties:

(i) The first time fines are imposed on a service provider, the penalty must be at the rate of fifty dollars per day for each juvenile involved in a violation that was not reported as required. The penalty must be assessed for each day the report was late, and may continue until a corrective action plan is approved by the program administrator.

(ii) Subsequent fines imposed on the service provider during the same calendar year must be at the rate of seventy-five dollars per day for each juvenile involved in a violation that was not reported as required. The penalty must be assessed for each day the report was late, and may continue until a corrective action plan is approved by the program administrator.

(c) Order to stop placement until a corrective action plan is submitted, approved by the program administrator, and implemented.

(d) Termination of the contract for convenience if it is determined such termination is in the best interests of the department.

WSR 03-03-071
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 15, 2003, 8:20 a.m., effective March 1, 2003]

Date of Adoption: January 15, 2003.

Purpose: Amending WAC 388-450-0045 to reflect the current federal requirement to exclude payments made through AmeriCorps and AmeriCorps VISTA as income.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0045.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510.

Adopted under notice filed as WSR 02-23-084 on November 19, 2002.

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

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

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

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

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

Effective Date of Rule: March 1, 2003.

January 13, 2003
Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-03-019, filed 1/4/02, effective 2/1/02)

WAC 388-450-0045 How do we count income from employment and training programs? This section applies to cash assistance, Basic Food ((~~assistance~~)), and medical programs for families, children, and pregnant women.

(1) We treat payments issued under the Workforce Investment Act (WIA) as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food ((~~assistance~~)):

(i) We exclude OJT earnings for children who are eighteen years of age or younger and under parental control as described in WAC 388-408-0035.

(ii) We count OJT earnings as earned income for people who are:

(A) Age nineteen and older; or

(B) Age eighteen or younger and not under parental control.

(iii) We exclude all other payments.

(2) We ((~~treat~~)) exclude **all** payments issued under the National and Community Service Trust Act of 1993 ((~~AmeriCorps) as follows:~~

~~(a) We exclude OJT earnings for children who are eighteen years of age or younger and under parental control as described in WAC 388-408-0035 (2)(c).~~

~~(b) We count OJT earnings as earned income for people who are:~~

~~(i) Age nineteen and older; or~~

~~(ii) Age eighteen or younger and not under parental control.~~

~~(c) We exclude all other payments~~)). This includes payments made through the AmeriCorps and AmeriCorps VISTA programs.

(3) We ((~~exclude~~)) treat payments issued under Title ((~~H~~)) I of the Domestic Volunteer Act of 1973, such as ((~~Retired Senior Volunteer Program (RSVP).~~

~~(4) We treat payments issued under Title I of the Domestic Volunteer Act of 1973,such as VISTA,~~)) University Year for Action, and Urban Crime Prevention Program as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food ((~~assistance~~)), we count most payments as earned income. We exclude the payments if you got:

(i) Basic Food ((~~assistance~~)) or cash assistance at the time you joined the Title I program; or

(ii) You were participating in the Title I program and got an income disregard at the time of conversion to the Food Stamp Act of 1977. We will continue to exclude the payments you get even if you do not get Basic Food ((~~assistance~~)) every month.

(4) We exclude **all** payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(a) Retired Senior Volunteer Program (RSVP);

(b) Foster Grandparents Program; and

(c) Senior Companion Program.

(5) We count training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(6) When GAU clients receive training allowances we allow:

(a) The earned income incentive and work expense deduction specified under WAC 388-450-0175, when applicable; and

(b) The actual cost of uniforms or special clothing required for the course as a deduction, if enrolled in a remedial education or vocational training course.

(7) We exclude support service payments received by or made on behalf of WorkFirst participants.

PERMANENT

WSR 03-03-072
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 15, 2003, 8:21 a.m., effective March 1, 2003]

Date of Adoption: January 15, 2003.

Purpose: Amending WAC 388-460-0005 to update the language of the rule and remove references to obsolete methods of issuing food assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-460-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510.

Adopted under notice filed as WSR 02-23-085 on November 19, 2002.

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

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

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

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

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Effective Date of Rule: March 1, 2003.

January 13, 2003
Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-460-0005 ((~~Authorized representative~~)) Can I choose someone to apply for Basic Food for my assistance ((~~benefits.~~)) unit? ((~~An authorized representative is an adult who is not a member of the~~)) Your Basic Food assistance unit ((~~but has the knowledge and consent of the assistance unit~~)) (AU) can choose an adult who is not a member of the AU to act on their behalf. This is called an authorized representative.

(1) A responsible member of the ((~~food assistance unit~~)) AU can name, in writing, an authorized representative. ((~~An authorized representative has authority to:~~

~~(a) Apply for food assistance on behalf of the food assistance unit;~~

~~(b) Redeem the food coupon authorization (FCA) card for the unit; and~~

~~(c) Purchase food for the food assistance unit using the unit's authorized benefit allotment.~~

~~(2) A responsible member of the food assistance unit can name, in writing, an emergency authorized representative to transact a particular FCA card when no responsible member is able to transact the card. Both the responsible member of the food assistance unit and the person named must sign the written statement.~~

~~(3) The food assistance unit members are liable for any over-issuance that may result from information supplied to the department by the authorized representative.~~

~~(4) An authorized representative may act on behalf of more than one food assistance unit when approved by the CSO administrator~~)) A responsible member of the AU is either:

(a) The applicant;

(b) The applicant's spouse;

(c) Another member of the AU the applicant states is able to conduct business on behalf of all members in the AU.

(2) The AU's authorized representative has the authority to apply for Basic Food on the AU's behalf.

(3) If the authorized representative provides information to the department that causes an AU to have an overpayment, the AU members are liable for the overpayment.

(4) An authorized representative may act on behalf of more than one Basic Food AU **only** if the CSO Administrator approves.

WSR 03-03-081
PERMANENT RULES
DEPARTMENT OF ECOLOGY
[Order 02-06—Filed January 15, 2003, 1:43 p.m.]

Date of Adoption: January 14, 2003.

Purpose: In 2000, the legislature amended the provisions of chapters 90.03 and 90.44 RCW to include storing water in underground geologic formations within the definition of reservoirs. The legislation also directed the Department of Ecology to adopt a rule identifying certain standards that projects storing water underground would have to meet. Specifically, this rule will establish standards for review of proposals for "artificial storage and recovery" (ASR) projects and for mitigation of any adverse impacts which such projects may create. The rule will be a new chapter of the Washington Administrative Code, chapter 173-157 WAC, Underground artificial storage and recovery.

Statutory Authority for Adoption: RCW 90.03.370 (2)(b) and 90.44.460.

Adopted under notice filed as WSR 02-15-181 on July 24, 2002; and a continuance was filed as WSR 02-19-077 on September 16, 2002.

Changes Other than Editing from Proposed to Adopted Version: Some detail was added and minor reorganization performed for clarification. The following definitions were added: Confined aquifer, hydraulic continuity; hydrogeology; normative flow; permeability; reservoir permit; secondary permit; transmissivity; vadose zone; WAC. In WAC 173-157-050(5) a reference to an additional permit (NPDES permit) that will be needed for an ASR project was added. A reference to the role of SEPA was added in the appropriate sections of the rule. Clarification to the project monitoring

plan was added in WAC 173-157-170 (2)(e) to include evaluation criteria.

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 15, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, Amended 0, Repealed 0.

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

January 14, 2003
Tom Fitzsimmons
Director

Chapter 173-157 WAC

UNDERGROUND ARTIFICIAL STORAGE AND RECOVERY

PART I INTRODUCTION

NEW SECTION

WAC 173-157-010 What is the purpose of this rule? The purpose of this rule is to establish the standards for review of applications for underground artificial storage and recovery projects and, when necessary, to identify options for mitigation of potential adverse impacts to ground water quality or the environment. The rule also outlines the process the department of ecology will use to evaluate applications and issue permits to artificially store water in underground geological formations and subsequently recover it for beneficial use.

NEW SECTION

WAC 173-157-020 What is the authority for this rule? In 2000, the Washington state legislature passed Engrossed Second Substitute House Bill 2867 (E2SHB 2867), which amended chapters 90.03 and 90.44 RCW. This bill expanded the definition of "reservoir" in RCW 90.03.370 to include "any naturally occurring underground geological formation where water is collected and stored for subsequent use as part of an underground artificial storage and recovery project." Projects of this type are more commonly known as "aquifer storage and recovery" or "ASR" projects. The legislation directed the department to adopt rules establishing the "standards for review and standards for mitigation of adverse impacts for an underground artificial storage and recovery project." The department of ecology promulgates this rule under the authorities provided in chapter 34.05 RCW and RCW 90.03.370.

NEW SECTION

WAC 173-157-030 To whom does this rule apply? This rule applies to any firm, association, water users' association, corporation, irrigation district, municipal corporation, or anyone else that intends to obtain a reservoir permit to develop an underground artificial storage and recovery project pursuant to RCW 90.03.370. This chapter does not apply to projects utilizing irrigation return flow, or to operational and seepage losses that occur during the irrigation of land, or to water that is artificially stored due to the construction, operation, or maintenance of an irrigation district project, or to projects involving water reclaimed in accordance with chapter 90.46 RCW.

NEW SECTION

WAC 173-157-040 What are the meanings of words and phrases used in this rule? "Aquifer storage and recovery project," "ASR project," or **"underground artificial storage and recovery project"** means those projects where the intent is to artificially store water in an underground geological formation through injection, surface spreading and infiltration, or other department-approved method, and to make subsequent use of the stored water.

"Artificial recharge" means either controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer.

"Beneficial use" includes, among others, uses for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, thermal power production, municipal, and preservation of environmental and aesthetic values.

"Confined aquifer" means an aquifer where the permeability of the beds above and below the aquifer is significantly lower than the aquifer itself.

"Department" means the Washington department of ecology.

"DOH" means the Washington department of health.

"Hydraulic continuity" means the existence of some degree of interconnection between two or more sources of water, either surface water and ground water or two ground water sources.

"Hydrogeology" means the study of the geologic aspects of subsurface waters.

"Normative flow" means a flow that resembles the natural flow sufficiently enough to sustain all life stages of several species native to the state of Washington, including salmonid populations.

"Permeability" means the ability for a fluid to be transmitted in porous rock, sediment, or soil.

"Piezometric elevation" means the static level to which the water from a given aquifer will rise under its full head.

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"**RCW**" means the Revised Code of Washington.

"**Receiving aquifer**" or "**reservoir**" means any portion of a naturally occurring underground geological formation in which the source water will be collected and stored for a future beneficial use as part of an ASR project.

"**Reservoir permit**" means a permit to artificially store water in underground geological formations and subsequently recover it for beneficial use.

"**SEPA**" means the State Environmental Policy Act, chapter 43.21C RCW.

"**Secondary permit**" means a permit for the appropriation of ground water which was artificially stored in underground geological formations for subsequent beneficial use.

"**Source water**" means water that will be stored in a receiving aquifer.

"**Stored water**" means water that has been stored in a receiving aquifer pursuant to a reservoir permit issued in accordance with the provisions of this chapter.

"**Transmissivity**" is a measure of the rate which water passes through the geologic material within an aquifer.

"**UIC**" means the Underground Injection Control program, which was created by the U.S. Environmental Protection Agency pursuant to federal legislation (the Safe Drinking Water Act) and is administered by the department's water quality program.

"**Vadose zone**" means within the zone of aeration, i.e., water vapor above the saturation zone within an aquifer.

"**WAC**" means Washington Administrative Code.

"**WDFW**" means the Washington department of fish and wildlife.

"**You**" and "**I**" means any firm, association, water users' association, corporation, irrigation district, municipal corporation, or anyone else that intends to obtain a reservoir permit to develop an underground artificial storage and recovery project pursuant to RCW 90.03.370.

NEW SECTION

WAC 173-157-050 What authorization is required for an ASR project? The following permits or authorizations are required:

(1) **Water rights to source waters.**

(a) Any source water you use as part of a project by diverting from a state watercourse or withdrawing state ground waters, must be obtained under a valid water right permit, certificate, or registered water right claim.

(b) The underlying water right specifies authorized uses. Any proposal to use stored water for different uses will require issuance of a secondary permit.

(2) **Reservoir permit.** When proposing to collect and store water in a naturally occurring underground geological formation for subsequent use as part of an ASR project, you must apply for a reservoir permit in accordance with the provisions of RCW 90.03.370 (2)(a).

(3) **Secondary permit.** You must apply for a secondary permit in accordance with the provisions of RCW 90.03.370 if you propose to apply the water stored in a reservoir to a beneficial use, except that you are not required to apply for a secondary permit if you already have a water right for the source water that authorizes the proposed beneficial use.

(4) **UIC registration.** All UIC wells to be utilized as part of an ASR project must be registered with the department in accordance with the provisions of chapter 90.48 RCW. Additionally, the construction and technical aspects of the injection wells must abide by UIC regulations as stated in chapter 173-160 WAC.

(5) **NPDES permit.** Discharges to surface water must meet water quality standards set forth in chapter 173-201A WAC to protect aquatic life.

PART II APPLICATION PROCESS

NEW SECTION

WAC 173-157-100 What should I know before I apply? (1) You must assess potential impacts to the hydrogeologic system and the environment prior to submitting your application. If your application does not describe the general setting and conditions with sufficient information for the department to assess the application, the department may require you to perform a detailed feasibility study. This feasibility study should reduce uncertainty of the impacts, and better quantify the available storage capacity of the aquifer.

(2) To further reduce uncertainty, you must design a pilot phase for the project, to be used to collect data that will be used to validate the conceptual model, monitor efficacy, and adjust the monitoring, operation, and mitigation plans based upon results. The duration of this phase will be determined by the complexity of the project and stated within the reservoir permit.

(3) You may schedule a preapplication meeting with the department to discuss the project plan and likely requirements for monitoring and mitigation.

NEW SECTION

WAC 173-157-110 What types of information will I need to provide as part of my application? Your application for an ASR project must contain, at a minimum:

(1) A description (conceptual model) of the hydrogeologic system (see WAC 173-157-120) prepared by a hydrogeologist licensed in the state of Washington.

(2) A project operation plan (see WAC 173-157-130) with a description of the pilot and operational phases of the ASR project prepared by an engineer or geologist licensed in the state of Washington.

(3) A description of the legal framework (see WAC 173-157-140) for the proposed project.

(4) An environmental assessment and analysis (see WAC 173-157-150) of any potential adverse conditions or potential impacts to the surrounding ecosystem(s) that might result from the project, along with a plan to mitigate such conditions or impacts.

The environmental assessment will establish whether a determination of nonsignificance or an environmental impact statement is required per SEPA regulations.

(5) A project mitigation plan (see WAC 173-157-160), if required.

(6) A project monitoring plan (see WAC 173-157-170).

NEW SECTION

WAC 173-157-120 What must I include in the hydrogeologic system description? Your hydrogeologic system description must include a conceptual hydrogeologic model that describes:

(1) The aquifer targeted for storage, to include at a minimum estimates for:

(a) Lateral and vertical extent;

(b) Whether the aquifer is confined or unconfined;

(c) Permeability;

(d) Total storage volume available;

(e) Effective hydraulic conductivity;

(f) Transmissivity; and

(g) Potential for physio-chemical changes in the aquifer or vadose zone as a consequence of recharge.

(2) The estimated flow direction(s) and rate of movement.

(3) The anticipated changes to the ground water system due to the proposed ASR project.

(4) The estimated area that could be affected by the project.

(5) The general geology in the vicinity of the proposed project, including stratigraphy and structure.

(6) The locations of existing documented natural hazards that could be affected or exacerbated by the project, such as landslide-prone areas or areas of subsidence along with a plan to mitigate such conditions or impacts.

(7) The locations of surface waters such as springs, creeks, streams or rivers that could be affected by the ASR project.

(8) The locations of all wells or other sources of ground water of record within the area affected by the project.

(9) The chemical and physical composition of the source water(s) and their compatibility with the naturally occurring waters of the receiving aquifer.

NEW SECTION

WAC 173-157-130 What must I include in the project operation plan? Your project operation plan should include, at a minimum, the following information:

(1) The quantity and times of year source water is available for recharge.

(2) The proposed rate of injection and withdrawal of water.

(3) The length of time the water is proposed to be stored.

(4) The location, number, and capacity of proposed recharge wells or infiltration basins, and recovery facilities.

(5) Any variability in quality and reliability of the source water.

(6) A description of any water treatment method(s) you will use at the time of injection and recovery to ensure compliance with the water quality standards set forth in chapter 173-200 WAC, as well as the department's antidegradation policy.

(7) Any plans to discharge ASR water to a surface body should include information on the quantity, timing, duration, and water quality parameters such as chlorine, pH and dissolved oxygen of the ASR discharge water.

(8) Any operation and maintenance plans to discharge ground water and suspended sediment from the ASR well shall provide information on the quantity, duration, quality, and means of discharge.

(9) Destination(s) and permitting for water used for operation and maintenance (e.g., flushing water).

NEW SECTION

WAC 173-157-140 What must I include in the description of the legal framework? Your description of the legal framework should include, at a minimum:

(1) Documentation of the water rights for the source waters intended to be stored for the proposed ASR project.

(2) A list of other water rights within the ASR project area.

(3) Instream flows established by the department or stream closures in the vicinity of the point of diversion/withdrawal of the source water and/or within the ASR project area.

(4) Ownership and control of any facilities to be used for the proposed project.

NEW SECTION

WAC 173-157-150 What must I include in the environmental assessment and analysis? Your environmental assessment and analysis must, at a minimum, describe:

(1) The environment within the ASR project area, including:

(a) Proximity to contaminated areas;

(b) Present and prior land use(s) within the ASR project area;

(c) Location(s) of historical or existing wetland habitat(s);

(d) Location(s) of historical or existing flood plain(s);

(e) Location(s) of historical or existing surface water body or spring, including documented:

(i) Base flows;

(ii) Seven-day low flows;

(iii) Maximum flows.

(2) Adverse impacts to the surrounding environment by the ASR project, including, but not limited to:

(a) Slope stability;

(b) Wetland habitat;

(c) Flood plain;

(d) Ground deformation;

(e) Surface water body or spring.

(3) If an environmental assessment has already been performed for the purposes of this specific ASR project, the application may simply refer to that documentation and need not repeat that analysis.

PERMANENT

NEW SECTION

WAC 173-157-160 What must I include in the project mitigation plan? Your project mitigation plan, if necessary, must be reviewed and approved or prepared by an appropriately experienced engineer licensed in the state of Washington. The mitigation plan shall prescribe actions to be taken to prevent adverse impacts to the environment and methods for evaluation of the effectiveness of these actions.

NEW SECTION

WAC 173-157-170 What must I include in the project monitoring plan? Your project monitoring plan, which will be utilized to evaluate and verify the assumptions in the conceptual model, during the pilot and operational phases, must include the following:

(1) Proposed time intervals for sampling and subsequent reporting.

(2) Descriptions of measurement methodology, threshold values, and evaluation techniques for the following criteria:

(a) The quality of the source and receiving waters. This information must be provided for the period or periods of the year when the water will be stored. Testing must be done by a laboratory certified by either the department or DOH.

(b) The actual quantity of water injected.

(c) Changes in ground water piezometric elevations in the receiving aquifer.

(d) The percentage of the initial amount of stored water that is recoverable after varying lengths of storage time to validate the estimates of the amount of stored water that is actually recovered.

(e) Data necessary to evaluate the effectiveness of required mitigation.

(f) Other data you or the department determine necessary for monitoring the ASR project and adverse impacts.

You must provide a report of the monitoring data, at least annually, to the department. Based on the complexity of the project, the department may require you to comply with a more frequent reporting schedule. The required reporting frequency will be specified in the reservoir permit.

NEW SECTION

WAC 173-157-180 Where do I submit my application for a reservoir and/or secondary permit? You must submit your application to the ecology water resources regional office that serves the area where your project would be located. Please refer to the department's website for telephone numbers.

(1) The Northwest regional office serves Whatcom, Island, Kitsap, San Juan, Skagit, Snohomish, and King counties.

(2) The Southwest regional office serves Clallam, Jefferson, Grays Harbor, Mason, Thurston, Pierce, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, and Skamania counties.

(3) The Central regional office serves Okanogan, Chelan, Douglas, Kittitas, Yakima, Klickitat, and Benton counties.

(4) The Eastern regional office serves Ferry, Stevens, Pend Oreille, Lincoln, Spokane, Grant, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield, and Asotin counties.

PART III APPLICATION REVIEW PROCESS

NEW SECTION

WAC 173-157-200 How will the department issue reservoir permits and/or secondary permits for ASR projects? (1) The department will process applications for permits for ASR projects in accordance with the provisions of RCW 90.03.250 through 90.03.320, RCW 90.03.370, chapter 173-152 WAC and this chapter. The department shall expedite processing applications for those projects that:

(a) Will not require a new water right for diversion or withdrawal of the water to be stored;

(b) Are adding or changing one or more purposes of use for the stored water;

(c) Are adding to the storage capacity of an existing reservoir; or

(d) Are applying for the secondary permit to secure use of water stored in an existing reservoir.

(2) The department shall give strong consideration to the overriding public interest in its evaluation of compliance with ground water quality protection standards.

(3) Any application considered under this chapter that may impact surface waters will be subject to review by the department, WDFW, DOH, and the appropriate Indian tribe(s), specifically to ensure that the following do not occur during ASR project injections or withdrawals:

(a) Alteration of the normative hydrograph which may result in adverse impacts to fish;

(b) Detrimental changes in temperature, nutrient, heavy metals, hydrocarbon, or other deleterious material levels during critical spawning and rearing periods;

(c) Disruption of natural downwelling or upwelling within stream during critical spawning and rearing periods; or

(d) Saturation of stream bank which could lead to erosion, bank failure, and excess sedimentation entering the stream which can alter stream chemistry, flow, and bed morphology.

Each ASR project application will be subject to public notice and comment per RCW 90.03.280. The department will consider any comments by the reviewers in evaluating the application.

(4) The department may issue a conditioned permit to prevent any long-term changes to the aquifer, or other adverse impacts to the environment. The conditioning will provide for a pilot phase of the project, to be used to collect data, monitor efficacy, evaluate the effectiveness of any mitigation plan approved under WAC 173-157-150, and adjust the ASR project or mitigation plan based upon pilot phase results.

(5) Permits will contain a schedule for:

(a) Development and completion of the project;

(b) Monitoring and reporting during the pilot and operational phases of the project.

(6) The department can, upon a showing of good cause, issue extensions for the permit in accordance with the provisions of RCW 90.03.320.

(7) Once sufficient information is developed and provided to the department to verify that the project is viable and the requirements of RCW 90.03.330 have been met, the department will issue proper documentation for the reservoir and secondary permit, if any, with the priority date or dates based on the underlying source water right.

NEW SECTION

WAC 173-157-210 Can I appeal a decision made by the department on my application? Yes, all final written decisions of the department made on applications pursuant to this chapter are subject to review by the pollution control hearings board in accordance with the provisions of chapter 43.21B RCW if you comply with the requirements for appeal established by statute and rule.

NEW SECTION

WAC 173-157-220 Can this regulation be reviewed or updated? Yes, the department may initiate a review of the rules established in this chapter whenever new information, changing conditions, statutory modifications, or other factors make it necessary or desirable to consider revisions.

NEW SECTION

WAC 173-157-230 Where can I obtain copies of ecology statutes and regulations? Copies of statutes and regulations cited in this chapter may be obtained from the public records office at the department's headquarters office. You may also obtain copies by downloading documents from the department's internet site at http://www.ecy.wa.gov or copies of rules of the pollution control hearings board from the pollution control hearings board's internet site at http://www.eho.wa.gov.

WSR 03-03-089
PERMANENT RULES
SOUTH PUGET SOUND COMMUNITY COLLEGE

[Filed January 16, 2003, 9:14 a.m.]

Date of Adoption: January 9, 2003.

Purpose: Identifies appropriate college staff and clarifies the designated areas relevant to distribution and posting of materials; updates title change; and for general housekeeping changes.

Citation of Existing Rules Affected by this Order: Amending WAC 132X-60-065 Distribution and posting of materials.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 02-23-046 on November 15, 2002.

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

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

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

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

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

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

January 15, 2003
Kenneth J. Minnaert
President

PERMANENT

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-065 Distribution and posting of materials. Permission for the posting of materials and literature on college property is not required in designated posting areas on the campus.

Permission for the posting of materials and literature on college property shall be obtained from the following college officials:

(1) The ((~~associate~~)) dean of student((~~s~~))programs ((~~and activities~~)) for the posting ((~~on restricted posting~~)) of materials in nondesignated areas in the student union building, the college center, hallways, within buildings and those areas located on ((~~the~~)) campus outside of college buildings.

(2) ((~~Posting on campus will be approved on campus by student programs. Exceptions to this are instruction announcements, cancellations, class changes, grade posting, etc., registration information, or construction posting by administrative services.~~

~~Permission for the dissemination or distribution of materials in other areas of the college campus, buildings, or facilities shall be obtained from the appropriate vice president.~~))

No posting will be allowed on railings unless paint protection devices are used. Permission for any such postings must have the prior approval of the dean of student programs.

((~~Only nonprofit, nonreligious organizations will be allowed to advertise on campus. An exception is career days or hiring firms on campus.~~))

(3) The appropriate college vice-president for permission for the dissemination and distribution of materials in other areas of the college campus, buildings, or facilities.

In addition, the following apply to the posting of materials:

(4) No posting of ((~~commercial, secular, or~~)) obscene materials.

(5) No ((~~notes on trees~~)) materials will be posted or tacked ((~~to~~)) on trees or the covered walkway gazebo(s) ((~~at Percival Creek.~~

~~Any item posted must have the identity of the local sponsor on its face. Posting on windows with the exception of instruction and administrative notices put up with nonadhesive tape is not to be allowed~~)).

WSR 03-03-090
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. UT-990146, General Order No. R-507A—Filed January 16, 2003, 1:41 p.m.]

ORDER CORRECTING ADOPTION DATE FOR TWO SECTIONS AND CORRECTING REFERENCE IN WAC 480-120-173

PERMANENT

In the matter of amending, adopting and repealing chapter 480-120 WAC, relating to telephone companies.

1 On December 12, 2002, the Washington Utilities and Transportation Commission (commission) filed with the code reviser an order amending, adopting and repealing rules permanently for chapter 480-120 WAC, relating to telephone companies. The order is filed at WSR 03-01-065. The effective date for the amendment, adoption, and repeal of the rules is July 1, 2003.

2 Recently, the commission learned that through a scrivener's error WAC 480-120-017 and 480-120-019 were erroneously omitted from the list of adopted sections in paragraphs 174 and 178 of the order. The commission intended that all the rules submitted for adoption in the order at WSR 03-01-065 would become effective July 1, 2003. Without this correction, WAC 480-120-017 and 480-120-019 would go into effect before July 1, 2003, prior to all the other sections submitted with this filing. Moreover, the commission would have two "severability" rules in effect, WAC 480-120-017 and 480-120-545, which would not be repealed until July 1, 2003.

3 In order to facilitate a smooth transition from the current rules to the newly adopted rules, and to avoid having two rules on the same subject, the commission corrects General Order No. R-507 to reflect an effective adoption date of July 1, 2003, for WAC 480-120-017 and 480-120-019.

4 Accordingly, the commission enters this order to correct General Order R-507 by amending paragraphs 174 and 178 to include WAC 480-120-017 and 480-120-019 as adopted sections to take effect on July 1, 2003.

5 Additionally, the commission learned that WAC 480-120-173 Restoring service after discontinuation, contains an incorrect reference to WAC 480-120-061(7) in the last sentence of subsection (1)(a). WAC 480-120-061 does not contain a subsection (7). The rule should instead refer to WAC 480-120-173 (1)(b). Failure to correct the section reference in the rules submitted to the code reviser with the adoption order constitutes an oversight.

6 Accordingly, the commission enters this order to correct the section reference in the last sentence of WAC 480-120-173 (1)(a). The reference should read WAC 480-120-173 (1)(b). A copy of the corrected rule is attached to this order as Appendix A.

ORDER

7 THE COMMISSION ORDERS That General Order No. R-507 is amended as follows:

8 (1) Paragraphs 174 and 178 are amended to include WAC 480-120-017 and 480-120-019 as adopted sections to take effect pursuant to RCW 34.05.380(2) on July 1, 2003.

9 (2) The section reference, WAC 480-120-061(7), in the last sentence of WAC 480-120-173 (1)(a) is corrected to read WAC 480-120-173 (1)(b) as described in paragraph 5 above and set forth in Appendix A, to take effect pursuant to RCW 34.05.380(2) on July 1, 2003.

DATED at Olympia, Washington, this 15th day of January, 2003.

Washington Utilities and Transportation Commission
Marilyn Showalter, Chairwoman
Richard Hemstad, Commissioner
Patrick J. Oshie, Commissioner

APPENDIX A

NEW SECTION

WAC 480-120-173 Restoring service after discontinuation. (1) A company must restore a discontinued service when:

(a) The causes of discontinuation not related to a delinquent balance have been removed or corrected. In the case of deceptive practices as described in WAC 480-120-172 (1)(a), this means the customer has corrected the deceptive practice and has paid the estimated amount of service that was taken through deceptive means, all costs resulting from the deceptive use, any applicable deposit, and any delinquent balance owed to the company by that customer for the same class of service. A company may require a deposit from a customer that has obtained service in a deceptive manner as described in WAC 480-120-172 (1)(a). A company is not required to allow six-month arrangements on a delinquent balance as provided for in WAC 480-120-172 (1)(b) when it can demonstrate that a customer obtained service through deceptive means in order to avoid payment of a delinquent amount owed to that company;

(b) Payment or satisfactory arrangements for payment of all proper charges due from the applicant, including any proper deposit and reconnection fee, have been made. Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first half of a deposit is paid as provided for in WAC 480-120-122; or

(c) The commission staff directs restoration pending resolution of any dispute between the company and the applicant or customer over the propriety of discontinuation.

(2) After the customer notifies the company that the causes for discontinuation have been corrected, and the company has verified the correction, the company must restore service(s) within the following periods:

(a) Service(s) that do not require a premises visit for reconnection must be restored within one business day; and

(b) Service(s) that requires a premises visit for reconnection must be restored within two business days. Companies must offer customers a four-hour window during which the company will arrive to complete the restoration.

(c) For purposes of this section Saturdays are considered business days.

(3) A company may refuse to restore service to a customer who has been discontinued twice for deceptive practices as described in WAC 480-120-172 (1)(a) for a period of five years from the date of the second disconnection, subject to petition by the customer to the commission for an order requiring restoration of service based on good cause.

WSR 03-03-109
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 21, 2003, 1:14 p.m.]

Date of Adoption: January 21, 2003.

Purpose: Minimum wages, chapter 296-128 WAC.

The purpose of this rule making is to make changes to chapter 296-128 WAC to clarify and develop requirements associated with paying exempt employees on a salary. These proposed rules are as a result of a state supreme court case (*Drinkwitz v. Alliant Techsystems*, Inc., 140 Wn.2d 291 (2000)).

These proposed rules are necessary to:

- Ensure employers know their rights and responsibilities under the law and that workers are adequately protected.
- Establish provisions in rule associated with deducting pay or leave from exempt, salaried employees.
- Clarify that payment of a salary does not in and of itself exempt a worker from the minimum wage and overtime requirements.
- Include a limited "window of correction" to allow employers to correct improper deductions under certain circumstances.
- Issue similar provisions that exist in federal regulations.

AMENDED SECTION: **WAC 296-128-500 Purpose.**

Clarifies that employees must meet both the definitions test (executive, administrative, professional) and the salary test in order to be exempt. Further clarifies that payment of a salary does not in and of itself exempt a worker from the minimum wage and overtime requirements.

NEW SECTION: **WAC 296-128-532 Deductions for salaried, exempt employees.**

(1) When does this section apply? Specifies that this section applies to any employee who is paid on a salary basis and who meets the definition of executive, administrative, or professional.

(2) What does salary basis mean? Defines "salary" as a predetermined monetary amount, not less than that required in WAC 296-128-510 through 296-128-530, and which shall not be subject to deduction because of variations in the quantity or quality of the work performed, except as provided in this section.

(3) When are deductions from salary allowed? This subsection addresses the specific circumstances when an employer may deduct pay from an exempt employee's salary without jeopardizing the employee's exempt status.

(4) What are improper deductions from salary? This subsection lists the specific circumstances in which a deduction is recognized to be improper and in violation of the salary test.

(5) Is a "window of correction" permitted? This section specifies that a "limited window of correction" is available in the state of Washington when the improper deduction is inadvertent and is immediately corrected, providing that the deduction is not due to lack of work, as prohibited in subsection (4) above, or is not part of a pattern of the same of similar deductions.

(6) What deductions may be made from leave banks? This section specifies the requirements when deductions may be taken from employee leave banks, e.g., vacation, sick, compensatory.

NEW SECTION: **WAC 296-128-533 Public employees.**

(1) How do the provisions specified in WAC 296-128-532 affect public employees? This section clarifies that the salary rules apply also to public employees but that due to issues of public employee accountability, deductions from pay and leave are allowed in certain additional circumstances not available to the private sector. Those circumstances include (a) deductions for partial day absences when the employee is on leave without pay for personal reasons or illness and does not use accrued leave; and (b) deductions for furlough (absences authorized by law).

(2) What does "public employee" mean? Defines "public employee" as an employee directly employed by a county, incorporated city or town, municipality, state agency, institution of higher education, political subdivision or other public agency including any department, bureau, office, board, commission or institution of such public entities.

Citation of Existing Rules Affected by this Order: Amending WAC 296-128-500.

Statutory Authority for Adoption: RCW 49.46.005, 49.46.010, and 49.46.120.

Other Authority: Chapter 49.46 RCW.

Adopted under notice filed as WSR 02-23-090 on November 20, 2002.

Changes Other than Editing from Proposed to Adopted Version: The phrase "including vacation" was added to pro-

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posed WAC 296-128-532 (6)(b) to clarify that personal time off includes vacation time.

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 1, Repealed 0.

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

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

January 21, 2003

Gary Moore

Director

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AMENDATORY SECTION (Amending Order 76-5, filed 2/24/76)

WAC 296-128-500 Purpose. This regulation is adopted in accordance with chapter 49.46 RCW to define the terms "bona fide executive, administrative, or professional capacity or in the capacity of outside salesman," to define salary basis and to establish a procedure for computing overtime pay.

An employee who meets the definitions of executive, administrative, or professional and who is paid on a salary basis (except as provided for in WAC 296-128-530(5)) is considered exempt from the requirements of chapter 49.46 RCW. Payment of a salary does not in and of itself exempt a worker from the minimum wage and overtime requirements.

NEW SECTION

WAC 296-128-532 Deductions for salaried, exempt employees. (1) **When does this section apply?** This section applies to any employee who is paid on a salary basis and who meets the definitions of executive, administrative, or professional.

(2) **What does salary basis mean?** Salary is where an employee regularly receives for each pay period of one week or longer (but not to exceed one month) a predetermined monetary amount (the salary) consisting of all or part of his or her compensation, which amount will not be less than required to be paid pursuant to WAC 296-128-510 through 296-128-530. The salary shall not be subject to deduction because of variations in the quantity or quality of the work performed, except as provided in this section. Under RCW 49.46.130 (2)(a), salaried employees may receive additional compensation or paid time off and still be considered exempt.

(3) **When are deductions from salary allowed?**

(a) If the employee performs no work in a particular week, regardless of the circumstances, the employer may deduct for the entire week.

(b) When the employee takes at least a whole day off for personal reasons other than sickness or accident, the employer may deduct in full day increments.

(c) Deductions for absences due to sickness or disability may be made in full day increments if the deduction is made according to the employer's bona fide plan, policy or practice of providing paid sick and disability leave (other than industrial accidents or disability).

(i) Deductions are permitted when either leave is exhausted or the employee has not yet qualified under the plan.

(ii) Deductions are permitted even if an employee receives compensation under that plan or under workers' compensation laws.

(d) When an employee is eligible for the federal Family and Medical Leave Act 29 U.S.C. Sec. 2611 et seq., deductions may be made for partial day absences due to leave taken according to that law and the applicable provisions in chapter 49.78 RCW.

(e) In the first and final week of employment, an employee's salary may be prorated for the actual days worked.

(f) Deductions are allowed for disciplinary absences that are imposed for violations of safety rules of major significance. This includes only those relating to the prevention of serious danger to the plant, the public, or other employees, such as rules prohibiting smoking in explosive plants or around hazardous or other flammable materials.

(g) Deductions are allowed when authorized under RCW 49.48.010, 49.52.060, or WAC 296-126-025.

(4) **What are improper deductions from salary?**

(a) Deductions are not permitted for partial days of work, except as permitted by subsection (3)(d) of this section or by WAC 296-128-533.

(b) Deductions are not permitted for lack of work for any amount of time less than a full week.

(c) Deductions are not permitted when the employee participates in jury duty, attendance as a witness, or temporary military leave if the employee performs any work during that week. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay.

(d) Deductions are not permitted for absences due to sickness or disability if the employer does not have a bona fide plan, policy or practice in place for sick or disability leave.

(e) Any other deductions not allowed under subsection (3) of this section.

(5) **Is a "window of correction" permitted?** A limited window of correction will be permitted when an improper deduction is shown to be infrequent and inadvertent and the employer immediately begins taking corrective steps to promptly resolve the improper deduction when brought to the attention of the supervisor or other appropriate representative of the employer. Such corrections will be allowed only to the

extent that the deduction is not due to lack of work or part of a pattern of the same or substantially similar deductions.

(6) **What deductions may be made from leave banks?**

(a) Deductions may be made from compensatory time in any increment.

(b) Deductions may be made from bona fide leave banks in partial or full day increments. However, partial day deductions may be made only on the express or implied request of the employee for time off from work. Leave bank deductions may not be made for less than one hour.

A "bona fide leave bank" is a benefit provided to employees in the case of absence from work due to sickness or personal time off, including vacation. It must be in writing and contained in contract or agreement, or in a written policy that is distributed to employees. A leave bank policy, or a leave bank provision in a contract or agreement, is not "bona fide" if it is used as a subterfuge to circumvent or evade the requirements of this regulation.

(c) When leave banks are exhausted, deductions from salary may not be made, except as permitted in subsection (3) of this section.

NEW SECTION

WAC 296-128-533 Public employees. (1) **How do the provisions specified in WAC 296-128-532 affect public employees?** WAC 296-128-532 (1) through (5) is applicable to public employees, except that deductions from salary or leave banks are permitted in the following additional circumstances.

(a) **Deductions from salary for partial day absences:** A public employee who otherwise meets the requirements of WAC 296-128-532 will not be disqualified from the executive, administrative, or professional exemptions on the basis that such public employee is paid according to a pay system that:

(i) Is established by statute, ordinance, or regulation, or by a policy or practice established according to principles of public accountability, under which the public employee accrues sick or personal leave (annual, vacation, etc.); and

(ii) Permits the public employee's pay to be reduced or the public employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work day when accrued leave is not used by a public employee.

(b) **Deductions from leave banks:** Deductions may be made from a public employee's accrued leave banks in any increment in accordance with any statute, ordinance, or regulation, or by a policy or practice established according to principles of public accountability.

(c) **Deductions for furlough:** Deductions from the salary of a public employee for absences where authorized by law due to a budget-required leave of absence will not disqualify the public employee from being paid on a "salary basis" except in the workweek in that the absence occurs and for which the public employee's pay is accordingly reduced.

(2) **What does "public employee" mean?** Public employee means an employee directly employed by a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision or other public agency and includes any department, bureau, office, board, commission or institution of such public entities.

WSR 03-03-114

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 21, 2003, 3:50 p.m., effective February 23, 2003]

Date of Adoption: January 16, 2003.

Purpose: Amended WAC 388-478-0055 updates SSI and SSP payment standards caused by the cost of living adjustment (COLA), changes to eligibility criteria as directed by the legislature for the state supplemental payment program, adjusts the SSP rate upward, and simplifies rule language. New WAC 388-474-0012 changes reflect the legislature's directive defining the eligibility criteria for receiving a state supplemental payment (SSP) in Washington state. Federal Public Law 92-603 and the Social Security Act publish regulations for states that must provide a state supplemental payment program. The Social Security Administration oversees compliance with state supplementation rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Adopted under notice filed as WSR 02-23-032 on November 12, 2002.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-478-0055 SSI and SSP payment standards were updated to reflect the cost of living adjustment effective January 1, 2003, and to increase the SSP payment to assure the state maintenance of effort (MOE) is met per federal requirement. The changes increase payments that eligible clients may receive.

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 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 0, Amended 0, Repealed 0.

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

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

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Effective Date of Rule: February 23, 2003.

January 16, 2003
Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-19-024, filed 9/12/01, effective 11/1/01)

WAC 388-478-0055 ((~~**SSI payment standards for eligible recipients.**~~)) **How much do I get from my Supplemental Security Income (SSI) and state supplemental payments (SSP)?** (1) ((~~Supplemental Security Income (~~))SSI((~~)~~)) is a federal cash assistance program for needy individuals and couples who meet federal disability guidelines as aged, blind or disabled. ((~~Since the SSI program began in January 1974, the state of Washington has added to the federal benefit level with state funds, known as the SSI state supplement. If you are found eligible for SSI, you will receive cash assistance based on the combined federal and state supplement benefit levels, minus countable income. An essential person is someone who lives with you and provides care and personal services that enable you to live in either your own home or the home of the essential person~~)) SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you are eligible for SSI, you may receive a federal cash payment from the federal Social Security Administration, as well as a SSP cash payment from the state.

If you were converted from state assistance to the federal SSI program in January 1974 because you were aged, blind, or disabled, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client. To be a grandfathered (MIL) client, you must have remained continuously eligible for SSI from January 1974.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The federal, state and combined ((~~benefit levels~~)) payment level for an eligible individual and couple are:

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

LIVING ALONE - In own household or alternate care, except nursing homes or medical institutions	Federal ((~~Benefit~~)) Payment Level	State Supplement ((~~Benefit~~)) Payment Level	Combined Federal/ State ((~~Benefit~~)) Payment Level
Individual	$ ((~~531.00~~)) 552.00	$ ((~~25.90~~)) 0.00	$ ((~~556.90~~)) 552.00
Individual with: One essential person	((~~$ 797.00~~)) 829.00	((~~$ 19.90~~)) 0.00	((~~$ 816.90~~)) 829.00
((~~Individual with: Multiple essential persons~~))	((~~$531 for the eligible individual plus $266 for each essential person (no state supplement)~~))		
Individual with an ineligible spouse	$ ((~~531.00~~)) 552.00	$ ((~~166.10~~)) 100.00	$ ((~~697.10~~)) 652.00
Couple	$ ((~~796.00~~)) 829.00	$ ((~~19.90~~)) 0.00	$ ((~~815.90~~)) 829.00
((~~Couple with one or more essential persons~~))	((~~$796 for eligible couple plus $266 for each essential person (no state supplement)~~))		
Couple with one essential person	$829.00	$0.00	$829.00

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

~~living alone - In own household or alternate care, except nursing homes or medical institutions~~	~~Federal Benefit Level~~	~~State Supplement Benefit Level~~	~~Combined Federal/ State Benefit Level~~
~~Individual~~	~~$ 531.00~~	~~$ 5.45~~	~~$ 536.45~~
~~Individual with: One essential person~~	~~$ 797.00~~	~~$ 0.00~~	~~$ 797.00~~
~~Individual with: Multiple essential persons~~	~~$531 for the eligible individual plus $266 for each essential person (no state supplement)~~		
~~Individual with an ineligible spouse~~	~~$ 531.00~~	~~$ 136.15~~	~~$ 667.15~~
~~Couple~~	~~$ 796.00~~	~~$ 0.00~~	~~$ 796.00~~
~~Couple with one or more essential persons~~	~~$796 for eligible couple plus $266 for each essential person (no state supplement)~~		

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

SHARED LIVING - In the home of another person	Federal ((~~Benefit~~)) Payment Level	State Supplement ((~~Benefit~~)) Payment Level	Combined Federal/ State ((~~Benefit~~)) Payment Level
Individual	$ ((~~354.00~~)) 368.00	$ ((~~3.71~~)) 0.00	$ ((~~357.71~~)) 368.00
Individual with: One essential person	(($ ~~531.34~~)) 665.00	(($ ~~4.20~~)) 0.00	(($ ~~535.54~~)) 665.00
((~~Individual with: Multiple essential persons~~))	((~~$354.00 for the eligible individual plus $177.00 for each essential person (no state supplement)~~))		
Individual with an ineligible spouse	$ ((~~354.00~~)) 368.00	$ ((~~101.66~~)) 100.00	$ ((~~455.66~~)) 468.00
Couple	$ ((~~530.67~~)) 552.67	$ ((~~4.20~~)) 0.00	$ ((~~534.87~~)) 552.67
((~~Couple with one or more essential persons~~))	((~~$530.67 for eligible couple plus $177.00 for each essential person (no state supplement)~~))		
Couple with one essential person	$665.00	$0.00	$665.00

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

MEDICAL INSTITUTION	Federal ((~~Benefit~~)) Payment Level	State Supplement ((~~Benefit~~)) Payment Level	Combined ((~~Benefit~~)) Payment Level
Individual	$ 30.00	$ 11.62	$ 41.62

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

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

~~(i) The state assistance standard you received in December 1973, except if you resided in a medical institution at the time of conversion, plus the federal cost of living adjustments (COLA) since then; or~~

~~(ii) The current standard.~~))

NEW SECTION

WAC 388-474-0012 What is a state supplemental payment and who can get it? (1) The state supplemental payment (SSP) is a state-paid cash assistance program for certain clients who the Social Security Administration determines are eligible for Supplemental Security Income (SSI).

(2) You can get an SSP if:

(a) You are a grandfathered SSI recipient under WAC 388-474-0001;

(b) You are an individual with an ineligible spouse under WAC 388-474-0001; or

(c) You are determined eligible for SSP by the division of developmental disabilities (see WAC 388-825-525 and 388-825-535).

WSR 03-03-133
PERMANENT RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2002-09—Filed January 22, 2003, 11:24 a.m.]

Date of Adoption: January 22, 2003.

Purpose: To implement chapter 22, Laws of 2002 (ESSB 6326). The adopted rule also reflects a change made to the form used to file the special liability report and brings the rule into accord with existing Office of the Insurance Commissioner (OIC) practices.

Citation of Existing Rules Affected by this Order: Amending WAC 284-07-010.

Statutory Authority for Adoption: RCW 48.02.060 and 48.05.380.

Other Authority: RCW 48.30.390.

Adopted under notice filed as WSR 02-21-122 on October 23, 2002.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

January 22, 2003
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 94-20-049, filed 9/29/94, effective 10/30/94)

WAC 284-07-010 Special liability insurance report required annually. (1) Pursuant to RCW 48.05.380, each insurer authorized to write property and casualty insurance in the state of Washington shall record and report its Washington state loss and expense experience and other data, as required by RCW 48.05.390, on a form issued by the commissioner.

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(2) Each such insurer shall complete the form in accordance with the definitions and instructions ((~~on the form~~)) provided by the commissioner.

(3) Each such insurer shall submit this report to the insurance commissioner annually. The report covering the period ending December 31 of each year must be submitted no later than May 1 of the following year.

(4) ((~~Insurers not licensed to write general casualty insurance are exempt from the requirement to submit this report.~~)) If an insurer has no data or experience to report, it is not required to submit a report.

(5) ((~~Upon the written request of a professional reinsurer which never writes business anywhere on a direct basis, the commissioner may grant such reinsurer a permanent exemption from the requirement to submit this report.~~

(~~6~~))) With respect to products liability data, the commissioner finds that comparable information is included in the annual statement required by RCW 48.05.250. Therefore, products liability data shall not be reported on the form required by this section.

WSR 03-03-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-02—Filed January 2, 2003, 4:21 p.m., effective January 3, 2003, 12:01 a.m.]

Date of Adoption: January 2, 2003.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300A; 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 red and green sea urchins exist in the areas described. Prohibition of all diving within one or two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Effective Date of Rule: January 3, 2003, 12:01 a.m.

January 2, 2003
Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-07300B Sea urchins. Notwithstanding the provisions of WAC 220-52-073, effective January 3, 2003 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 1 and 2 are open only on January 3, 6 and 7, 2003. Sea Urchin Districts 3 and 4 are open only on Mondays, Tuesdays and Fridays of each week. Sea Urchin Districts 6 and 7 are open only on Mondays, Tuesdays, Fridays and Saturdays of each week. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Friday of each week. Sea Urchin District 3 is open only on January 6 and 7, 2003. The maximum daily landing of red sea urchins for a harvest vessel in Sea Urchin District 3 on January 6, 2003 is 5,000 pounds. The maximum daily landing of red sea urchins for a harvest vessel in Sea Urchin District 3 on January 7, 2003 is 4,000 pounds. It is unlawful to harvest red sea urchins smaller or larger than the following size (size in largest test diameter exclusive of the spines).

(a) District 1 and 2 - 4.0 minimum to 5.5 maximum inches.

(b) District 3 - 3.25 minimum to 5.0 maximum inches.

(3) It is unlawful to dive for any purpose from a commercially licensed fishing vessel, except vessels actively fishing geoducks under contract with the Washington Department of Natural Resources within the following sea urchin Districts on the following days.

(a) District 1 and 2 - Saturdays and Sundays of each week

(b) District 3 - January 4 and 5, 2003.

(c) District 6 and 7 - Wednesdays, Thursdays and Sundays of each week.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 3, 2003:

WAC 220-52-07300A Sea urchins. (02-308)

EMERGENCY

WSR 03-03-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-01—Filed January 3, 2003, 3:54 p.m., effective January 6, 2003, 12:01 a.m.]

Date of Adoption: January 3, 2003.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900C; 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: Returns of winter steelhead to local hatcheries have been well below normal for this time of year. These closures are necessary to protect adult hatchery fish holding near the hatchery until they can be trapped for brood stock needs. If egg take needs are assured prior to the February closing date the area will be reopened to fishing for

game 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 1, Amended 0, Repealed 1.

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

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

Effective Date of Rule: January 6, 2003, 12:01 a.m.

January 3, 2003
J. P. Koenings
Director
by Larry Peck

EMERGENCY

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Cascade River, North Fork Nooksack River, Skykomish River, North Fork Stillaguamish River, Snoqualmie River Tokul Creek and Wallace River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. January 6, 2003 through February 28, 2003 the following waters are closed to the fishing for game fish:

(1) Cascade River (Skagit County) from the mouth upstream to the Rockport Cascade road bridge.

(2) North Fork Nooksack River (Whatcom County) from the mouth of Racehorse Creek upstream to the mouth of Kendall Creek.

(3) Skykomish River (Snohomish County) from 1,500 feet upstream to 1,000 feet downstream of Reiter Ponds outlet.

(4) North Fork Stillaguamish River (Snohomish County) from the mouth of the Little French Creek (located approximately 1/2 mile downstream of Fortson Creek) to 25 yards upstream of the mouth of the outlet of the White Horse rearing ponds.

(5) Snoqualmie River (King County) Mainstem Snoqualmie from the Plum access boat launch (located approximately 1/4 mile downstream of the mouth of Tokul Creek) upstream to Snoqualmie Falls.

(6) Tokul Creek (King County) from its mouth to the posted cable boundary marker (approximately 700 feet upstream of the mouth)

(7) Wallace River (Snohomish County) from the railroad trestle (downstream of Highway 2 bridge) upstream to the mouth of Olney Creek.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 1, 2003:

WAC 232-28-61900C	Exceptions to statewide rules—Cascade River, North Fork Nooksack River, Skykomish River, North Fork Stillaguamish River, Snoqualmie River, Tokul Creek and Wallace River.

WSR 03-03-027
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)
[Filed January 8, 2003, 3:53 p.m.]

Date of Adoption: January 8, 2003.

Purpose: MAA recently revised the core provider agreement (CPA), DSHS 09-048 (REV. 06/2002), that medical providers sign in order to participate in medical assistance programs offered by DSHS to needy individuals. The CPA governs the relationship between MAA and those medical providers (including items such as reimbursement). The former CPA included certain "hold harmless" language that was inadvertently omitted from the new CPA. This regulatory amendment is intended to restore the applicability of that language, so that DSHS and the provider hold each harmless from legal action due to the negligence of either party. To avoid further delay, to ensure continued access to services for DSHS clients, and to avoid the expense of again revising the CPA, MAA is amending WAC 388-502-0010 Payment—Eligible providers defined, to include the "hold harmless" provision.

Citation of Existing Rules Affected by this Order: Amending WAC 388-502-0010.

Statutory Authority for Adoption: RCW 74.08.090.

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: Without the immediate adoption of this amendment, access to medical care for DSHS clients will be negatively impacted. Medical providers will be reluctant to sign the CPA without the "hold harmless" provision. Without a signed CPA, medical providers cannot be reimbursed by MAA. Without the prospect of reimbursement from MAA, providers will stop accepting DSHS clients as patients.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Effective Date of Rule: Immediately.

January 7, 2003
Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-07-076, filed 3/20/01, effective 4/20/01)

WAC 388-502-0010 Payment—Eligible providers defined. The department reimburses enrolled providers for covered medical services, equipment and supplies they provide to eligible clients.

(1) To be eligible for enrollment, a provider must:

(a) Be licensed, certified, accredited, or registered according to Washington state laws and rules; and

(b) Meet the conditions in this chapter and chapters regulating the specific type of provider, program, and/or service.

(2) To enroll, an eligible provider must sign a core provider agreement or a contract with the department and receive a unique provider number. (Note: Section 13 of the core provider agreement, DSHS 09-048 (REV. 06/2002), is hereby rescinded. The department and each provider signing a core provider agreement will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of the agreement.)

(3) Eligible providers listed in this subsection may request enrollment. Out-of-state providers listed in this subsection are subject to conditions in WAC 388-502-0120.

(a) Professionals:

(i) Advanced registered nurse practitioners;

(ii) Anesthesiologists;

(iii) Audiologists;

(iv) Chiropractors;

(v) Dentists;

(vi) Dental hygienists;

(vii) Denturists;

(viii) Dietitians or nutritionists;

(xiv) Maternity case managers;

(x) Midwives;

(xi) Occupational therapists;

(xii) Ophthalmologists;

(xiii) Opticians;

(xiv) Optometrists;

(xv) Orthodontists;

(xvi) Osteopathic physicians;

(xvii) Podiatric physicians;

(xviii) Pharmacists

(xix) Physicians;

(xx) Physical therapists;

(xxi) Psychiatrists;

(xxii) Psychologists;

(xxiii) Registered nurse delegators;

(xxiv) Registered nurse first assistants;

(xxv) Respiratory therapists;

(xxvi) Speech/language pathologists;

(xvii) Radiologists; and

(xviii) Radiology technicians (technical only);

(b) Agencies, centers and facilities:

(i) Adult day health centers;

(ii) Ambulance services (ground and air);

(iii) Ambulatory surgery centers (Medicare-certified);

(iv) Birthing centers (licensed by the department of health);

(v) Blood banks;

(vi) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of alcohol and substance abuse (DASA), and contracted through either:

(A) A county under chapter 388-810 WAC; or

(B) DASA to provide chemical dependency treatment services;

(vii) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DASA);

(viii) Community AIDS services alternative agencies;

(ix) Community mental health centers;

(x) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;

(xi) Family planning clinics;

(xii) Federally qualified health care centers (designated by the Federal Health Care Financing Administration);

(xiii) Genetic counseling agencies;

(xiv) Health departments;

(xv) HIV/AIDS case management;

(xvi) Home health agencies;

(xvii) Hospice agencies;

(xviii) Hospitals;

(xix) Indian Health Service;

(xx) Tribal or urban Indian clinics;

(xxi) Inpatient psychiatric facilities;

(xxii) Intermediate care facilities for the mentally retarded (ICF-MR);

(xxiii) Kidney centers;

(xxiv) Laboratories (CLIA certified);

(xxv) Maternity support services agencies;

(xxvi) Neuromuscular and neurodevelopmental centers;

(xxvii) Nursing facilities (approved by DSHS Aging and Adult Services);

(xxviii) Pharmacies;

(xxix) Private duty nursing agencies;

(xxx) Rural health clinics (Medicare-certified);

(xxxi) Tribal mental health services (contracted through the DSHS mental health division); and

(xxxii) Washington state school districts and educational service districts.

(c) Suppliers of:

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(i) Durable and nondurable medical equipment and supplies;

(ii) Infusion therapy equipment and supplies;

(iii) Prosthetics/orthotics;

(iv) Hearing aids; and

(v) Oxygen equipment and supplies;

(d) Contractors of:

(i) Transportation brokers;

(ii) Interpreter services agencies; and

(iii) Eyeglass and contact lens providers.

(4) Nothing in this chapter precludes the department from entering into other forms of written agreements to provide services to eligible clients.

(5) The department does not enroll licensed or unlicensed practitioners who are not specifically addressed in subsection (3) of this section, including, but not limited to:

(a) Acupuncturists;

(b) Counselors;

(c) Sanipractors;

(d) Naturopaths;

(e) Homeopaths;

(f) Herbalists;

(g) Massage therapists;

(h) Social workers; or

(i) Christian Science practitioners or theological healers.

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.

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WSR 03-03-028
EMERGENCY RULES
DEPARTMENT OF TRANSPORTATION
[Filed January 9, 2003, 9:44 a.m.]

Date of Adoption: January 9, 2003.

Purpose: To adopt the millennium edition of the Manual on Uniform Traffic Control Devices, June 2001 version prior to the January 17, 2003, federal deadline.

Citation of Existing Rules Affected by this Order: Repealing WAC 468-95-020, 468-95-025, 468-95-030, 468-95-035, 468-95-037, 468-95-040, 468-95-050, 468-95-055, 468-95-060, 468-95-070, 468-95-080, 468-95-090 and 468-95-100; and amending WAC 468-95-010.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 47.36.030.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Federal rules require the states to adopt the Manual on Uniform Traffic Control Devices prior to January 17, 2003. A state is subject to a 10% penalty on their federal transportation funding if they fail to adopt the MUTCD M. E.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 27, Amended 1, Repealed 13; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Effective Date of Rule: Immediately.

January 9, 2003
John F. Conrad
Assistant Secretary

AMENDATORY SECTION (Amending Order 127, filed 12/21/90, effective 1/21/91)

WAC 468-95-010 General. ((~~The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 1988 edition, and future revisions approved by the Federal Highway Administrator, except as modified by the department of transportation herein, as the national standard for all highways open to public travel, published by the U.S. Department of Transportation, Federal Highway Administration, was duly adopted by Administrative Order No. . . . . of the Secretary of Transportation dated . . . . . .~~)) The June 2001 Millennium Edition of the *Manual on Uniform Streets and Highway for Streets and Highways (MUTCD)*, published by the Federal Highway Administration and approved by the Federal Highway Administrator as the national standard for all highways open to public travel, was duly adopted by the Washington state secretary of transportation. The manual includes in part many illustrations, some of which depend on color for proper interpretation. The code reviser has deemed it inexpedient to convert these regulations and illustrations to the prescribed form and style of WAC and therefore excludes them from publication. ((~~Copies of the MUTCD may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~)) The document is available for public inspection at the headquarters office and all ((~~district~~)) region offices of the Washington state department of transportation. Further, each city, town, and county engineering office in the state will have a copy of the MUTCD, with revisions and modifications for Washington, in its possession.

NEW SECTION

WAC 468-95-110 Parking for the disabled in urban areas. Pursuant to RCW 46.61.581 the following modifications to the MUTCD are established:

(1) A paragraph is added to the standard of MUTCD Section 2B.35, Design of Parking, Standing, and Stopping Signs: A parking space or stall for a physically disabled person shall be indicated by a vertical sign with the international

symbol of access, whose colors are white on a blue background, described under RCW 70.92.120 and the notice State Disabled Parking Permit Required.

(2) A second Standard is added to MUTCD Section 2B.36 to read: Signs indicating a parking space or stall for a physically disabled person shall be installed between thirty-six and eighty-four inches off the ground.

NEW SECTION

WAC 468-95-120 Traffic signal signs. Pursuant to RCW 46.61.055 amend the second Standard of MUTCD Section 2B.40 to read:

The NO TURN ON RED sign (R10-11a, R10-11b) shall be used to prohibit a right turn on red or a left turn on red from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn.

NEW SECTION

WAC 468-95-130 High occupancy vehicle signs. Amend the fourth paragraph of the Standard of MUTCD Section 2B.50 to read:

For concurrent-flow HOV lanes, ground-mounted HOV signs (R3-11) shall be located at intervals based on engineering judgment. Overhead HOV signs (R3-14) should be used to supplement the ground-mounted HOV signs (R3-11) at intervals based on an engineering study.

NEW SECTION

WAC 468-95-140 Signing to regional shopping centers. Pursuant to RCW 47.36.270 a regional shopping center may be signed as a supplemental guide sign destination from state highways in accordance with the applicable sections of MUTCD Part II-D, Guide Signs - Conventional Roads and Part II-E Guide Signs - Freeways and Expressways, and in accordance with subsections (1) through (8) of this section.

(1) There shall be at least 500,000 square feet of leasable retail floor space;

(2) There shall be at least three major department stores owned by national or regional retail chain organizations;

(3) The center shall be located within one highway mile of the state highway;

(4) The center shall generate at least 9,000 daily one-way vehicle trips to the center;

(5) Sufficient sign space as specified in the MUTCD shall be available for installation;

(6) Supplemental follow-through directional signing is required on county roads or city streets at key motorist decision points, if the center is not clearly visible from the point of exit from the state highway. The required supplemental follow-through directional signs shall be installed by the city or county prior to the installation of signs on the state highway;

(7) Signing on the state highway to a county road or city street that bears the name of the regional shopping center fulfills the statutory requirements for signing to those centers;

(8) The costs of materials and labor for fabricating, installing, and maintaining regional shopping center signs shall be borne by the center.

NEW SECTION

WAC 468-95-150 No passing zone markings. Amend the third Standard of MUTCD Section 3B.02, to read:

On two-way, two- or three-lane roadways where centerline markings are installed, no-passing zones shall be established at vertical curves and other locations where an engineering study indicates that passing must be prohibited because of inadequate sight distances or other special conditions.

On two-way, two- and three-lane roadways where centerline markings are installed, no-passing zones shall be established at horizontal curves where an engineering study indicates passing must be prohibited because of inadequate sight distances or other special conditions. A January 17, 2007, compliance date is established.

On three-lane roadways where the direction of travel in the center lane transitions from one direction to the other, a no-passing buffer zone shall be provided in the center lane as shown in Figure 3B-4. A lane transition shall be provided at each end of the buffer zone.

The buffer zone shall be a median island consisting of a lane transition in each direction and a minimum of a 15 m (50 ft) buffer zone. In areas where no-passing zones are required because of limited passing sight distances, the buffer zone shall be the distances between the beginnings of the no-passing zones in each direction.

NEW SECTION

WAC 468-95-160 Other yellow longitudinal markings. Amend the second Standard of MUTCD Section 3B.03 to read:

If a continuous median island formed by pavement markings separating travel in opposite directions is used, the island may be formed by two single normal solid yellow lines, a combination of two single normal solid yellow lines with yellow crosshatching between the lines with a total width not less than eighteen inches, two sets of double solid yellow lines, or a solid yellow line not less than eighteen inches in width. All other markings in the median island area shall be yellow, except crosswalk markings, which shall be white (see MUTCD Section 3B.17).

NEW SECTION

WAC 468-95-170 White lane line markings. Amend the third Standard of MUTCD Section 3B.04 to read:

Where crossing is prohibited, the lane line markings shall consist of two normal solid white lines or a single wide white line, supplemented with lane change prohibition signing.

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NEW SECTION

WAC 468-95-180 Other white longitudinal pavement markings. Amend MUTCD Section 3B.05, to change the dimensions shown on Figure 3B-10 for drop lane markings from 3' markings with a 9' gap to 3' markings with a 12' gap.

NEW SECTION

WAC 468-95-190 Pavement edge lines and raised pavement markers supplementing other markings. Pursuant to RCW 47.36.280, the Standard in MUTCD Section 3B.07, is revised as follows:

Edge lines shall be used on all interstate highways, on rural multilane divided highways, on all principal arterials and minor arterials within urbanized areas, except when curb or sidewalk exists, and may be used on other classes of roads. Jurisdictions shall conform to these requirements at such time that it undertakes to renew or install permanent markings on new or existing roadways. The lines shall be white except that on the left edge of each roadway of divided streets and highways and one-way roadway in the direction of travel, the lines shall be yellow.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

Pursuant to RCW 47.36.280, the first paragraph under Option of MUTCD Section 3B.13 is revised to read as follows:

Raised pavement markers may also be used to supplement other markings for channelizing islands or approaches to other objects. The general use of raised pavement markers along right edge lines is strongly discouraged because they can cause steering difficulties and make bicyclists lose control of their vehicles. Raised or recessed pavement markers may be used along right edge lines on the taper in lane transition sections, on approaches to objects and within channelization at intersections. Raised or recessed pavement markers can only be used along right edge lines at other locations where an engineering study has determined the markers are essential to preserving pedestrian, bicycle, and motor vehicle safety. At the initiation of the engineering study, local bicycling organizations, the regional member of the state bicycling advisory committee, or the WSDOT bicycle and pedestrian program manager shall be notified of the study for review and comment. Positioning and spacing of the markers in such cases must be determined by engineering judgment taking into consideration their effect on bicycle, pedestrian, and motor vehicle safety. Other applications of raised or recessed pavement markers along right edge lines of arterials are considered to be nonconforming with this section. Cities and counties shall remove nonconforming raised pavement markings at the time that they prepare to resurface roadways, or earlier at their option.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

NEW SECTION

WAC 468-95-200 Approach markings for obstructions. Amend the first Standard of MUTCD Section 3B.10 to read:

Pavement markings shall be used to guide traffic away from fixed obstructions within a paved roadway. Approach markings for bridge supports, refuge islands, median islands, and channelization islands (except channelization islands formed by paint stripes or raised pavement markers) shall consist of a diagonal line or lines extending from the centerline or the lane line to a point 0.3 to 0.6 m (1 to 2 ft) to the right side, or to both sides, of the approach end of the obstruction (see Figure 3B-13).

Amend the third Standard of MUTCD Section 3B.10 to read:

If traffic is required to pass only to the right of the obstruction, the markings shall consist of a no-pass marking, approaching the obstruction, at least twice the length of the diagonal portion as determined by the appropriate taper formula (see Figure 3B-13).

Modify MUTCD Figure 3B-13, Item a - Center of two-lane road, to show a single no-pass marking on the approach to the obstruction.

NEW SECTION

WAC 468-95-210 Raised pavement markers substituting for pavement markings. Amend the first sentence in the first Standard of MUTCD Section 3B.14 to read:

If raised pavement markers are substituted for broken line markings, a group of 3 to 5 markers equally spaced at no greater than N/8 (see Section 3A.06), or at the one-third points of the line segment if N is other than 12 m (40 ft), with a least one retroreflective or internally illuminated marker used per group.

NEW SECTION

WAC 468-95-220 Stop line locations. Amend the second Guidance of MUTCD Section 3B.16 to read:

Stop or yield lines, where used, should ordinarily be placed four feet in advance of and parallel to the nearest crosswalk line. In the absence of a marked crosswalk, the stop or yield line should be placed at the desired stopping point, in no case less than 4 feet from the nearest edge of intersecting roadway.

Stop lines at midblock signalized locations should be placed at least 40 feet in advance of the nearest signal indication (see MUTCD Section 4D.15).

NEW SECTION

WAC 468-95-230 Crosswalk markings. Amend the second Guidance in MUTCD Section 3B.17 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap

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between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

NEW SECTION

WAC 468-95-240 Preferential lane longitudinal markings for motorized vehicles. Amend the second Standard of MUTCD Section 3B.23, item C.1 to read:

A double solid wide white line or a single wide white line, supplemented with lane change prohibition signing where crossing is prohibited (see Figure 3B-25b and 3B-25c).

Amend the second Standard of MUTCD Section 3B.23, item D.4 to read:

A single dotted normal white line or a single dotted wide white line is permitted for any vehicle to perform a right turn maneuver (see Figure 3B-25b).

Amend all references in Table 3B-2 for double wide white line to allow single solid wide white line, each with lane change prohibition signing.

Amend the callout in figure 3B-25 for a SINGLE DOTTED NORMAL WHITE on the approach to the limited access exit, side-street, or commercial entrance to say SINGLE DOTTED NORMAL WHITE or SINGLE DOTTED WIDE WHITE.

NEW SECTION

WAC 468-95-250 Meaning of signal indications. Pursuant to RCW 46.61.055, amend the second paragraph of the Standard of MUTCD Section 4D.04, item C.1 to read:

Vehicle operators facing a steady circular red signal may, after stopping, proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

Pursuant to RCW 46.61.055, amend the MUTCD Section 4D.04, item C.2 to read:

Vehicle operators facing a steady red arrow indication may, after stopping, proceed to make a right turn from a one-way or two-way street or into a one-way street carrying traffic in the direction of the right turn, or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn, unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

NEW SECTION

WAC 468-95-260 Application of steady signal indications. Pursuant to RCW 46.61.055, amend MUTCD Section 4D.05, item D to read:

A steady RED ARROW signal indication shall be displayed when it is intended to prohibit vehicular traffic from entering the intersection or other controlled area to make the indicated turn when regulatory signing is in place prohibiting such movement. Pedestrians directed by a pedestrian signal head may enter the intersection or other controlled area.

NEW SECTION

WAC 468-95-270 Meaning of lane-use control indications. Pursuant to RCW 46.61.072, amend MUTCD Section 4J.02 paragraph B to read:

A steady YELLOW X or a flashing RED X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made, and to avoid occupying that lane when a steady RED X is displayed.

NEW SECTION

WAC 468-95-280 Operation of lane-use control signals. Pursuant to RCW 46.61.072, in MUTCD Section 4J.04, amend the first sentence of the first paragraph after item G to read:

A moving condition in one direction shall be terminated either by the immediate display of a RED X signal indication or by a YELLOW X signal indication followed by a RED X signal indication or a flashing RED X indication followed by a RED X indication.

NEW SECTION

WAC 468-95-290 County road signing. Pursuant to RCW 36.75.300, there is added to Part 5 of the MUTCD, the following regulation pertaining to signing of county roads:

The legislative authority of each county may by resolution classify and designate portions of county roads as primitive roads where the designated road portion:

(1) Is not classified as part of the county primary road system, as provided for in RCW 36.86.070;

(2) Has a gravel or earth driving surface; and

(3) Has an average annual daily traffic of 100 or fewer vehicles.

Any road designated as a primitive road shall be marked with a PRIMITIVE ROAD sign at all places where the primitive road portion begins or connects with a highway other than a primitive road.

A sign with the caption CAUTION - NO WARNING SIGNS may be installed on the same post with the PRIMITIVE ROAD sign, and may be individually erected at intermediate points along the road section if conditions warrant. In addition, a sign with the caption NEXT... MILES may be installed on the same post below the CAUTION - NO WARNING SIGNS sign.

EMERGENCY

NEW SECTION

WAC 468-95-300 Temporary traffic control. Amend MUTCD Section 6C.04, Table 6C-1 and MUTCD Section 6H.01, Table 6H-3 to read:

Sign Spacing (1)

Freeways & Expressways	55/70 MPH	1500'± or per MUTCD
Rural Highways	60/65 MPH	1000'±
Rural Roads	45/55 MPH	500'±
Rural Roads & Urban Arterials	35/40 MPH	350'±
Rural Roads, Urban Streets, Residential Business Districts	25/30 MPH	200'± (2)
Urban Streets	25 MPH or less	100'± (2)

(1) All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

(2) This spacing may be reduced in urban areas to fit roadway conditions.

NEW SECTION

WAC 468-95-310 Temporary pavement markings. Amend the first Support of MUTCD Section 6F.66 to read:

Temporary pavement markings are those that may be used until it is practical and possible to install permanent pavement markings that meet MUTCD standards. Normally, it should not be necessary to leave temporary pavement markings in place for more than 2 weeks, except on roadways being paved with bituminous surface treatment (BST) and having traffic volumes under 2,000 ADT. All temporary pavement markings, including pavement markings for no-passing zones, shall conform to the requirements of Sections 3A and 3B.

Amend the first Guidance of MUTCD Section 6F.66 to read:

For temporary situations of 14 calendar days or less, for a two-lane or three-lane road, no-passing zones may be identified by using W 14-3 No Passing Zone signs (see Section 2C.32) rather than pavement markings (see Section 3B.02). Signs may also be used in lieu of pavement markings on low-volume roads for longer periods, when this practice is in keeping with the state's or other highway agency's policy. These signs should be placed in accordance with Sections 2B.24 and 2B.25.

NEW SECTION

WAC 468-95-320 School advance warning sign (S-1). Amend MUTCD Section 7B.08, Figure 7B-1 by deleting the words SCHOOL PROPERTY LINE and replacing with the words SCHOOL GROUNDS. Amend MUTCD Section 7B.08, Figure 7B-1 to show the school zone 300 feet on either side of the marked school crosswalk.

NEW SECTION

WAC 468-95-330 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1). Pursuant to RCW 46.61.440 delete the first Guidance paragraph and add the following paragraph to the first Standard of MUTCD Section 7B.11:

The reduced school speed zone shall begin at a point 90 m (300 ft) in advance of the crosswalk and end at a point 90 m (300 ft) after the crosswalk. These distances may be modified to fit the field conditions by regulation.

NEW SECTION

WAC 468-95-340 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1). Amend the Option to the second Standard of MUTCD Section 7B.11 to read:

The School Speed Limit assembly shall be either a fixed-message sign assembly or a changeable message sign. The fixed-message School Speed Limit assembly shall consist of a top plaque (S4-3) with the legend SCHOOL, a Speed Limit (R2-1) sign, and a bottom plaque (S4-1, S4-2, or S4-4) indicating the specific periods of the day and/or days of the week that the special school speed limit is in effect. An additional bottom plaque may be used that reads WHEN FLAGGED.

NEW SECTION

WAC 468-95-350 When children are present. Amend MUTCD Section 7B.11 by adding the following supplemental paragraph to the second Standard:

The supplemental or lower panel of a School Speed Limit 20 sign which reads When Children are Present shall indicate to the motorist that the 20 mile per hour school speed limit is in force under any of the following conditions:

(1) School children are occupying or walking within the marked crosswalk.

(2) School children are waiting at the curb or on the shoulder of the roadway and are about to cross the roadway by way of the marked crosswalk.

(3) School children are present or walking along the roadway, either on the adjacent sidewalk or, in the absence of sidewalks, on the shoulder within the posted school speed limit zone extending 300 feet, or other distance established by regulation, in either direction from the marked crosswalk.

NEW SECTION

WAC 468-95-360 Crosswalk markings. Amend the second Guidance of MUTCD Section 7C.03 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

EMERGENCY

NEW SECTION

WAC 468-95-370 Pavement markings for obstructions. Amend MUTCD Section 9C.07, Figure 9C.07, to show a normal solid white line instead of a wide solid white line.

NEW SECTION

WAC 468-95-400 Sign borders. The following MUTCD sections are adopted as modified herein, until Revision 2 to the June 2001 Millennium Edition of the MUTCD is adopted by the Washington state secretary of transportation:

(1) **Section 2A.15, Sign Borders**

Amend the Standard to read:

Unless specifically stated otherwise, each sign illustrated herein shall have a border of the same color as the legend, at or just inside the edge. The corners of all sign borders shall be rounded, except for STOP signs.

Amend the Guidance to read:

A dark border on a light background should be set in from the edge, while a light border on a dark background should extend to the edge of the panel. A border for 750 mm (30 in) signs with a light background should be from 13 to 19 mm (0.5 to 0.75 in) in width, and 13 mm (0.5 in) from the edge. For similar size signs with a light border, a border width of 25 mm (1 in) should be used. For other sizes, the border width should be of similar proportions, but should not exceed the stroke-width of the major lettering of the sign. On signs exceeding 1800 x 3000 mm (72 x 120 in) in size, the border should be 50 mm (2 in) wide. For signs larger than 1800 x 3000 mm (72 x 120 in), the border should be 75 mm (3 in) wide. Where practical, the corners of the sign should be rounded parallel to the border, except for STOP sign corners which are not rounded.

(2) **Section 2A.19, Lateral Offset**

Change the first Standard to read:

For overhead sign supports (cantilever or sign bridges), the minimum lateral offset from the edge of the shoulder (or if no shoulder exists, from the edge of the pavement) to the near edge of the supports shall be 1.8 m (6 ft).

Overhead sign supports shall have a barrier or crash cushion to shield them if they are within the clear zone.

Roadside-mounted sign supports shall be breakaway, yielding, or shielded with a longitudinal barrier or crash cushion if within the clear zone.

(3) **Section 2C.04 Page 2C-4, Table 2C-2, Warning Sign Sizes**

Replace the table with the following:

Table 2C-2. Warning Sign Sizes

Description						
Shape	Sign Series	Conventional Roads	Expressways	Freeways	Minimum	Oversized
Diamond	W1, W2, W7, W8, W9, W11, W14, W15-1, W17-1	750 x 750 (30 x 30)	900 x 900 (36 x 36)	1200 x 1200 (48 x 48)	600 x 600 (24 x 24)	
Diamond	W3, W4, W5, W6, W8-3, W10, W12	900 x 900 (36 x 36)	1200 x 1200 (48 x 48)	1200 x 1200 (48 x 48)	750 x 750 (30 x 30)	
Rectangular	W1 - Arrows	1200 x 600 (48 x 24)			900 x 450 (36 x 18)	1500 x 750 (60 x 30)
Rectangular	W1 - Chevron	450 x 600 (18 x 24)	750 x 900 (30 x 36)	900 x 1200 (36 x 48)	300 x 450 (12 x 18)	
	W7-4	1950 x 1200 (78 x 48)	1950 x 1200 (78 x 48)	1950 x 1200 (78 x 48)		
	W7-4a, b, c	1950 x 1500 (78 x 60)	1950 x 1500 (78 x 60)	1950 x 1500 (78 x 60)		
	W10-9, W10-10	750 x 225 (30 x 9)				
	W12-2P	2100 x 600 (84 x 24)	2100 x 600 (84 x 24)	2100 x 600 (84 x 24)		
	W13, W25	600 x 750 (24 x 30)	900 x 1200 (36 x 48)	1200 x 1500 (48 x 60)	600 x 750 (24 x 30)	1200 x 1500 (48 x 60)
Pennant	W14-3	900 x 1200 x 1200 (36 x 48 x 48)			750 x 1000 x 1000 (30 x 40 x 40)	1200 x 1600 x 1600 (48 x 64 x 64)
Circular	W10-1	900 (36) Dia.	1200 (48) Dia.		750 (3) Dia.	1200 (48) Dia.

EMERGENCY

Note: 1. Larger signs may be used when appropriate.
2. Dimensions are shown in millimeters followed by inches in parentheses and are shown as width x height.

(4) **Section 2C.05, Table 2C-4, Guidelines for Advance Placement of Warning Signs (English Units).** Replace the table and notes with the following:

Table 2C-4. Guidelines for Advance Placement of Warning Signs (English Units)

Posted or 85th Percentile Speed	Advance Placement Distance[1]								
	Condition A: Speed reduction and lane changing in heavy traffic[2]	Condition B: Deceleration to the listed advisory speed (mph) for the condition[4]							
		0[3]	10	20	30	40	50	60	70
20 mph	225 ft	N/A[5]	N/A[5]	–	–	–	–	–	–
25 mph	325 ft	N/A[5]	N/A[5]	N/A[5]	–	–	–	–	–
30 mph	450 ft	N/A[5]	N/A[5]	N/A[5]	–	–	–	–	–
35 mph	550 ft	N/A[5]	N/A[5]	N/A[5]	N/A[5]	–	–	–	–
40 mph	650 ft	125 ft	N/A[5]	N/A[5]	N/A[5]	–	–	–	–
45 mph	750 ft	175 ft	125 ft	N/A[5]	N/A[5]	N/A[5]	–	–	–
50 mph	850 ft	250 ft	200 ft	150 ft	100 ft	N/A[5]	–	–	–
55 mph	950 ft	325 ft	275 ft	225 ft	175 ft	100 ft	N/A[5]	–	–
60 mph	1100 ft	400 ft	350 ft	300 ft	250 ft	175 ft	N/A[5]	–	–
65 mph	1200 ft	475 ft	425 ft	400 ft	350 ft	275 ft	175 ft	N/A[5]	–
70 mph	1250 ft	550 ft	525 ft	500 ft	425 ft	350 ft	250 ft	150 ft	–
75 mph	1350 ft	650 ft	625 ft	600 ft	525 ft	450 ft	350 ft	250 ft	100 ft

Notes: [1]The distances are adjusted for a sign legibility distance of 50 m (175 ft) for Condition A. The distances for Condition B have been adjusted for a sign legibility distance of 75 m (250 ft), which is appropriate for an alignment warning symbol sign.

[2]Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. Typical signs are Merge, Right Lane Ends, etc. The distances are determined by providing the driver a PIEV time of 14.0 to 14.5 seconds for vehicle maneuvers (2001 AASHTO Policy, Exhibit 3-3, Decision Sight Distance, Avoidance Maneuver E) minus the legibility distance of 50 m (175 ft) for the appropriate sign.

[3]Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield Ahead, Signal Ahead, and Intersection Advance Warning signs. The distances are based on the 2001 AASHTO Policy, Stopping Sight Distance, Exhibit 3-1, providing a PIEV time of 2.5 seconds, a deceleration rate of 3.4 m/second^2 (11.2 ft/second^2), minus the sign legibility distance of 50 m (175 ft).

[4]Typical conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, Reverse Turn, or Reverse Curve. The distance is determined by providing a 2.5 second PIEV time, a vehicle deceleration rate of 3 m/second^2 (10 ft/second^2), minus the sign legibility distance of 75 m (250 ft).

[5]No suggested minimum distances are provided for these speeds, as the placement location is dependent on-site conditions and other signing to provide an adequate advance warning for the driver.

(5) **Section 2C.27 CROSS TRAFFIC DOES NOT STOP Plaque (W4-4)**

Replace the entire Section text with the following:

Option:

The CROSS TRAFFIC DOES NOT STOP (W4-4) plaque (see Figure 2C-9) may be used in combination with a STOP sign when engineering judgment indicates that drivers frequently misinterpret the intersection to be a multi-way stop condition.

Standard:

If the W4-4 plaque is used, it shall be installed below the STOP sign.

(6) **Section 2C.28 Merge Signs (W4-1, W4-1a)**

W4-2 Lane End sign is included in MUTCD Revision 2 Section 2C.30.

(7) **Section 2C.34 Intersection Warning Signs (W2-1 through W2-6)**

Amend the section to read:

Option:

A Cross Road (W2-1) symbol, Side Road (W2-2 or W2-3) symbol, T-Symbol (W2-4), or Y-Symbol (W2-5) sign (see Figure 2C-9) may be used in advance of an intersection to indicate the presence of an intersection and the possibility of turning or entering traffic. The relative importance of the intersecting roadways may be shown by different widths of lines in the symbol.

The Circular Intersection (W2-6) symbol sign accompanied by an educational word message plaque may be installed in advance of a circular intersection.

An advance street name plaque (see Section 2C.45) may be installed below an Intersection Warning sign.

Guidance:

The Intersection Warning sign should illustrate and depict the general configuration of the intersecting roadway, such as cross road, side road, T-intersection, or Y-intersection. Where the side roads are not opposite of each other, the symbol for the intersection should indicate a slight offset.

Intersection Warning signs, other than the Circular Intersection symbol (W2-6) sign should not be used on approaches controlled by STOP signs, YIELD signs, signals, or where Junction signing (see Sections 2D.13 and 2D.28) or advance route turn assembly signs (see Section 2D.29) are present. The Circular Intersection symbol (W2-6) sign should be installed on the approach to a roundabout intersection controlled by a YIELD sign.

(8) **Section 2C.37 Crossing Signs (W11-1, W11-2, W11-3, W11-4, W16-7P)**

Rename and replace the entire section with the following:

Section 2C.37 Nonvehicular Signs (W11-1, W11-2, W11-3, W11-4, W11-11, W11-14, W11-14a, W11-15)

Option:

Nonvehicular signs (see Figure 2C-10) may be used to alert road users in advance of locations where unexpected entries into the roadway or shared use of the roadway by pedestrians, bicyclists, golf carts, animals, horse-drawn vehicles, and other crossing activities might occur.

Support:

These conflicts might be relatively confined, or might occur randomly over a segment of roadway.

Option:

When used in advance of a crossing, Nonvehicular warning signs may be supplemented with supplemental plaques (see Section 2C.39) with the legend AHEAD, XX METERS (XX FEET), or NEXT XX KILOMETERS (NEXT XX MILES) to provide advance notice to road users of possible crossing activity.

Standard:

When used at the crossing, Nonvehicular warning signs shall be supplemented with a diagonal downward pointing arrow (W16-7) plaque (see Figure 2C-10) showing the location of the crossing.

Option:

The crossing location may be defined with crosswalk markings (see Section 3B.17). Pedestrian, Bicycle, School Advance Crossing, and School Crossing signs and their related supplemental plaques may have a fluorescent yellow-green background with a black legend and border.

Guidance:

When a fluorescent yellow-green background is used, a systematic approach featuring one background color within a zone or area should be used. Mixing standard yellow and fluorescent yellow-green backgrounds within a selected site area should be avoided.

Nonvehicular signs should be used only at locations where the crossing activity is unexpected or at locations not readily apparent.

(9) **Section 2C.46 Dead End/No Outlet Plaques (W14-1P, W14-2P)**

Amend the section to read:

Option:

DEAD END (W14-1P) or NO OUTLET (W14-2P) plaques (see Figure 2C-11) may be used in combination with Street Name (D3-1) signs (see Section 2D.38) to warn turning traffic that the cross street ends in the direction indicated by the arrow.

At locations where the cross street does not have a name, DEAD END or NO OUTLET plaques may be used alone in place of a street name sign.

(10) **Section 3B.13 B1 Raised Pavement Markers Supplementing Other Markings**

Under Guidance, amend the section to read:

B. Longitudinal Spacing

1. When supplementing solid line markings, raised pavement markers at a spacing no greater than N (see Section 3A.06) should be used, except when supplementing left edge line markings a spacing no greater than N/2 should be used. Raised markers should not supplement right edge line markings, unless they are spaced closely enough (no greater than 3 m (10 ft) apart) to approximate the appearance of a solid line.

2. When supplementing broken line markings, a spacing no greater than 3N should be used. However, when supplementing broken line markings identifying reversible lanes, a spacing no greater than N should be used.

3. When supplementing dotted line markings, a spacing appropriate for the application should be used.

4. When supplementing longitudinal line markings through at-grade intersections, one raised pavement marker for each short line segment should be used.

5. When supplementing edge line extensions through freeway interchanges, a spacing of N should be used.

(11) **Section 3B.24 Markings for Roundabouts**

Replace Figure 3B-27, Typical Markings for Roundabouts with Two Lanes, with the same figure in MUTCD Revision 2 available at http://mutcd.fhwa.dot.gov/pdfs/millennium/pr2/3r2.pdf. Page 69.

(12) **Section 3B.25 General**

Amend the section to read:

Support:

When used for guidance or regulation of traffic, colored pavements are traffic control devices. Colored pavements also are sometimes used to supplement other traffic control devices. Colored pavement located between crosswalk lines to emphasize the presence of the crosswalk is not considered to be a traffic control device.

Guidance:

Colored pavements used as traffic control devices should be used only where they contrast significantly with adjoining paved areas. Colors that degrade the contrast of white crosswalk lines, or that might be mistaken by road users as a traffic control application, should not be used for colored pavement located between crosswalk lines.

Standard:

Colored pavements shall not be used as a traffic control device, unless the device is applicable at all times. Colored pavements used as traffic control devices shall be limited to the following colors and applications:

A. Yellow shall be used only for flush or raised median islands separating traffic flows in opposite directions.

EMERGENCY

B. White shall be used for delineation on shoulders, and for flush or raised channelizing islands where traffic passes on both sides in the same direction of travel.

(13) **Section 4D.18-2 Design, Illumination, and Color of Signal**

Delete the entire last Guidance.

(14) **Section 7A.04 Scope**

Under the Standard, delete the second paragraph.

(15) **Section 7B.01 Size of School Signs**

Replace Table 7B-1 size of School Signs with the following figure:

Table 7B-1. Size of School Area Signs and Plaques

Sign Minimum	MUTCD Code	Conventional Roads		
		Standard	Special	
School Crossing	S1-1	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)	1200 x 1200 mm (48 x 48 in)
School Bus Stop Ahead	S3-1	750 x 750 mm (30 x 30 in)	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)
School Speed Limit Ahead	S4-5, S4-5a	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)	1200 x 1200 mm (48 x 48 in)
School Speed Limit XX When Flashing (English)	S5-1	600 x 1200 mm (24 x 48 in)	900 x 1800 mm (36 x 72 in)	1200 x 2400 mm (48 x 96 in)
School Speed Limit XX When Flashing (Metric)	S5-1	600 x 1350 mm (24 x 54 in)	900 x 1950 mm (36 x 78 in)	1200 x 2550 mm (48 x 102 in)
End School Zone	S5-2	600 x 750 mm (24 x 30 in)	900 x 1125 mm (36 x 45 in)	1200 x 1500 mm (48 x 60 in)
Speed Limit (School Use) (English)	R2-1	600 x 750 mm (24 x 30 in)	900 x 1125 mm (36 x 45 in)	1200 x 1500 mm (48 x 60 in)
Speed Limit (School Use) (Metric)	R2-1	600 x 900 mm (24 x 36 in)	900 x 1275 mm (36 x 51 in)	1200 x 1650 mm (48 x 66 in)

Plaque Minimum	MUTCD Code	Conventional Roads		
		Standard	Special	
8:30 AM to 5:30 PM	S4-1	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
When Children Are Present	S4-2	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
School	S4-3	600 x 200 mm (24 x 8 in)	900 x 300 mm (36 x 12 in)	1200 x 400 mm (48 x 16 in)
When Flashing	S4-4	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
XXX FT or XXX M	W16-2	600 x 300 mm (24 x 12 in)	750 x 375 mm (30 x 15 in)	900 x 450 mm (36 x 18 in)
XXX FT or XXX M	W16-2a	600 x 450 mm (24 x 18 in)	750 x 525 mm (30 x 21 in)	900 x 600 mm (36 x 24 in)
Ahead	W16-9p	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
Diagonal Arrow	W16-7	600 x 300 mm (24 x 12 in)	750 x 375 mm (30 x 15 in)	900 x 450 mm (36 x 18 in)

(16) **Section 7B.07, Sign Color for School Warning Signs**

Under Option D, amend the reference to the School Speed Limit sign (S5-1) to become a reference to the SCHOOL portion of the School Speed Limit sign (S5-1).

(17) **Section 9B.04, Bicycle Lane Signs (R3-16, R3-17)**

Amend the Standard to read:

The BIKE LANE (R3-17) sign (see Figure 9B-2) shall be used only in conjunction with marked bicycle lanes as described in Chapter 9C, and shall be placed at periodic intervals along the bicycle lanes.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 468-95-020	Parking for the disabled in urban areas.
WAC 468-95-025	Signing to regional shopping centers.
WAC 468-95-030	No passing zone markings.
WAC 468-95-035	Pavement edgelines and raised pavement markers supplementing other markings.
WAC 468-95-037	Stop line locations.
WAC 468-95-040	Meaning of signal indications.
WAC 468-95-050	Meaning of lane-use control indications.
WAC 468-95-055	"MUTCD Part VI."
WAC 468-95-060	When children are present.
WAC 468-95-070	Meaning of signal indications.
WAC 468-95-080	Functions.
WAC 468-95-090	County road signing.
WAC 468-95-100	Compliance dates.

WSR 03-03-042
EMERGENCY RULES
PERSONNEL RESOURCES BOARD
[Filed January 10, 2003, 11:54 a.m., effective March 10, 2003]

Date of Adoption: January 9, 2003.

Purpose: The purpose of this rule is to reinstate the exemption language for the State Board for Community and Technical Colleges and the board's definitions of student, part-time or temporary employees, and part-time professional consultants. This language was contained in WAC 251-04-040 that was repealed at the July board meeting. Since the language being proposed is not contained in chapter 41.06 RCW, there is a need for it to be reinstated.

STAFF NOTE: This rule is being proposed on an emergency basis by IPOC and the DOP. This rule was adopted on an emergency basis at the November 14, 2002, board meeting. Staff is proposing a second emergency adoption, effective March 10, 2003.

Statutory Authority for Adoption: RCW 41.06.150.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: RCW 41.06.070 exempts from coverage of chapter 41.06 RCW students, part-time, or temporary employees, and part-time professional consultants as defined by the Washington Personnel Resources Board. Effective September 1, 2002, the board abolished WAC 251-04-040 which has historically defined these categories of employees. Without the emergency adoption of WAC 251-04-035 which reinstates the definitions of student, part-time, temporary employees and part-time professional consultants, the status of these employees may be in question.

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

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

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

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

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

Effective Date of Rule: March 10, 2003.

January 9, 2003
E. C. Matt
Secretary

EMERGENCY

NEW SECTION

WAC 251-04-035 Exemptions. The provisions of this chapter do not apply to positions listed in RCW 41.06.070 and to the following:

(1) The executive director, his/her confidential secretary, assistant directors, and professional education employees of the state board for community and technical colleges.

(2) The following definitions are hereby established as the criteria for identifying positions occupied by student, part-time or temporary employees, and part-time professional consultants that are exempt from the provisions of this chapter.

(a) Students employed by the institution at which they are enrolled (or related board) and who either:

(i) Work five hundred sixteen hours or less in any six consecutive months, exclusive of hours worked in a temporary position(s) during the summer and other breaks in the academic year, provided such employment does not take the place of a classified employee laid off due to lack of funds or lack of work; or fill a position currently or formerly occupied by a classified employee during the current or prior calendar or fiscal year, whichever is longer;

(ii) Are employed in a position directly related to their major field of study to provide a training opportunity; or

(iii) Are elected or appointed to a student body office or student organization position such as student officers or student news staff members.

(b) Students participating in a documented and approved programmed internship which consists of an academic component and work experience.

(c) Students employed through the state or federal work/study programs.

(d) Persons employed to work one thousand fifty hours or less in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later. Such an appointment may be subject to remedial action in accordance with WAC 251-12-600, if the number of hours worked exceeds one thousand fifty hours in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, exclusive of overtime or work time as described in subsection (2)(a) of this section.

(e) Part-time professional consultants retained on an independent part-time or temporary basis such as physicians, architects, or other professional consultants employed on an independent contractual relationship for advisory purposes and who do not perform administrative or supervisory duties.

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WSR 03-03-047
EMERGENCY RULES
DEPARTMENT OF ECOLOGY

[Order 03-01—Filed January 13, 2003, 10:00 a.m., effective January 14, 2002 [2003]]

Purpose: Law enforcement agencies within the state of Washington confiscate drugs, including controlled substances, during the course of their work. The controlled substances are kept as evidence until the case is adjudicated. When no longer needed as evidence, law enforcement agencies follow their own policies for the destruction of the controlled substances. These policies include incineration, witnessed by a law enforcement officer. There is only one waste-to-energy facility in Washington that is able to take these wastes; however its permit prohibits the burning of dangerous waste. Some controlled substances designate as dangerous wastes in the state of Washington. This conditional exclusion will make it possible for these wastes to be disposed of at the waste to energy facility.

Controlled substances collected by law enforcement agencies within the state of Washington must be handled according to law enforcement policy to assure consistency in handling procedures. Deviations from the policy can put the law enforcement agency at risk for liability, loss of accreditation of their evidence rooms, and may impact case development. Law enforcement agencies have limited budgets for evidence disposal and varying disposal needs. The absence of the option for incinerating controlled substances is an impediment to a necessary element of police work.

This conditional exclusion from the dangerous waste regulations applies only to wastes that are regulated as state-only dangerous waste; that is, they are not also regulated under federal hazardous waste regulations. Ecology does not have the authority to exempt from regulation any drug that is a regulated waste under federal law. The drugs that are regulated as state-only dangerous waste are regulated primarily due to their toxicity. Incineration is an appropriate method of disposal for these low volume, low toxicity wastes.

Citation of Existing Rules Affected by this Order: Amending WAC 173-303-071.

Statutory Authority for Adoption: Chapter 70.105 RCW.

Other Authority: Chapter 43.21A RCW.

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: Law enforcement agencies have no in-state options for disposal of confiscated controlled substances that are state-only dangerous wastes. Due to a sudden loss of the last in-state disposal option and an ever increasing backlog in evidence rooms, law enforcement agencies need a safe, acceptable, immediately available option to dispose of these substances. Conditional exclusion from chapter 173-303 WAC will allow for disposal outside of the requirements of dangerous waste regulation.

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

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

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

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

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

Effective Date of Rule: January 14, 2002 [2003].

January 13, 2003
Tom Fitzsimmons
Director

AMENDATORY SECTION (Amending Order 99-01, filed 5/10/00, effective 6/10/00)

WAC 173-303-071 Excluded categories of waste. (1) Purpose. Certain categories of waste have been excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, because they generally are not dangerous waste, are regulated under other state and federal programs, or are recycled in ways which do not threaten public health or the environment. WAC 173-303-071 describes these excluded categories of waste.

(2) Excluding wastes. Any persons who generate a common class of wastes and who seek to categorically exclude such class of wastes from the requirements of this chapter

must comply with the applicable requirements of WAC 173-303-072. No waste class will be excluded if any of the wastes in the class are regulated as hazardous waste under 40 CFR Part 261.

(3) Exclusions. The following categories of waste are excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, 173-303-145, and 173-303-960, and as otherwise specified:

(a)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works (POTW) for treatment provided:

(A) The generator or owner/operator has obtained a state waste discharge permit issued by the department, a temporary permit obtained pursuant to RCW 90.48.200, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165;

(B) The waste discharge is specifically authorized in a state waste discharge permit, pretreatment permit or written discharge authorization, or in the case of a temporary permit the waste is accurately described in the permit application;

(C) The waste discharge is not prohibited under 40 CFR Part 403.5; and

(D) The waste prior to mixing with domestic sewage must not exhibit dangerous waste characteristics for ignitability, corrosivity, reactivity, or toxicity as defined in WAC 173-303-090, and must not meet the dangerous waste criteria for toxic dangerous waste or persistent dangerous waste under WAC 173-303-100, unless the waste is treatable in the publicly owned treatment works (POTW) where it will be received. This exclusion does not apply to the generation, treatment, storage, recycling, or other management of dangerous wastes prior to discharge into the sanitary sewage system;

(b) Industrial wastewater discharges that are point-source discharges subject to regulation under Section 402 of the Clean Water Act. This exclusion does not apply to the collection, storage, or treatment of industrial waste-waters prior to discharge, nor to sludges that are generated during industrial wastewater treatment. Owners or operators of certain wastewater treatment facilities managing dangerous wastes may qualify for a permit-by-rule pursuant to WAC 173-303-802(5);

(c) Household wastes, including household waste that has been collected, transported, stored, or disposed. Wastes that are residues from or are generated by the management of household wastes (e.g., leachate, ash from burning of refuse-derived fuel) are not excluded by this provision. "Household wastes" means any waste material (including, but not limited to, garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste will not be deemed to be treating, storing, disposing of, or otherwise managing dangerous wastes for the purposes of regulation under this chapter, if such facility:

(i) Receives and burns only:

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(B) Solid waste from commercial or industrial sources that does not contain dangerous waste; and

(ii) Such facility does not accept dangerous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that dangerous wastes are not received at or burned in such facility;

(d) Agricultural crops and animal manures which are returned to the soil as fertilizers;

(e) Asphaltic materials designated only for the presence of PAHs by WAC 173-303-100(6). For the purposes of this exclusion, asphaltic materials means materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of oil and sand, gravel, ash or similar substances;

(f) Roofing tars and shingles, except that these wastes are not excluded if mixed with wastes listed in WAC 173-303-081 or 173-303-082, or if they exhibit any of the characteristics specified in WAC 173-303-090;

(g) Treated wood waste and wood products including:

(i) Arsenical-treated wood that fails the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D004 through D017 only), or which fails any state criteria, if the waste is generated by persons who utilize the arsenical-treated wood for the materials' intended end use.

(ii) Wood treated with other preservatives provided such treated wood is, within one hundred eighty days after becoming waste:

(A) Disposed of at a landfill that is permitted in accordance with WAC 173-304-460, minimum functional standards for solid waste handling, or chapter 173-351 WAC, criteria for municipal solid waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-9903 and 173-303-9904 nor a TCLP waste under WAC 173-303-090(8); or

(B) Sent to a facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or

(C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through WAC 173-303-845. In addition, creosote-treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to burn creosote treated wood.

(h) Irrigation return flows;

(i) Reserve;

(j) Mining overburden returned to the mining site;

(k) Polychlorinated biphenyl (PCB) wastes:

(i) PCB wastes whose disposal is regulated by EPA under 40 CFR 761.60 (Toxic Substances Control Act) and that are dangerous either because:

(A) They fail the test for toxicity characteristic (WAC 173-303-090(8), Dangerous waste codes D018 through D043 only); or

(B) Because they are designated only by this chapter and not designated by 40 CFR Part 261, are exempt from regula-

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tion under this chapter except for WAC 173-303-505 through 173-303-525, 173-303-960, those sections specified in subsection (3) of this section, and 40 CFR Part 266;

(ii) Wastes that would be designated as dangerous waste under this chapter solely because they are listed as W001 under WAC 173-303-9904 when such wastes are stored and disposed in a manner equivalent to the requirements of 40 CFR Part 761 Subpart D for PCB concentrations of 50 ppm or greater.

(l) Samples:

(i) Except as provided in (l)(ii) of this subsection, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter, when:

(A) The sample is being transported to a lab for testing or being transported to the sample collector after testing; or

(B) The sample is being stored by the sample collector before transport, by the laboratory before testing, or by the laboratory after testing prior to return to the sample collector; or

(C) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action).

(ii) In order to qualify for the exemptions in (l)(i) of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(A) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) Comply with the following requirements if the sample collector determines that DOT or USPS, or other shipping requirements do not apply:

(I) Assure that the following information accompanies the sample:

(AA) The sample collector's name, mailing address, and telephone number;

(BB) The laboratory's name, mailing address, and telephone number;

(CC) The quantity of the sample;

(DD) The date of shipment;

(EE) A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(iii) This exemption does not apply if the laboratory determines that the waste is dangerous but the laboratory is no longer meeting any of the conditions stated in (l)(i) of this subsection;

(m) Reserve;

(n) Dangerous waste generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit until it exits the unit in which it was generated. This exclusion does not apply to surface impoundments, nor does it apply if the dangerous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials;

(o) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332), except that these wastes are not excluded if they exhibit one or more of the dangerous waste criteria (WAC 173-303-100) or characteristics (WAC 173-303-090);

(p) Wastes from burning any of the materials exempted from regulation by WAC 173-303-120 (2)(a)(vii) and (viii). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria;

(q) As of January 1, 1987, secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed;

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal; and

(v) A generator complies with the requirements of chapter 173-303 WAC for any residues (e.g., sludges, filters, etc.) produced from the collection, reclamation, and reuse of the secondary materials.

(r) Treatability study samples.

(i) Except as provided in (r)(ii) of this subsection, persons who generate or collect samples for the purpose of conducting treatability studies as defined in WAC 173-303-040 are not subject to the requirements of WAC 173-303-180, 173-303-190, and 173-303-200 (1)(a), nor are such samples included in the quantity determinations of WAC 173-303-070 (7) and (8) and 173-303-201 when:

(A) The sample is being collected and prepared for transportation by the generator or sample collector; or

(B) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(C) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study; or

(D) The sample or waste residue is being transported back to the original generator from the laboratory or testing facility.

(ii) The exemption in (r)(i) of this subsection is applicable to samples of dangerous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(A) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with nonacute dangerous waste, 1000 kg of nonacute dangerous waste other than contaminated media, 1 kg of acutely hazardous waste, 2500 kg of media contaminated with acutely hazardous waste for each process being evaluated for each generated waste stream; and

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(B) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with nonacute dangerous waste or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of dangerous waste, and 1 kg of acutely hazardous waste; and

(C) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of (r)(ii)(C)(I) or (II) of this subsection are met.

(I) The transportation of each sample shipment complies with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(AA) The name, mailing address, and telephone number of the originator of the sample;

(BB) The name, address, and telephone number of the laboratory or testing facility that will perform the treatability study;

(CC) The quantity of the sample;

(DD) The date of shipment; and

(EE) A description of the sample, including its dangerous waste number.

(D) The sample is shipped, within ninety days of being generated or of being taken from a stream of previously generated waste, to a laboratory or testing facility which is exempt under (s) of this subsection or has an appropriate final facility permit or interim status; and

(E) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

(AA) The amount of waste shipped under this exemption;

(BB) The name, address, and EPA/state identification number of the laboratory or testing facility that received the waste;

(CC) The date the shipment was made; and

(DD) Whether or not unused samples and residues were returned to the generator.

(F) The generator reports the information required under (r)(ii)(E)(III) of this subsection in its annual report.

(iii) The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in (r)(ii)(A) and (B) of this subsection and (s)(iv) of this subsection, for up to an additional 5000 kg of media contaminated with nonacute dangerous waste, 500 kg of nonacute dangerous waste, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste or for up to an additional 10,000 kg of wastes regulated only by this chapter and not regulated by 40 CFR Part 261, to conduct further treatability study evaluation:

(A) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(B) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(C) The additional quantities and time frames allowed in (r)(iii)(A) and (B) of this subsection are subject to all the provisions in (r)(i) and (r)(ii)(C) through (F) of this subsection. The generator or sample collector must apply to the department where the sample is collected and provide in writing the following information:

(I) The reason the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

(II) Documentation accounting for all samples of dangerous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the department considers necessary.

(s) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to chapter 70.105 RCW) are not subject to the requirements of this chapter, except WAC 173-303-050, 173-303-145, and 173-303-960 provided that the conditions of (s)(i) through (xiii) of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to (s)(i) through (xiii) of this subsection. Where a group of MTUs are located at the same site, the limitations specified in (s)(i) through (xiii) of this subsection apply to the entire group of MTUs collectively as if the group were one MTU.

(i) No less than forty-five days before conducting treatability studies the laboratory or testing facility notifies the

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department in writing that it intends to conduct treatability studies under this subsection.

(ii) The laboratory or testing facility conducting the treatability study has an EPA/state identification number.

(iii) No more than a total of 10,000 kg of "as received" media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" dangerous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(iv) The quantity of "as received" dangerous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of nonacute dangerous wastes other than contaminated media, and 1 kg of acutely hazardous waste. This quantity limitation does not include treatment materials (including nondangerous solid waste) added to "as received" dangerous waste.

(v) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(vi) The treatability study does not involve the placement of dangerous waste on the land or open burning of dangerous waste.

(vii) The laboratory or testing facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(A) The name, address, and EPA/state identification number of the generator or sample collector of each waste sample;

(B) The date the shipment was received;

(C) The quantity of waste accepted;

(D) The quantity of "as received" waste in storage each day;

(E) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(F) The date the treatability study was concluded;

(G) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated TSD facility, the name of the TSD facility and its EPA/state identification number.

(viii) The laboratory or testing facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(ix) The laboratory or testing facility prepares and submits a report to the department by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(A) The name, address, and EPA/state identification number of the laboratory or testing facility conducting the treatability studies;

(B) The types (by process) of treatability studies conducted;

(C) The names and addresses of persons for whom studies have been conducted (including their EPA/state identification numbers);

(D) The total quantity of waste in storage each day;

(E) The quantity and types of waste subjected to treatability studies;

(F) When each treatability study was conducted;

(G) The final disposition of residues and unused sample from each treatability study.

(x) The laboratory or testing facility determines whether any unused sample or residues generated by the treatability study are dangerous waste under WAC 173-303-070 and if so, are subject to the requirements of this chapter, unless the residues and unused samples are returned to the sample originator under the exemption in (r) of this subsection.

(xi) The laboratory or testing facility notifies the department by letter when it is no longer planning to conduct any treatability studies at the site.

(xii) The date the sample was received, or if the treatability study has been completed, the date of the treatability study, is marked and clearly visible for inspection on each container.

(xiii) While being held on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public.

Note: If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate.

(t) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D018 through D043 only) and are subject to the corrective action regulations under 40 CFR Part 280.

(u) Special incinerator ash (as defined in WAC 173-303-040).

(v) Wood ash that would designate solely for corrosivity by WAC 173-303-090 (6)(a)(iii). For the purpose of this exclusion, wood ash means ash residue and emission control dust generated from the combustion of untreated wood, wood treated solely with creosote, and untreated wood fiber materials including, but not limited to, wood chips, saw dust, tree stumps, paper, cardboard, residuals from waste fiber recycling, deinking rejects, and associated wastewater treatment solids. This exclusion allows for the use of auxiliary fuels

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including, but not limited to, oils, gas, coal, and other fossil fuels in the combustion process.

(w)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (w)(i) and (ii) of this subsection, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W which is incorporated by reference at WAC 173-303-400 (3)(a), regardless of whether the plant generates a total of less than 220 pounds/month of dangerous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the department a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(F) Additional reports.

(I) Upon determination by the department that the storage of wood preserving wastewaters and spent wood preserving solutions in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store wood preserving wastewaters and spent wood preserving solutions. This authority applies to tanks and secondary containment systems used to store wood preserving wastewaters and spent wood preserving solutions in tanks and containers. The department's determination of a threat to public health or the environment may be based upon observations of factors that would contribute to spills or releases of wood preserving wastewaters and spent wood preserving solutions or the generation of hazardous by-products. Such observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(II) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(III) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (w)(iii)(F)(I) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the wood preserving wastewaters and spent wood preserving solutions until such repairs or improvements are completed and approved by the department.

(x) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(y) Used oil filters that are recycled in accordance with WAC 173-303-120, as used oil and scrap metal.

(z) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(aa) Wastes that fail the test for the toxicity characteristic in WAC 173-303-090 because chromium is present or are listed in WAC 173-303-081 or 173-303-082 due to the presence of chromium. The waste must not designate for any other characteristic under WAC 173-303-090, for any of the criteria specified in WAC 173-303-100, and must not be listed in WAC 173-303-081 or 173-303-082 due to the presence of any constituent from WAC 173-303-9905 other than chromium. The waste generator must be able to demonstrate that:

(i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(ii) The waste is generated from an industrial process that uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(iii) The waste is typically and frequently managed in nonoxidizing environments.

(bb)(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in WAC 173-303-040 - blast furnaces, smelting, melting and refining furnaces, and other devices the department may add to the list - of the definition for "industrial furnace"), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of dangerous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the

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process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
(2)Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(ii) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D unit receiving the waste shipments; the dangerous waste number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of dangerous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment." These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics (WAC 173-303-090) or criteria (WAC 173-303-100).

(cc)(i) Oil-bearing hazardous secondary materials (that is, sludges, by-products, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (that is, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph: Provided, That the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in (cc)(ii) of this subsection, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (that is, from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under WAC 173-303-081 and 173-303-082, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in (cc)(i) of this subsection. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in WAC 173-303-081 and 173-303-082; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in WAC 173-303-040.

(dd) Dangerous waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are dangerous only because they exhibit the Toxicity Characteristic (TC) specified in WAC 173-303-090(8) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion

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is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(ee) Biological treatment sludge from the treatment of one of the following wastes listed in WAC 173-303-9904 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K157) unless it exhibits one or more of the characteristics or criteria of dangerous waste.

(ff) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(gg) Shredded circuit boards being recycled: Provided, That they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(hh) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in WAC 173-303-090(5) and/or toxicity for benzene (WAC 173-303-090(8), waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process.

An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (that is, sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(ii) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in WAC 173-303-016(5).

(jj) Catalyst inert support media separated from one of the following wastes listed in WAC 173-303-9904 Specific Sources - Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria.

(kk) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed: Provided, That:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing (February 8, 1999);

(ii) The solid wastes described in (kk)(i) of this subsection were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic or criteria of dangerous waste nor is derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: If the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system): Provided, That the impoundment has a double liner, and: Provided further, That the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(ll) Dredged material. Dredged material as defined in 40 CFR 232.2 that is subject to:

(i) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of a U.S. Army Corps of Engineers civil works project, the administrative equivalent of the permits referred to in (ll)(i) and (ii) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 CFR 336.1, 336.2 and 337.3.

(mm) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(nn) Controlled substances that are state-only dangerous wastes. Controlled substances as defined and regulated by chapter 69.50 RCW, including Schedule I through V drugs, that are held in the custody of law enforcement agencies within the state of Washington, and managed for destruction: Provided, That they are disposed of by incineration in a controlled combustion unit permitted to handle solid waste or disposed by other methods approved by ecology.

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WSR 03-03-065
EMERGENCY RULES
PUBLIC EMPLOYMENT RELATIONS COMMISSION
[Filed January 14, 2003, 1:57 p.m.]

Date of Adoption: January 6, 2003.

Purpose: To implement provisions of RCW 41.80.070 (3) (Personnel System Reform Act of 2002 (PSRA)) allowing employee organizations representing two or more bargaining units of state civil service employees, to consolidate units into single larger unit if commission considers larger unit to be appropriate.

Statutory Authority for Adoption: RCW 41.58.050, 41.06.340.

Other Authority: RCW 41.80.070(3).

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 PSRA (chapter 41.80 RCW) was passed by the legislature in March of 2002, and signed into law by Governor Locke on April 3, 2002. The provisions of RCW 41.80.070, including consideration by the commission of the avoidance of excessive fragmentation in determining appropriate units, became effective on June 13, 2002. Immediate adoption of this rule is necessary to implement the statutory intent of the PSRA.

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 1, 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 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 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

January 14, 2003
Marvin L. Schurke
Executive Director

NEW SECTION

WAC 391-25-426 Special provision—State civil service employees. The merger of two or more bargaining units that are represented by the same employee organization shall be approved by the agency upon request by the employee representative, provided that the agency considers the larger unit to be appropriate.

WSR 03-03-068
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE
[Order 03-05—Filed January 14, 2003, 4:53 p.m., effective January 15, 2003]

Date of Adoption: January 14, 2003.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300B; 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 red and green sea urchins exist in the areas described. Prohibition of all diving within one or 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.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule:

Effective Date of Rule: January 15, 2003.

January 14, 2003
Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-07300C Sea urchins. Notwithstanding the provisions of WAC 220-52-073, effective January 15, 2003 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 Mondays through Thursdays of each week. Sea Urchin Districts 6 and 7 are open only on Mondays, Tues-

days, Fridays and Saturdays of each week. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Mondays through Fridays of each week. Sea Urchin District 3 is open only on Mondays through Thursdays of each week. The maximum daily landing of red sea urchins for a harvest vessel in Sea Urchin District 3 is 500 pounds It is unlawful to harvest red sea urchins smaller or larger than the following size (size in largest test diameter exclusive of the spines).

(a) District 1 and 2 - 4.0 minimum to 5.5 maximum inches.

(b) District 3 - 3.25 minimum to 5.0 maximum inches.

(3) It is unlawful to dive for any purpose from a commercially licensed fishing vessel, except vessels actively fishing geoducks under contract with the Washington Department of Natural Resources within the following sea urchin Districts on the following days.

(a) District 1, 2, 3 and 4 - Saturdays and Sundays of each week

(b) District 6 and 7 - Wednesdays, Thursdays and Sundays of each week.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 15, 2003:

WAC 220-52-07300B Sea urchins. (03-02)

WSR 03-03-069
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)
[Filed January 15, 2003, 8:16 a.m.]

Date of Adoption: January 14, 2003.

Purpose: The Division of Program and Policy is adopting these emergency rules for family reconciliation services (FRS), WAC 388-32-0025 and 388-32-0030, to redefine the time frames for the delivery and completion of services within the FRS program, to allow for a greater flexibility in the delivery of services. Additionally, the Children's Administration has implemented a centralized intake system, requiring revision of this WAC to conform to the centralized intake operations. The department has filed a preproposal statement of inquiry and is initiating a rule-making proceeding to adopt the emergency rules as permanent rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-32-0025 and 388-32-0030.

Statutory Authority for Adoption: RCW 74.13.031, 74.08.090.

Other Authority: Chapter 371, Laws of 2002.

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; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The legislature has directed that the Children's Administration, per the 2002 supplemental budget, chapter 371, Laws of 2002, reduce the family reconciliation services program by $1.68 million. This reduction has resulted in a loss of funding for related contracted services. Altering the time frames for the delivery and completion of FRS services to a family would allow for greater flexibility in the delivery of services. Revised contracts as a result of the funding restraints are scheduled to be active January 1, 2003. The WAC governing this portion of the FRS program requires immediate revision to maintain the program within its budgetary allotment and preserve services to department clients. Delay threatens the health, safety and general welfare of all families receiving or eligible for FRS services. Failure to adopt these rules would cause the department to exhaust FRS funding before the end of fiscal year 2003, cutting off all FRS services to eligible families. The department is initiating rule-making proceedings to adopt these emergency rules as 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 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Effective Date of Rule: Immediately.

January 13, 2003
Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

WAC 388-32-0025 Who may receive FRS services? (1) CA provides FRS to ((~~runaways and families in conflict~~)) adolescents, thirteen through seventeen years of age, and their families, in instances where the adolescent has runaway and/or is in conflict with his/her family. These populations are defined as follows:

"Families in conflict" means families in which personal or family situations present a serious and imminent threat to the health or stability of the child, which may include an at-risk youth, or family.

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"Runaways" means youths who are absent from home for a period of time without parental permission. Services are to actual runaways and not to threatened runaways, unless the threatened runaways meet the definition of families in conflict.

(2) FRS is not provided for any of the following situations, unless the family is seeking an at-risk youth or a child-in-need-of-services (CHINS) family assessment:

(a) The identified youth has not reached his/her thirteenth birthday, or the youth is eighteen years of age or older;

(b) Chronic or long-term multi-problem situations requiring long-term interventions;

((~~(b)~~)) (c) Custody and marital disputes unless the dispute creates a conflict between the child and parent with physical custody;

((~~(c)~~)) (d) Families currently receiving counseling services related to the parent-child conflict/relationship from other agencies;

((~~(d)~~)) (e) Child abuse and neglect cases, unless those cases meet the definition of family in conflict((~~;~~

~~(e)~~)); or

(f) Youth receiving foster care or group care services or follow up to those services((~~; and~~

~~(f) Post-adoption cases still under supervision of an agency, except when those cases meet the definition of families in conflict~~)).

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

WAC 388-32-0030 What FRS services does the department provide? The assigned social worker provides services to develop skills and supports within families to resolve family conflicts, achieve a reconciliation between parent and child, and to avoid out-of-home placement. The services may include, but are not limited to, referral to services for suicide prevention, psychiatric or other medical care, or psychological, financial, legal, educational, or other social services, as appropriate to the needs of the child and family. Typically FRS is limited to a ninety-day period.

(1) The ((~~CA social worker provides intake/assessment services (IAS).~~)) children's administration's (CA) central intake provides intake services. Youth and/or their families who self-present at a local DCFS office requesting FRS services shall be provided assistance in contacting central intake to make a formal request for FRS services.

(2) The FRS social worker must ((~~initiate these short-term counseling sessions within forty-eight hours of the family's request for services~~)) contact the family within twenty-four hours of their assignment to the case, to schedule an appointment to begin the phase I family interview process. These FRS phase I sessions are intended to defuse the immediate potential for violence, assess problems, and explore options leading to problem resolution.

((~~(2)~~)) (3) CA or its contractors may provide FRS phase II crisis counseling services for up to ((~~thirty days within a ninety-day period.~~

~~(3)~~)) six weeks.

(4) Families eligible for ((~~thirty-day~~)) FRS phase II crisis counseling are those who, in the opinion of the family and the CA social worker, require more intensive services than those provided through ((~~IAS.~~

~~(4)~~)) phase I services.

(5) Families must make a commitment to participate in the ((~~thirty-day~~)) FRS phase II crisis counseling service and must not concurrently be receiving similar ((~~family~~)) counseling services through other agencies or practitioners. At a minimum, there must be a parent and a child willing to participate.

((~~(5) Thirty-day~~))

(6) FRS phase II crisis counseling services may not exceed ((~~fifteen hours within thirty days~~)) twelve hours over six weeks. The assigned counselor helps the family develop skills and supports to resolve conflicts. The counselor may refer to resources including medical, legal, ongoing counseling and CPS for problem resolution.

(a) ((~~The CA supervisor may extend thirty-day crisis counseling for an additional thirty days and up to fifteen additional hours of service, subject to availability of funds and the family's continued progress toward resolving conflicts~~)) FRS phase II crisis counseling may not be extended for either additional days or additional hours, except by an exception-to-policy waiver signed by the area administrator.

(b) ((~~The thirty-day~~)) FRS phase II crisis counseling ((~~is~~)) services are available a maximum of twice in a lifetime for any one ((~~child within a~~)) family. The family must include a parent/guardian who has legal custody of the youth.

WSR 03-03-085
EMERGENCY RULES
DEPARTMENT OF AGRICULTURE
[Filed January 15, 2003, 3:23 p.m.]

Date of Adoption: January 15, 2003.

Purpose: The department is adopting as an emergency rule a new section, WAC 16-54-155 Exotic Newcastle Disease (END) emergency quarantine, to prevent the introduction or spread of Exotic Newcastle Disease (END) in Washington state. The virus that causes the disease is highly contagious, and is readily spread by contact with infected birds or materials contaminated with the causative virus.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

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: A serious avian disease known as Exotic Newcastle Disease was first diagnosed in backyard poultry in Los Angeles County October 1, 2002. The disease was subsequently confirmed in birds in five commercial egg-laying facilities in Southern California since mid-December, 2002. Control efforts have not yet been successful in eliminating the disease in the quarantined area.

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

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

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

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

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

Effective Date of Rule: Immediately.

January 15, 2003
Valoria Loveland
Director

NEW SECTION

WAC 16-54-155 Exotic Newcastle Disease (END) emergency quarantine. This section applies to all avian species and commercial traffic originating from the END quarantine zone in California and to bird exhibits, shows, auctions, public displays and competitions held in Washington State.

(1) Areas under quarantine. The areas under quarantine include all counties and portions of counties in California currently declared or in the future declared to be under quarantine for END by the state of California or the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service. The area under quarantine in California as of January 15, 2003 includes Los Angeles County, Orange County, San Diego County, San Bernadino County, Riverside County, Imperial County and Ventura County.

(2) Items under restriction. Birds, poultry, poultry products, poultry waste, vehicles, equipment and materials that could transmit END. Included in the restriction are vehicles that make deliveries of live birds into the quarantine zone and return into the state of Washington.

(3) No live or dead bird of any type, including poultry, poultry product, material or poultry waste, that could transmit END may be moved into Washington State from the area under quarantine. An exemption is made for eggs that have met the requirements of 9 CFR 82.8, including washing, sanitizing and packing in new material.

(4) No equipment used for the processing of eggs or for the housing, feeding, watering, entertaining, or otherwise caring for birds of any type may be moved into Washington State from the area under quarantine unless accompanied by a certificate signed by an official of the USDA or the California Department of Food and Agriculture stating the equipment has been cleaned and disinfected according to a protocol established by the USDA.

(5) The driver of a commerical vehicle orginating from the area under quarantine who is transporting feed or eggs must provide proof, if asked by an agriculture inspector, of the cleaning and disinfection of the vehicle, trailer, and packing material performed immediately prior to the loading of the vehicle. This proof must be provided in writing and demonstrate that the cleaning and disinfection was performed according to the protocol established by the USDA.

(6) A driver of a vehicle of any type transporting a bird must provide, if asked by any agriculture inspector, an original health certificate issued by an accredited veterinarian within thirty days prior to entry stating the birds are healthy and do not originate from a quarantined area. Photocopies of health certificates must have an original veterinarian signature. National Poultry Improvement Plan (NPIP) forms for movement of poultry may be used by members of NPIP with the certification that the shipment did not originate from a quarantined area.

(7) A promoter of an event in Washington State, such as an exhibit, show, auction, competition, or other public display of birds of any type shall immediately inform the State Veterinarian by mail, facsimile, or electronic mail of a scheduled event. The notification shall include the contact name, mailing address, physical address of the event, and daytime telephone number.

(8) A promoter of an event in Washington State, such as an exhibit, show, auction, competition, or other public display of birds of any type, shall inform the event exhibitors and vendors in writing of this WAC, the current quarantine for END, and the risk of introducing END into Washington State. The promoter also shall require each event exhibitor and vendor to attest in writing that they are not in violation of this WAC. The signed document shall be forwarded to the State Veterinarian within one week of the conclusion of the event.

Reviser's note: The spellingl 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.

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WSR 03-03-098
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 03-06—Filed January 17, 2003, 3:44 p.m., effective January 21, 2003]

Date of Adoption: January 16, 2003.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-619[00D]; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The run size for Nisqually River wild steelhead returning this winter (2002-2003) is

expected to be extremely low. Although there is no sport fishery directed at steelhead, a closure of all fishing is necessary to minimize impacts on this depressed stock.

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 1.

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

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

Effective Date of Rule: January 21, 2003.

January 16, 2003
J. P. Koenings
Director

EMERGENCY

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Nisqually River Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. January 21, 2003 through 11:59 p.m. January 31, 2003, it is unlawful to fish in those waters of the Nisqually River from mouth to four hundred feet below LaGrande Powerhouse.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 1, 2003:

WAC 232-28-61900D	Exceptions to statewide rules—Nisqually River.

WSR 03-03-102
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE
[Order 03-04—Filed January 17, 2003, 4:57 p.m.]

Date of Adoption: January 9, 2003.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-42600C; and amending WAC 232-28-426.

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 harvest of brant is not allowed until a minimum of 6,000 birds have arrived. It is not expected that the minimum harvestable level will be achieved to allow hunting in 2003. 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.

January 9, 2003
Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-42600C 2003 Waterfowl seasons—Brant closure. Notwithstanding the provisions of WAC 232-28-426, effective immediately through January 26, 2003, it is unlawful to hunt for or possess brant taken from the lands and waters of Skagit County.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. January 26, 2003:

WAC 232-28-42600C	2003 Waterfowl seasons—Brant closure.

WSR 03-03-115
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed January 21, 2003, 3:52 p.m.]

Date of Adoption: January 14, 2003.

Purpose: The Division of Developmental Disabilities has been directed by the 2002 Washington state legislature to begin paying an income supplemental, called state supplementary payment (SSP). Implementation of this directive requires amendment of rules in chapters 388-820, 388-825

and 388-850 WAC, as well as adoption of new WAC 388-825-500 through 388-825-600, Division of Development Disabilities state supplemental payment.

Amended Rules: WAC 388-820-020 What definitions apply to this chapter?, 388-820-060 Who may receive residential services?, 388-820-120 Who pays for a client's residential services?, 388-825-020 Definitions, 388-825-055 Authorization for services, 388-825-100 Notification, 388-825-120 Adjudicative proceeding, 388-825-180 Eligible persons, 388-825-205 Who is eligible to participate in the family support opportunity program?, 388-825-252 Family support services, 388-825-254 Service need level rates, 388-850-035 Services—Developmental disabilities, and 388-850-045 Funding formula—Developmental disabilities.

New Rules: WAC 388-825-500 What is the state supplemental payment that will be administered by the division of development disabilities?, 388-825-505 What are the eligibility requirements for the DDD/SSP program?, 388-825-510 What are the financial eligibility requirements to receive DDD/SSP?, 388-825-515 What are the programmatic requirements for DDD/SSP?, 388-825-520 How often will my eligibility for DDD/SSP be redetermined?, 388-825-525 How will I know if I am eligible to receive a DDD/SSP payment?, 388-825-530 Can I choose not to accept DDD/SSP payments?, 388-825-535 Can I apply for the DDD/SSP program if I am not identified by DDD as eligible for the DDD/SSP program?, 388-825-540 What are my appeal rights if DDD determines that I am not eligible for DDD/SSP?, 388-825-545 How much money will I receive?, 388-825-546 May I voluntarily remove myself from the community alternatives program (CAP) waiver in order to increase the amount of my SSP?, 388-825-550 How often will I receive my DDD/SSP warrant/check?, 388-825-555 Who will the warrant/check be sent to?, 388-825-560 How will the warrant/check be sent?, 388-825-565 When will DDD/SSP begin issuing payments?, 388-825-570 Are there rules restricting how I use my DDD/SSP money?, 388-825-571 May I purchase services from a provider who lives outside the state of Washington?, 388-825-575 What changes must I report to the department?, 388-825-576 Do I have additional responsibilities when I purchase my own services?, 388-825-580 What happens if I do not spend my DDD/SSP money as required by WAC 388-825-570?, 388-825-585 When will the department stop sending my DDD/SSP money?, 388-825-590 What is a representative payee?, 388-825-591 Who can be a representative payee for my DDD/SSP?, 388-825-592 What are the responsibilities of the representative payee?, and 388-825-600 Does DSHS make exceptions to the requirements of this chapter?

The department has filed a CR-101 Preproposal statement of inquiry (WSR 02-17-068) and has initiated a rule-making proceeding to adopt permanent rules on this subject matter. These rules supersede emergency rules filed as WSR 02-20-045 on September 25, 2002.

Citation of Existing Rules Affected by this Order: Amending WAC 388-820-020, 388-820-060, 388-820-120, 388-825-020, 388-825-055, 388-825-100, 388-825-120, 388-825-180, 388-825-205, 388-825-252, 388-825-254, 388-850-035, and 388-850-045.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.10.020.

Other Authority: 2001-03 Supplemental Budget, ESSB 6387, (chapter 371, Laws of 2002).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The state legislature in adopting ESSB 6387 (chapter 371, Laws of 2002), has directed the Division of Developmental Disabilities to begin paying an income supplement, called state supplementary payment. In its published "Final Budget - Statewide Agency Detail" for ESSB 6387, the legislature also clearly stated its intent that "Beginning July 2002, state supplemental payments will no longer be provided automatically to all persons receiving a federal SSI benefit. SSI recipients will continue to receive their federal benefits and their federally provided annual cost of living increases each January. Some recipients who are dependent on larger state supplements will be provided a transitional state supplemental payment. The remaining amount of state supplemental payments required by federal rules will be used to support low... income families who are struggling to continue to care for children and other relatives with developmental disabilities." Emergency adoption of these rules is necessary to implement ESSB 6387 and the legislature's intent.

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 25, Amended 13, 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 25, Amended 13, Repealed 0.

Effective Date of Rule: Immediately.

January 14, 2003
Bonita H. Jacques
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

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 03-04 issue of the Register.

EMERGENCY

WSR 03-01-023
RULES OF COURT
STATE SUPREME COURT
[December 5, 2002]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO RAP 2.2(a), RAP 2.3(b) AND (e), RAP 2.4, RAP 5.1, RAP 7.2, RAP 8.1, RAP 9.1, RAP 9.2, FORM 15, RAP 9.5, FORM 15A, RAP 9.6, RAP 10.1, RAP 10.2, RAP 10.3, RAP 10.4 (a)(1), (2) AND (3), RAP 10.5, RAP 10.7, RAP 10.8, RAP 10.9, RAP 10.10, FORMS 22 AND 23, RAP 11.4, RAP 11.5, RAP 11.6, RAP 12.3, RAP 12.4, RAP 12.7, RAP 13.4, RAP 14.6, RAP 15.2, RAP 17.2, RAP 17.3, RAP 17.4, RAP 18.1, RAP 18.4, RAP 18.13, AND RAP 18.15	))))))))))))))))))	ORDER NO. 25700-A-755

The Washington State Bar Association having recommended the adoption of the proposed amendments to RAP 2.2(a), RAP 2.3 (b) and (e), RAP 2.4, RAP 5.1, RAP 7.2, RAP 8.1, RAP 9.1, RAP 9.2, Form 15, RAP 9.5, Form 15A, RAP 9.6, RAP 10.1, RAP 10.2, RAP 10.3, RAP 10.4 (a)(1), (2) and (3), RAP 10.5, RAP 10.7, RAP 10.8, RAP 10.9, RAP 10.10, Forms 22 and 23, RAP 11.4, RAP 11.5, RAP 11.6, RAP 12.3, RAP 12.4, RAP 12.7, RAP 13.4, RAP 14.6, RAP 15.2, RAP 17.2, RAP 17.3, RAP 17.4, RAP 18.1, RAP 18.4, RAP 18.13, and RAP 18.15, and the Court having determined that the proposed amendments will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates and early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendments will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 5th day of December 2002.

Alexander, C. J.

Smith, J.

Johnson, J. Bridge, J.

Madsen, J. Chambers, J.

Ireland, J. Owens, J.

RULE OF APPELLATE PROCEDURE 2.2 DECISIONS OF THE SUPERIOR COURT WHICH MAY BE APPEALED

(a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(1) *Final Judgment.* The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.

(1) - (13) Unchanged.

(b) - (d) Unchanged.

RULE OF APPELLATE PROCEDURE 2.3 DECISIONS OF THE TRIAL COURT WHICH MAY BE REVIEWED BY DISCRETIONARY REVIEW

(a) Unchanged.

(b) Considerations Governing Acceptance of Review. Except as provided in section (d), discretionary review ~~will~~ may be accepted only in the following circumstances:

(1) ~~If the~~ The superior court has committed an obvious error which would render further proceedings useless;

(2) ~~If the~~ The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act; ~~or~~

(3) ~~If the~~ The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court~~.~~; or

(4) ~~The appellate court may consider that the~~ The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

(c) - (d) Unchanged.

Rule of Appellate Procedure 2.3 Decisions of the Trial Court Which May Be Reviewed By Discretionary Review

(e) Acceptance of Review. Upon accepting discretionary review, the appellate court may specify the issue or issues as to which review is granted.

Rule of Appellate Procedure 2.4 Scope of Review of a Trial Court Decision

(a) Generally. The appellate court will, at the instance of the appellant, review the decision or parts of the decision designated in the notice of appeal or, subject to RAP 2.3(e) in the notice for discretionary review, and other decisions in the case as provided in sections (b), (c), (d), and (e). The appellate court will, at the instance of the respondent, review those acts in the proceeding below which if repeated on remand would constitute error prejudicial to respondent. The appellate court will grant a respondent affirmative relief by modifying the decision which is the subject matter of the review only (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice of discretionary review, or (2) if demanded by the necessities of the case.

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RULE OF APPELLATE PROCEDURE 2.4
SCOPE OF REVIEW OF A TRIAL COURT DECISION

(a) Unchanged.

(b) Order or Ruling Not Designated in Notice. The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review. A timely notice of appeal of a trial court decision relating to attorney fees and costs does not bring up for review a decision previously entered in the action that is otherwise appealable under rule 2.2(a) unless a timely notice of appeal has been filed to seek review of the previous decision.

(c) - (f) Unchanged.

(g) Award of Attorney Fees. An appeal from a decision on the merits of a case brings up for review an award of attorney fees entered after the appellate court accepts review of the decision on the merits~~, if the party seeking review files within the time provided in RAP 5.2 an amended notice of appeal or an amended notice for discretionary review as provided in rule 7.2(d)~~.

RULE OF APPELLATE PROCEDURE 5.1
REVIEW INITIATED BY FILING NOTICE OF APPEAL OR NOTICE FOR DISCRETIONARY REVIEW

(a) - (e) Unchanged.

(f) Order Entered After Review Accepted. If a party wants to seek review of a trial court decision entered pursuant to rule 7.2 after review in the same case has been accepted by the appellate court, the party must initiate a separate review of the decision by timely filing a notice of appeal or notice for discretionary review, except as provided by rules 2.4(c), ~~and~~ (f) and (g), ~~7.2(i),~~ 8.1(h), 8.2(b), and 9.13.

RULE OF APPELLATE PROCEDURE 7.2
AUTHORITY OF TRIAL COURT AFTER REVIEW ACCEPTED

(a) - (c) Unchanged.

(d) Attorney Fees and Litigation Expenses On Appeal. The trial court has authority to award attorney fees and litigation expenses for an appeal in a marriage dissolution, a legal separation, a declaration of invalidity proceeding, or an action to modify a decree in any of these proceedings, and in any other action in which applicable law gives the trial court authority to do so. ~~To obtain review of a trial court decision on attorney fees and litigation expenses in the same review proceeding as that challenging the judgment, a party must file an amended notice of appeal or an amended notice for discretionary review in the trial court.~~

(e) - (h) Unchanged.

(i) Attorney Fees, Costs and Litigation Expenses. The trial court has authority to act on claims for attorney fees, costs and litigation expenses ~~objections to costs~~. A party may obtain review of a trial court decision on attorney fees, costs and litigation expenses in the same review proceeding as that challenging the judgment without filing a separate notice of appeal or notice for discretionary review.

(j) Unchanged.

RULE OF APPELLATE PROCEDURE 8.1
SUPERSEDEAS PROCEDURE

(a) Application of Civil Rules. This rule provides a means of delaying the enforcement of a trial court decision in a civil case in addition to the means provided in CR 62 (a), (b), and (h).

(b) ~~Procedure~~ Right to Stay Enforcement of Trial Court Decision. A trial court decision may be enforced pending appeal or review unless stayed pursuant to the provisions of this rule. Any party to a review proceeding has the right to stay enforcement of a money judgment, or a decision affecting real, personal or intellectual property, pending review. Stay of a decision in other civil cases is a matter of discretion. ~~Enforcement of a trial court decision may be stayed through the following procedures~~:

(1) *Money Judgment.* Except when prohibited by statute, a party may ~~obtain a~~ stay ~~of~~ enforcement of a money judgment by filing in the trial court a supersedeas bond or cash, or by alternate security approved by the ~~in the~~ trial court pursuant to subsection (4), below. ~~The amount of the bond shall be the amount of the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs, and expenses likely to be awarded on appeal. If a party seeks to stay enforcement of only part of the judgment, the bond shall be fixed at such sum as the trial court determines is appropriate to secure that portion of the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs, and expenses likely to be awarded on appeal. If all or part of the judgment is secured by other means, the bond shall be fixed at such sum as the trial court determines is appropriate to secure the otherwise unsecured portion of the money judgment, plus interest likely to accrue during the pendency of the appeal on the unsecured portion of the judgment and attorney fees, costs, and expenses likely to be awarded on appeal that are not secured by other means.~~

(2) *Decision Affecting Property.* Except where prohibited by statute, a party may obtain a stay of enforcement of a decision affecting ~~the~~ rights to possession, ownership or use of real property, or of tangible personal property, or of intangible personal property, by filing in the trial court a supersedeas bond or cash, or by alternate security approved ~~in~~ by the trial court pursuant to subsection (4), below. If the decision affects the rights to possession, ownership or use of a trademark, trade secret, patent, or other intellectual property, a party may obtain a stay in the trial court only if it is reasonably possible to quantify the loss which would be incurred by the prevailing party in the trial court as a result of the party's inability to enforce the decision during review. ~~The amount of the bond shall be the amount of any money judgment entered by the trial court plus the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review. Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review. A party claiming that the reasonable value of the use of the property is inadequate to secure the loss which the party may suffer as a result of the party's inability to enforce the judgment shall~~

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~~have the burden of proving that the amount of loss would be more than the reasonable value of the use of the property during review. If the property at issue has value, the property itself may fully or partially secure any loss and the court may determine that no bond need be filed or may reduce the amount of the bond accordingly~~.

(3) *Other Civil Cases*. Except where prohibited by statute, in other civil cases, including cases involving equitable relief ordered by the trial court, the appellate court has authority, before or after acceptance of review, to stay enforcement of the trial court decision upon such terms as are just. The appellate court ordinarily will condition such relief from enforcement of the trial court decision on the furnishing of a supersedeas bond, cash or other security. In evaluating whether to stay enforcement of such a decision, the appellate court will (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed. The party seeking such relief should use the motion procedure provided in Title 17.

(4) *Alternate Security*. Upon motion of a party, ~~T~~the trial court or appellate court may authorize a party to post security other than a bond or cash. The effect of doing so is equivalent to the filing of a supersedeas bond or cash.

(c) Supersedeas Amount. The amount of the supersedeas bond, cash or alternate security required shall be as follows:

(1) *Money Judgment*. The supersedeas amount shall be the amount of the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs, and expenses likely to be awarded on appeal.

(2) *Decision Affecting Property*. The supersedeas amount shall be the amount of any money judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs, and expenses likely to be awarded on appeal entered by the trial court plus the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review. Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review. A party claiming that the reasonable value of the use of the property is inadequate to secure the loss which the party may suffer as a result of the party's inability to enforce the judgment shall have the burden of proving that the amount of loss would be more than the reasonable value of the use of the property during review. If the property at issue has value, the property itself may fully or partially secure any loss and the court may determine that no additional security need be filed or may reduce the supersedeas amount accordingly.

(3) *Stay of Portion of Judgment*. If a party seeks to stay enforcement of only part of the judgment, the supersedeas amount shall be fixed at such sum as the trial court determines is appropriate to secure that portion of the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs, and expenses likely to be awarded on appeal. If the judgment or decision provides for periodic payments, the trial court may in its discretion deny supersedeas, or permit the periodic posting of bonds, cash or alternate security.

(~~c~~d) Effect of Filing Bond or Other Security. Upon the filing of a supersedeas bond, cash or ~~other~~ alternate security approved by the trial court pursuant to subsection (4) above, enforcement of a trial court decision against a party furnishing the bond, cash or ~~other~~ alternate security is stayed. Unless otherwise ordered by the trial court or appellate court, upon the filing of a supersedeas bond, cash or ~~other~~ alternate security any execution proceedings against a party furnishing the bond, cash or ~~other~~ alternate security shall be of no further effect.

(~~d~~e) Objection to Supersedeas ~~Bond~~. A party may object to the sufficiency of an individual surety on a bond, to the form of a bond, or to the amount of a bond or cash supersedeas by a motion in the trial court made within 7 days after the party making the motion is served with a copy of the bond and any supporting affidavits, if required. If the trial court determines that the bond is improper in form, or that the amount of the bond, cash or ~~that the~~ net worth of an individual surety is inadequate, stay of enforcement of the trial court decision may be preserved only by furnishing a proper bond or supplemental bond or cash within 7 days after the entry of the order declaring the ~~bond~~ supersedeas deficient.

(ef) Supersedeas by Party Not Required to Post Bond. If a party is not required to post a bond, that party shall file a notice that the decision is superseded without bond and, after filing the notice, the party shall be in the same position as if the party had posted a bond pursuant to the provisions of this rule.

~~(f) Periodic Payments. If the judgment or decision provides for periodic payments, the trial court may deny or allow supersedeas in its discretion.~~

(g) Modification of Supersedeas Decision. After a supersedeas bond, cash or ~~other~~ alternate security has been filed, the trial court may, upon application of a party or on its own motion, and for good cause shown, discharge the bond, change the supersedeas amount ~~of the bond or other security~~ or require a new bond, additional cash or ~~other~~ alternate security.

(h) Review of Supersedeas Decision. A party may object to a supersedeas decision of the trial court by motion in the appellate court.

RULE OF APPELLATE PROCEDURE 9.1 COMPOSITION OF RECORD ON REVIEW

(a) - **(d)** Unchanged.

(e) Review of Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. Upon review of a superior court decision reviewing a decision of a court of limited jurisdiction pursuant to rule 2.3(d), the record shall consist of the record of proceedings and the transcript of electronic record as defined in RALJ 6.1 and 6.3A. When requested by the appellate court, the superior court shall transmit the original record of proceedings and transcript of electronic record as was considered by the superior court on the appeal from the decision of the court of limited jurisdiction.

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RULE OF APPELLATE PROCEDURE 9.2
VERBATIM REPORT OF PROCEEDINGS

(a) Transcription and Statement of Arrangements. If the party seeking review intends to provide a verbatim report of proceedings, the party should arrange for transcription of and payment for an original and one copy of the verbatim report of proceedings within 30 ~~45~~ days after the notice of appeal was filed or discretionary review was granted. If the proceeding being reviewed was recorded on videotape, transcription of the videotapes shall be completed by a court-approved transcriber in accordance with procedures developed by the Office of the Administrator for the Courts. Copies of these procedures are available at the court administrator's office in each county where there is a courtroom that videotapes proceedings or through the Office of the Administrator for the Courts. The party seeking review must file with the appellate court and serve on all parties of record and all named court reporters a statement that arrangements have been made for the transcription of the report and file proof of service with the appellate court. The statement must be filed within 30 ~~45~~ days after the notice of appeal was filed or discretionary review was granted. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or other person authorized to prepare a verbatim report of proceedings who will be preparing the transcript, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a verbatim report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements within 30 ~~45~~ days after the notice of appeal was filed or discretionary review was granted and served on all parties of record.

(b) - (f) Unchanged.

Form 15
(Replaces Current Form 15)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ___

)
)
) No.
)
) STATEMENT OF ARRANGEMENTS
) [Rule 9.2(a)]
)
)

_____, attorney for _____, states that on _____, 20___, I ordered transcription of the original and one copy of the verbatim report of proceedings from the court reporter(s)/transcriptionist(s) named below and arranged to pay the cost of transcriptions as follows:

_____.

Hearing date(s)	Judge	Court Reporter/ Transcriptionist
_____	_____	_____
_____	_____	_____
_____	_____	_____

___ A complete verbatim report of proceedings has been ordered.

___ A partial report has been ordered. In compliance with RAP 9.2, the following issues will be presented.

_____

ATTORNEY FOR_____
WSBA No. _____

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, 20___, I caused a true and correct copy of this Statement of Arrangements to be served on the following in the manner indicated below:

Counsel for _____	( )	U.S. Mail
Name _____	( )	Hand Delivery
Address _____	( )	_____
_____		
Counsel for _____	( )	U.S. Mail
Name _____	( )	Hand Delivery
Address _____	( )	_____
_____		
Court Report	( )	U.S. Mail
Name _____	( )	Hand Delivery
Address _____	( )	_____
_____		

By: _____

Statement of Arrangements

RULE OF APPELLATE PROCEDURE 9.5
FILING AND SERVICE OF REPORT OF PROCEEDINGS—OBJECTIONS

(a) Generally. The party seeking review must file an agreed or narrative report of proceedings with the clerk of the trial court within 60 ~~45~~ days after the statement of arrangements is filed. The court reporter or person authorized to prepare the verbatim report of proceedings must file it within 60 ~~45~~ days after the statement of arrangements is filed and all named court reporters are served. If the proceeding being reviewed was recorded on videotape, the transcript must be

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filed by the transcriber with the clerk of the trial court within 60 ~~45~~ days after the statement of arrangements is filed and all named court reporters are served. The party who caused a report of proceedings to be filed should at the time of filing the report of proceedings serve notice that the report of proceedings has been filed and file proof of the service on all parties.

(1) A party filing a brief must promptly forward a copy of the verbatim report of proceedings with a copy of the brief to the party with the right to file the next brief. If more than one party has the right to file the next brief, the parties must cooperate in the use of the report of proceedings. The party who files the last brief should return the copy of the report of proceedings to the party who paid for it

(2) If the transcript was computer-generated, one diskette or compact disk (using ASCII format with hard page returns) shall be filed with the original verbatim report of proceedings and a second diskette or compact disk shall be provided to the party who receives the verbatim report of proceedings. The party who files the last brief should return the diskette or compact disk to the party who paid for the verbatim report of proceedings.

(b) Filing and Service of Verbatim Report of Proceedings. If a verbatim report of proceedings cannot be completed within 60 ~~45~~ days after the statement of arrangements is filed and served, the court reporter or video transcriber or authorized person shall, no later than 10 days before the report of proceedings is due to be filed, submit an affidavit to the party who ordered the report of proceedings stating the reasons for the delay. The party who requested the verbatim report of proceedings should move for an extension of time from the appellate court. The clerk will notify the parties of the action taken on the motion. When the court reporter or video transcriber or authorized person files the verbatim report of proceedings, a copy shall be provided to the party who arranged for transcription and either the reporter or video transcriber or authorized person shall serve and file notice of the filing on all other parties and the appellate court. The notice of filing served on the appellate court shall include a declaration that (1) the transcript was computer generated and an ASCII diskette or compact disk was filed or (2) the transcript was not computer generated. Failure to timely file the verbatim report of proceedings and notice of service may subject the court reporter or video transcriber or authorized person to sanctions as provided in rule 18.9.

(c) - (d) Unchanged.

Form 15A [New]

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION_____

_____	)	
	)	No.
	)	
v.	)	NOTICE OF FILING VERBATIM REPORT OF PROCEEDINGS (RAP 9.5)
	)	
_____	)	

DECLARATION

I, _____ (name) _____, court reporter/transcriber, filed the verbatim report of proceedings for 20___, and provided a copy to the party who arranged for transcription.

CERTIFICATE OF SERVICE

I certify that on the_____ day of _____, 20____, I caused a true and correct copy of this Notice to be served on the following in the manner indicated below:

_____	( )	U.S. Mail
_____	( )	Hand Delivery
_____	( )	_____
_____	( )	U.S. Mail
_____	( )	Hand Delivery
_____	( )	_____
_____	( )	U.S. Mail
_____	( )	Hand Delivery
_____	( )	_____

By: _____

RULE OF APPELLATE PROCEDURE 9.6
DESIGNATION OF CLERK'S PAPERS AND EXHIBITS

(a) Generally. The party seeking review should, within 30 ~~15~~ days after the notice of appeal is filed or discretionary review is granted, serve on all other parties and file with the trial court clerk and the appellate court clerk a designation of those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court. Any party may supplement the designation of clerk's papers and exhibits prior to or with the filing of the party's last brief. Thereafter, a party may supplement the designation only by order of the appellate court, upon motion. Each party is encouraged to designate only clerk's papers and exhibits needed to review the issues presented to the appellate court.

(b) - (c) Unchanged.

RULE OF APPELLATE PROCEDURE 10.1
BRIEFS WHICH MAY BE FILED

(a) - (c) Unchanged.

(d) ~~Pro Se Supplemental Brief in Criminal Case. A defendant/appellant in a review of a criminal case may file a brief supplementing the brief filed by the defendant/appellant's counsel, but only if the defendant/appellant files a notice of intention to file a pro se supplemental brief. The court will not accept a pro se supplemental brief from a defendant/respondent. The notice of intent should be filed within 30 days after the defendant/appellant has received the brief prepared by defendant/appellant's counsel, a notice from the clerk of the appellate court advising the defendant/appellant of the substance of this section, rules 10.2(e), and 10.3(d), and a form of notice of intention to file a pro se supplemental brief. The clerk will advise all parties if the~~

MISC.

~~defendant/appellant files the notice of intention. If a defendant/appellant files a notice of intent to file a pro se supplemental brief, the appellate court will provide a copy of the verbatim report of proceedings to the defendant/appellant. The cost for reproducing the verbatim report of proceedings for an indigent defendant/appellant will be reimbursed to the appellate court from the appellate indigent defense fund.~~ [Reserved; see rule 10.10]

(e) Unchanged.

(f) Briefs in Cases Involving Cross Review. If a cross review is filed, the party first filing a notice of appeal or notice of discretionary review is deemed the appellant or petitioner for the purpose of this title, unless the parties otherwise agree or the appellate court otherwise orders. The following briefs may be filed in cases involving cross review: (1) brief of appellant, (2) brief of respondent/cross appellant, (3) reply brief of appellant/cross respondent, and (4) reply brief of cross ~~respondent~~ appellant.

(g) - (h) Unchanged.

RULE OF APPELLATE PROCEDURE 10.2 TIME FOR FILING BRIEFS

(a) – (c) Unchanged.

(d) Reply Brief. A reply brief of an appellant or petitioner should be filed with the appellate court within 30 days after service of the brief of respondent unless ~~oral argument is set fewer than 30 days after the brief of respondent is filed. In that instance, the reply brief must be filed at least 14 days before oral argument~~ the court orders otherwise.

(e) ~~Pro Se Supplemental Brief in Criminal Case. A pro se supplemental brief in a criminal case should be filed with the appellate court within 60 days after the defendant/appellant has been served with a verbatim report of proceedings.~~ [Reserved; see rule 10.10.]

(f) - (i) Unchanged.

RULE OF APPELLATE PROCEDURE 10.3 CONTENT OF BRIEF

(a) - (c) Unchanged.

(d) ~~Pro Se Supplemental Brief in Criminal Case. The pro se supplemental brief in a criminal case should be limited to those matters which defendant/appellant believes have not been adequately covered by the brief filed by the defendant/appellant's counsel.~~ [Reserved; see rule 10.10.]

(e) - (h) Unchanged.

RULE OF APPELLATE PROCEDURE 10.4 PREPARATION AND FILING OF BRIEF BY PARTY

(a) Typing or Printing Brief. Briefs shall conform to the following requirements:

(1) An original and one legible, clean, and reproducible copy of the brief must be filed with the appellate court. The original brief should be printed or typed in black on 20-pound substance 8-1/2- by 11-inch white paper. Margins should be at least 2 inches on the left side and 1-1/2 inches on the right side and on the top and bottom of each page. The brief shall not contain any tabs, colored pages, or binding and should be stapled in the left-hand upper corner.

(2) The text of any brief typed or printed ~~in a proportionally spaced typeface~~ must appear double spaced and in print as 12 point or larger type in the following fonts or their equivalent: Times New Roman, Courier, CG Times, Arial, or in typewriter fonts, pica or elite ~~with no more than 10 characters per inch and double spaced~~. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as 10 point or larger type and be the equivalent of single spaced. Quotations may be the equivalent of single spaced. Except for material in an appendix, the typewritten or printed material in the brief shall not be reduced or condensed by photographic or other means.

~~(3) The text of any brief typed or printed in a monospaced typeface shall be done in pica type or the equivalent at no more than 10 characters per inch. The lines must be double spaced. Quotations and footnotes may be single spaced. Except for material in an appendix, the typewritten or printed material in the brief shall not be reduced or condensed by photographic or other means.~~

(b) - (h) Unchanged.

RULE OF APPELLATE PROCEDURE 10.5 REPRODUCTION AND SERVICE OF BRIEFS BY CLERK

(a) Unchanged.

(b) Distribution of Brief. A party filing a brief must serve it in accordance with rules 10.2(h) and 18.5(a). ~~The time for filing the next brief shall run from the time the preceding brief is served.~~ The state law librarian shall determine how many copies of briefs from the Supreme Court and the Court of Appeals are to be transmitted to the State Law Library. The briefs will be transmitted by the clerks and provided at no cost to the State Law Library.

(c) Service and Notice to Appellant in Criminal Case when Defendant is Appellant. In a criminal case, the clerk will, at the time of filing of defendant/appellant's brief, ~~serve~~ advise the defendant/appellant ~~with a notice and form as provided in~~ of the provisions of rule ~~10.1(d)~~ 10.10.

RULE OF APPELLATE PROCEDURE 10.7 SUBMISSION OF IMPROPER BRIEF

If a party submits a brief ~~which~~ that fails to comply with the requirements ~~for content, style, legibility, and length provided by rules 10.3 and 10.4~~ of Title 10, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief ~~which~~ that fails to comply with these rules.

RULE OF APPELLATE PROCEDURE 10.8 ADDITIONAL AUTHORITIES

A party or amicus curiae may file a statement of additional authorities~~;~~. The statement should not contain ~~without~~ argument, but should identify the issue for which each

authority is offered. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion.

Rule of Appellate Procedure 10.9 [Proposed new Rule] Corresponding Briefs on CD-ROM

(a) Filing Corresponding Briefs on Compact Disc. The submission of briefs and appendices on compact disc read-only memory (CD-ROM), referred to in this rule as corresponding briefs, filed as companions to printed briefs is allowed and encouraged, provided that the Supreme Court and each Division of the Court of Appeals may by general order vary any of the conditions of this Rule, and may prohibit the filing of corresponding briefs.

(b) Conditions of filing. A party may file corresponding briefs upon 14 days notice to all other parties and the court, subject to the following requirements:

(1) *Content.* A CD-ROM with corresponding briefs must contain all appellate briefs filed by all parties. Corresponding briefs must be identical in content to the paper briefs. Corresponding briefs may provide hypertext links to the report of proceedings and clerks papers and to materials cited in the briefs such as cases, statutes, treatises, law review articles, and similar authorities. If any briefs are hyperlinked, all briefs must be similarly hyperlinked by the submitting party. All materials to which a hyperlink is provided must be included on the disc.

(2) *Format.* Corresponding briefs must come fully equipped with their own viewing program; or, if the disk does not contain its own viewing program, the briefs must be viewable within a version of a program such as Adobe Acrobat, Microsoft Word Viewer, or WordPerfect that is downloadable from the Internet at no cost to the user.

(3) *Statement Concerning Instructions and Viruses.* Corresponding briefs must be accompanied by a statement, preferably within or attached to the packaging, that

(A) sets forth the instructions for viewing the briefs and the minimum equipment required for viewing; and

(B) verifies the absence of computer viruses and lists the software used to ensure that the briefs are virus-free.

(c) Joint Submission. Upon receiving notice of intent to file corresponding briefs, within 14 days any other party may file notice of intent to join in the submission. When one or more parties join in the submission, the parties shall cooperate in preparing a joint submission. Absent agreement to the contrary, each party shall arrange for preparation of its own briefs for the joint submission and the party first giving notice shall create the CD-ROM.

(d) Non-Joint Submission. No party is required to prepare a corresponding brief. A party shall cooperate in good faith in the preparation of corresponding briefs by expeditiously providing the submitting party with the party's brief or briefs in electronic format, if available.

(e) Time of Filing. Corresponding briefs must be filed no later than 60 days after the final reply brief. This rule does not affect deadlines for paper briefs. Additional time may be granted for completion of the corresponding briefs.

(f) Costs. The costs incurred in preparing and filing corresponding briefs are not recoverable costs under Title 14 or as attorney fees under Title 18 of these Rules.

RULE OF APPELLATE PROCEDURE 10.10 [Proposed New Rule] STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

(a) Statement Permitted. A defendant/appellant in a review of a criminal case may file a pro se statement of additional grounds for review to identify and discuss those matters which the defendant/appellant believes have not been adequately addressed by the brief filed by the defendant/appellant's counsel.

(b) Length and Legibility. The statement, which shall be limited to no more than 50 pages, may be submitted in handwriting so long as it is legible and can be reproduced by the clerk.

(c) Citations; Identification of Errors. Reference to the record and citation to authorities are not necessary or required, but the appellate court will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. Except as required in cases in which counsel files a motion to withdraw as set forth in RAP 18.3 (a)(2), the appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review.

(d) Time for Filing. The statement of additional grounds for review should be filed within 30 days after service upon the defendant/appellant of the brief prepared by defendant/appellant's counsel and the mailing of a notice from the clerk of the appellate court advising the defendant/appellant of the substance of this rule. The clerk will advise all parties if the defendant/appellant files a statement of additional grounds for review.

(e) Report of Proceedings. If within 30 days after service of the brief prepared by defendant/appellant's counsel, defendant/appellant requests a copy of the verbatim report of proceedings from defendant/appellant's counsel, counsel should promptly serve a copy of the verbatim report of proceedings on the defendant/appellant and should file in the appellate court proof of such service. The pro se statement of additional grounds for review should then be filed within 30 days after service of the verbatim report of proceedings. The cost for producing and mailing the verbatim report of proceedings for an indigent defendant/appellant will be reimbursed to counsel from the Office of Public Defense in accordance with Title 15 of these rules.

(f) Additional Briefing. The appellate court may, in the exercise of its discretion, request additional briefing from counsel to address issues raised in the defendant/appellant's pro se statement.

Form 22

NOTICE TO APPELLANT RE:

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

COURT OF APPEALS DIVISION ___ OF THE STATE OF WASHINGTON

Re: Case No. _____

MISC.

Dear Appellant:

Your attorney has filed a proof of service indicating that you were mailed a copy of the opening brief in your appeal. If, after reviewing that brief, you believe there are additional grounds for review that were not included in your lawyer's brief, you may list those grounds in a Statement of Additional Grounds for Review. RAP 10.10.

Because the Statement of Additional Grounds for Review is not a brief, there is no required format and you may prepare it by hand. No citations to the record or legal authority are required, but you should sufficiently identify any alleged error so that the appellate court may consider your argument. A copy of the rule is enclosed for your reference.

Your Statement of Additional Grounds for Review must be sent to the Court within 30 days. It will be reviewed by the Court when your appeal is considered on the merits.

Very truly yours,

Clerk/Administrator

Form 23

FORM STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

STATE OF WASHINGTON)
Respondent,)
) No. _____
v.)
) STATEMENT OF ADDITIONAL
_____) GROUNDS FOR REVIEW
(your name))
Appellant.)

I, _____, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

_____

Additional Ground 2

_____

If there are additional grounds, a brief summary is attached to this statement.

Date: _____ Signature:_____

RULE OF APPELLATE PROCEDURE 11.4
TIME ALLOWED, ~~AND~~ ORDER, AND CONDUCT OF ARGUMENT

(a) - (e) Unchanged.

(f) Scope of Argument. The court ordinarily encourages oral argument. The opening argument ~~should~~ may include a fair and concise statement of the facts of the case. Counsel need not argue all issues raised and argued in the briefs.

(g) Reading at Length. Counsel should avoid reading at length from briefs, records, or authorities.

(h) Duplication of Argument. Counsel should avoid duplication of argument, particularly if there are multiple parties arguing in support of the same issue.

(i) Use of Exhibits. Counsel may, to promote clarity of argument, use exhibits brought up as a part of the record and demonstrative or illustrative exhibits not a part of the record. Counsel should arrange, before court convenes, for the placement in the courtroom of exhibits and equipment to be used in oral argument.

(j) Submitting Case without Oral Argument. The appellate court may, on its own initiative or on motion of all parties, decide a case without oral argument.

RULE 11.5
~~CONDUCT OF ARGUMENT~~ [RESERVED]

~~(a) Scope of Argument. The court ordinarily encourages oral argument. The opening argument should include a fair and concise statement of the facts of the case. Counsel need not argue all issues raised and argued in the briefs.~~

~~(b) Reading at Length. Counsel should avoid reading at length from briefs, records, or authorities.~~

~~(c) Duplication of Argument. Counsel should avoid duplication of argument, particularly if there are multiple parties arguing in support of the same issue.~~

~~(d) Use of Exhibits. Counsel may, to promote clarity of argument, use exhibits brought up as a part of the record and demonstrative or illustrative exhibits not a part of the record. Counsel should arrange, before court convenes, for the placement in the courtroom of exhibits and equipment to be used in oral argument.~~

~~RULE 11.6~~
~~SUBMITTING CASE WITHOUT ORAL ARGUMENT~~ [RESERVED]

~~The appellate court may, on its own initiative or on motion of all parties, decide a case without oral argument.~~

RULE OF APPELLATE PROCEDURE 12.3
FORMS OF DECISION

(a) - (d) Unchanged.

(e) Motion to Publish. A motion requesting the Court of Appeals to publish an opinion that had been ordered filed for public record should be served and filed within 20 days after the opinion has been filed. ~~If the motion is made by a person not a party, the~~ The motion must be supported by addressing the following criteria: ~~include a statement of~~ (1) if not a party, the applicant's interest and the person or group applicant represents; ~~and~~ (2) applicant's reasons for believing that publication is necessary; (3) whether the decision determines an unsettled or new question of law or constitutional principle; (4) whether the decision modifies, clarifies or reverses an established principle of law; (5) whether the decision is of general public interest or importance; or (6)

MISC.

whether the decision is in conflict with a prior opinion of the Court of Appeals. Rule 17.4 applies to motions to publish.

RULE OF APPELLATE PROCEDURE 12.4
MOTIONS FOR RECONSIDERATION OF DECISION TERMINATING REVIEW

(a) - (g) Unchanged.

(h) Only One Motion Permitted. Each party may file only one motion for reconsideration, ~~even if~~ unless the appellate court ~~modifies its decision or changes the language in the opinion rendered by the court~~ withdraws its opinion and files a subsequent opinion. Any party adversely affected by the subsequent opinion may file a motion for reconsideration.

(i) Unchanged.

RULE OF APPELLATE PROCEDURE 12.7
FINALITY OF DECISION

(a) Court of Appeals. The Court of Appeals loses the power to change or modify its decision (1) upon issuance of a mandate in accordance with rules 12.5, except when the mandate is recalled as provided in rule 12.9, ~~or~~ (2) upon acceptance by the Supreme Court of review of the decision of the Court of Appeals, or (3) upon issuance of a certificate of finality as provided in rule 12.5(e) and rule 16.15(e).

(b) - (d) Unchanged.

Rule of Appellate Procedure 13.4
Discretionary Review of Decision Terminating Review

(a) How to Seek Review. A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must file a petition for review or an answer to the petition which raises new issues. A petition for review should be filed in the Court of Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the ~~The~~ petition for review must be filed ~~in the Court of Appeals~~ within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish ~~of all or any part of that decision~~. If the petition for review is filed prior to the Court of Appeals determination on the motion ~~for reconsideration~~ to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions. ~~If no motion for reconsideration of all or part of the Court of Appeals decision is made, a petition for review must be filed within 30 days after the decision is filed.~~ The first party to file a petition for review must, at the time the petition is filed, pay the statutory filing fee to the clerk of the Court of Appeals in which the petition is filed.

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with ~~a~~ another decision of ~~another division of~~ the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(c) - (i) Unchanged.

RULE OF APPELLATE PROCEDURE 14.6
AWARD OF COSTS

(a) - (b) Unchanged.

(c) **Transmitting Costs**. The commissioner or clerk will award costs in the mandate or the certificate of finality or in a post-mandate ruling or order. An award of costs may be enforced as part of the judgment in the trial court.

Suggested Rule Change
RAP 15.2
Determination of Indigency and Rights of Indigent Party

(a) Motion for Order of Indigency. A party seeking review in the Court of Appeals or the Supreme Court partially or wholly at public expense must move in the trial court for an order of indigency. ~~The motion must be supported by an affidavit setting forth the moving party's total assets; the expenses and liabilities of the party; a statement of the amount, if any, the party can contribute toward the expense of a review; a statement of expenses the party wants waived or provided at public expense; a brief statement of the nature of the case and the issues sought to be reviewed; and a designation of those parts of the record the party thinks are necessary for review.~~ The party shall submit a Motion for Order of Indigency prescribed by the office of public defense to the trial court. In any case of a type not listed in section (b)(2) of this rule, the party must also demonstrate in the motion or the supporting affidavit that the issues the party wants reviewed have probable merit and that the party has a constitutional right to review partially or wholly at public expense.

(b) Action by the Trial Court. The trial court shall decide the motion for an order of indigency, after a hearing if the circumstances warrant, as follows:

(1) *Denial Generally.* The trial court shall deny the motion if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

(2) *Review at Public Expense.* The trial court shall grant the motion and enter an order of indigency if the party seeking public funds is unable by reason of poverty to pay for all or some of the expenses for appellate review of:

(a) criminal prosecutions or juvenile offense proceedings,

(b) dependency and termination cases under Ch. 13.34,

(c) commitment proceedings under RCW 71.05 and 71.09

(d) civil contempt cases directing incarceration of the contemnor,

(e) petitions for writ of habeas corpus under RCW 7.36, including attorneys fees upon a showing of extraordinary circumstances, and

MISC.

(f) any other case in which the party has a constitutional or statutory right to counsel at all stages of the proceeding.

(3) *Other Cases.* In any other case, the trial court shall consider the motion for order of indigency and, if the party is unable by reason of poverty to pay for all of the expenses of review, the trial court shall enter findings of indigency which shall be forwarded to the Supreme Court for consideration, pursuant to section (c) of this rule. The trial court shall determine in those findings the portion of the record necessary for review and the amount, if any, the party is able to contribute toward the expense of review. The findings shall conclude with an order to the clerk of the trial court to promptly transmit to the Supreme Court, without charge to the moving party, the findings of indigency, the motion for an order of indigency, the affidavit in support of the motion, and all other papers submitted in support of or in opposition to the motion. The trial court clerk shall promptly transmit to the Supreme Court the papers designated in the finding of indigency.

(c) Action by Supreme Court. If findings of indigency and other papers relating to the motion for an order of indigency are transmitted to the Supreme Court, the Supreme Court will determine whether an order of indigency in that case should be entered by the superior court. The determination will be made by a department of the Supreme Court on a regular motion day without oral argument and based only on the papers transmitted to the Supreme Court by the trial court clerk, unless the Supreme Court directs otherwise. If the Supreme Court determines that the party is seeking review in good faith, that an issue of probable merit is presented and that the party is entitled to review partially or wholly at public expense, the Supreme Court will enter an order directing the trial court to enter an order of indigency. In all other cases, the Supreme Court will enter an order denying the party's motion for an order of indigency. The clerk of the appellate court will transmit a copy of the order to the clerk of the trial court and notify all parties of the decision of the Supreme Court.

(d) Order of Indigency. An order of indigency shall designate the items of expense which are to be paid with public funds and where appropriate, the items of expense to paid by a party or the amount which the party must contribute toward the expense of review. The order shall designate the extent to which public funds are to used for payment of the expense of record on review, limited to those parts of the record reasonably necessary to review issues argued in good faith. The order of indigency shall appoint counsel if the party is entitled to counsel on review at public expense. The order of indigency must be transmitted to the appellate court as a part of the record on review.

(e) Continued Indigency Presumed. A party and counsel for the party who has been granted an order of indigency must bring to the attention of the trial court any significant improvements during review in the financial condition of the party. The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent.

(f) Appointment and Withdrawal of Counsel in Trial Court. The trial court shall determine questions relating to the appointment and withdrawal of counsel for an indigent party on review; except withdrawal as provided in section (h) and counsel appointed in a capital case, pursuant to SPRC 2 or RAP 16.25. If trial counsel is not appointed, trial counsel must assist counsel appointed for review in preparing the record.

(g) Review of Order of Indigency. Only a party in a case of a type listed in section (b)(2) of this rule may seek review of an order of indigency or an order denying an order of indigency entered by a trial court. Review must be sought by a motion for discretionary review.

(h) Withdrawal of Counsel in Appellate Court. If counsel can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent as provided in rule 18.3(a).

~~FORM 13. INVOICE OF COUNSEL FOR INDIGENT PARTY~~
~~[Rule 15.4(e)]~~

~~No.[appellate court]~~
~~[SUPREME COURT or COURT OF APPEALS, DIVISION _____]~~
~~OF THE STATE OF WASHINGTON~~

~~[Title of trial court proceeding with parties designated as in rule 3.4]~~	~~Invoice of Counsel for Indigent Party~~

~~[Name of claimant counsel] submits this invoice to be paid from public funds. An order authorizing the expenses claimed by this invoice was entered in [name of court] on [date of entry]. ["A copy of the order is attached." Or "The order of indigency is located at CP page _____."] My Social Security number [or, my firm's IRS employer identification number] is _____.~~

~~1. I claim $_____ for attorney fees. I spent _____ hours on the review and a reasonable hourly charge is $_____. I performed the following services:~~

~~[List services; for example: "Reviewed record, prepared brief of appellant and reply brief of appellant, oral argument in Court of Appeals, and prepared cost bill."]~~

~~2. The following expenses were incurred for the review:~~

~~[List each item of expense including preparing reproducible originals at the rate per page set pursuant to rule 14.3(b), the amount, and the total of all items listed.]~~

~~3. I have not filed another invoice in this cause.~~

~~4. The total amount of this invoice is [the totals from paragraphs 1 and 2] $_____.~~

~~I swear or affirm that the items listed are correct charges for necessary services rendered and expenses incurred for proper consideration of the review and I have not been promised compensation for the review from the indigent party or from any other source except as has been approved by the court.~~

~~Signature~~

~~[Name, address, telephone number, and Washington State Bar Association membership number of claimant]~~

~~SUBSCRIBED AND SWORN to before me this _____ day of _____, 19__~~

~~Notary Public in and for the State of Washington, residing at _____~~

RULES ON APPEAL APPENDIX OF FORMS
SUGGESTED FORM 13

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

(State of Washington),	)	
(_____)	)	
(Plaintiff),	)	No. [*trial court*]
(Petitioner)	)	
v.	)	
	)	Motion for Order of Indigency - (Criminal), (Juvenile Offense), (Dependency), (Termination), (Commitment), (Civil Contempt), Habeas Corpus), (Appeal involving a Constitutional or Statutory Right to Counsel) Case
(Name)	)	
(Defendant)	)	
(Respondent)	)	

_____, (defendant) (respondent) (petitioner), files a notice of appeal in the above-referenced (criminal), (juvenile offense), (dependency), (termination), (commitment), (civil contempt), (habeas corpus), (appeal involving a constitutional or statutory right to counsel) case, and moves the court for an Order of Indigency authorizing the expenditure of public funds to prosecute this appeal (wholly at public expense) (partially at public expense).

The following certificate is made in support of this motion.

DATED: _____

_____
(Defendant) (Respondent) (Petitioner)

_____
- WSBA #
Attorney for (Defendant) (Respondent) (Petitioner)

CERTIFICATE

I, _____, certify as follows:

1. That I am the (defendant) (respondent) (petitioner) and I wish to appeal the judgment that was entered in the above-entitled cause.
2. That I own:
   ( ) a. No real property
   ( ) b. Real property valued at $_____.
3. That I own:
   ( ) a. No personal property other than my personal effects
   ( ) b. Personal property (automobile, money, inmate account, motors, tools, etc.) valued at $_____.
4. That I have the following income:
   ( ) a. No income from any source.
   ( ) b. Income from employment, disability payments, SSI, insurance, annuities, stocks, bonds, interests, etc., in the amount of $_____ on an average monthly basis. I received $_____ after taxes over the past year.
5. That I have:
   ( ) a. Undischarged debts in the amount of $_____.
   ( ) b. No debts.
6. That I am without other means to prosecute said appeal and desire that public funds be expended for that purpose.
7. That I can contribute the following amount toward the expense of review:
   $_____.
8. The following is a brief statement of the nature of the case and the issues sought to be reviewed: _____
   _____
   _____
   _____
9. I ask the court to provide the following at public expense, the following: all filing fees, attorney fees, preparation, reproduction, and distribution of briefs, preparation of verbatim report of proceedings, and preparation of necessary clerk's papers.
10. I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.
11. I certify that I will immediately report any change in my financial status to the court.
12. I certify that review is being sought in good faith. I designate the following parts of the record which are necessary for review:

( ) Pre-trial hearings Date(s): _____
Judge(s): _____
Court Reporter(s): _____

( ) Trial, excluding _____ _____ Date(s): _____
Judge(s): _____
Court Reporter(s): _____

( ) Post-trial hearings Date(s): _____
Judge(s): _____
Court Reporter(s): _____

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( ) Sentencing hearing(s)	Date(s): _____	
	Judge(s): _____	
	Court Reporter(s): _____	
( ) Probation revocation hearings	Date(s): _____	
	Judge(s): _____	
	Court Reporter(s): _____	
( ) Other	Date(s): _____	
_____	Judge(s): _____	
_____	Court Reporter(s): _____	

I, _____, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

_____ _____

Date and Place Signature of (Defendant) (Respondent) (Petitioner)

RULE OF APPELLATE PROCEDURE 17.2
WHO DECIDES A MOTION

(a) Generally. The judges determine (1) a motion in a brief, (2) a motion to modify a ruling by a commissioner or the clerk, (3) a motion for reconsideration of a decision, (4) a motion to recall the mandate, except for a motion made to correct an inadvertently issued mandate, and (5) a motion to publish. All other motions may be determined initially by a commissioner or the clerk of the appellate court.

(b) - (c) Unchanged.

RULE OF APPELLATE PROCEDURE 17.3
CONTENT OF MOTION

(a) Unchanged.

(b) Motion for Discretionary Review. A motion for discretionary review should contain under appropriate headings and in the order here indicated:

(1) - (7) Unchanged.

(8) *Appendix.* An appendix containing a ~~conformed~~ copy of the decision which the party wants reviewed, ~~and~~ a ~~conformed~~ copy of any order granting or denying motions made with respect to that decision, and a copy of parts of the record relevant to the motion. In addition, the appendix may include copies of statutes and constitutional provisions relevant to the issues presented for review, ~~a conformed copy of parts of the record relevant to the motion,~~ and other material which would assist the court in determining whether the motion should be granted.

(c) Unchanged.

RULE OF APPELLATE PROCEDURE 17.4
FILING AND SERVICE OF MOTION - ANSWER TO MOTION

(a) - (d) Unchanged.

(e) Answer to Motion; Reply. A person with a recognized interest in the subject matter of the motion may submit a written answer to the motion. If the motion is to be determined without oral argument, the court will set a date for the filing of the answer to the motion. If the motion is set for oral argument, the ~~An~~ answer ~~to a motion~~ must be served and filed at least 4 days preceding the day of hearing. If service is by mail, the answering party must mail the answer at least 7 days before the day noted for hearing the motion. The answer to a motion within a brief may be made within the brief of the answering party. The moving party may submit a written reply to the answer to the motion. If the motion is to be determined without oral argument, the court will set a date for the filing of a reply. If the motion is set for oral argument, the ~~A~~ reply to an answer must be served and filed by noon 2 days before the hearing.

(f) - (g) Unchanged.

RULE OF APPELLATE PROCEDURE 18.1
ATTORNEY FEES AND EXPENSES

(a) - (b) Unchanged.

(c) Affidavit of Financial Need. In any action where applicable law mandates consideration of the financial resources of one or more parties regarding an award of attorney fees and expenses, each party must serve upon the other and file a financial affidavit no later than 10 days prior to the ~~time~~ date the case is set for ~~oral argument~~ hearing or submitted for consideration; however, in a motion on the merits pursuant to rule 18.14, each party must serve and file a financial affidavit along with its motion or response.

(d) Unchanged.

(e) ~~Answer~~ Objection to Affidavit; Reply. A party may ~~answer~~ object to a request for fees and expenses filed pursuant to section (d) by serving and filing an answer ~~answering documents~~ with appropriate documentation containing specific objections to the requested fee. The response must be filed within 10 days after service of the affidavit upon the party. In a rule 18.14 proceeding, an answer to an affidavit of financial need may be served and filed at any time before oral argument. A party may reply to an answer by serving and filing the reply documents within 5 days after the service of the answer upon that party.

(f) - (g) Unchanged.

(h) Transmitting Judgment on Award. The clerk will include the award of attorney fees and expenses in the mandate, or the certificate of finality, or in a supplemental judgment. The award of fees and expenses may be enforced in the trial court.

(i) - (j) Unchanged.

RULE OF APPELLATE PROCEDURE 18.4
DISPOSITION OF EXHIBITS

~~(a) If Further Proceedings Ordered. If a case is returned to the trial court for further proceedings, exhibits in the custody of the appellate court will be returned to the trial court.~~

~~(b) When Case Is Mandated.*~~ When a case is mandated~~, pursuant to rule 12.5,~~ or returned to the trial court for further proceedings, ~~all~~ exhibits in the custody of the appellate court will be returned to the trial court.

*Suggested title added by publisher [in West version of the rules].

RULE OF APPELLATE PROCEDURE 18.13
ACCELERATED REVIEW OF DISPOSITIONS IN JUVENILE OFFENSE, JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

(a) Generally. Dispositions in a juvenile offense proceeding beyond the standard range for such offenses, juvenile dependency and termination of parental rights, shall be reviewed on the merits by accelerated review as provided in this rule.

(b) - (d) Unchanged.

(e) Supreme Court Review. A decision by the Court of Appeals on accelerated review that relates only to a juvenile offense disposition, juvenile dependency and termination of parental rights is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5 (a), (b) and (c).

(f) Unchanged.

(g) Content of Motion and Response. In addition to the requirements of section (b) of this rule, a party appealing from the disposition decision following a finding of dependency by a juvenile court or a decision depriving a person of all parental rights with respect to a child should (1) append to the motion a copy of the trial court's finding of facts and conclusions of law and copies of all dependency review orders; (2) identify by specific assignments of error those findings and conclusions challenged on appeal; and (3) set forth the applicable standard of governing review of those issues. Counsel for the respondent should respond to each assignment of error and should provide citations to the record for any evidence supporting the trial court's findings.

RULE OF APPELLATE PROCEDURE 18.15
ACCELERATED REVIEW OF ADULT SENTENCINGS

(a) Generally. A sentence which is beyond the standard range may be reviewed on the merits in the manner provided in the rules for other decisions or by accelerated review as provided in this rule.

(b) - (f) Unchanged.

(g) Supreme Court Review. A decision by the Court of Appeals on accelerated review that relates only to an adult sentence is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in rules 13.3(e) and 13.5 (a), (b) and (c).

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 State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 03-03-003
NOTICE OF PUBLIC MEETINGS
BELLINGHAM TECHNICAL COLLEGE
[Memorandum—January 3, 2002]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, January 16, 2003, 9:00 - 11:00 a.m., in the College Services Building Board Room on the Bellingham Technical College campus. Call 738-3105 ext. 334 for information.

WSR 03-03-005
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF AGRICULTURE
(Asparagus Commission)
[Memorandum—January 3, 2003]

As required by RCW 42.30.075, the Washington Asparagus Commission wishes to file for publication in the Washington State Register, the following schedule of meetings:

Tuesday, January 21, 2003 9:00 a.m. Annual Meeting 2:00 p.m. Business Meeting	Franklin PUD Auditorium 1411 West Clark Pasco, WA
Tuesday, March 25, 2003 9:00 a.m.	Franklin PUD Auditorium 1411 West Clark Pasco, WA
Tuesday, July 15, 2003 10:00 a.m.	WSU Extension Office 328 West Poplar Walla Walla, WA
Tuesday, October 21, 2003 10:00 a.m.	Hickenbottom & Sons 301 Warehouse Avenue Sunnyside, WA

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WSR 03-03-006
AGENDA
OFFICE OF THE INTERAGENCY COMMITTEE
(Interagency Committee for Outdoor Recreation)
(Salmon Recovery Funding Board)
[Filed January 6, 2003, 3:39 p.m.]

SEMIANNUAL RULE DEVELOPMENT AGENDA
Interagency Committee for Outdoor Recreation (IAC)~ Salmon Recovery Funding Board (SRFB)

To comply with RCW 34.05.314, IAC/SRFB has prepared the following agenda for rules under development. As required, filing will be made with the code reviser for publication in the State Register by January 31 and July 31 each year. Within three days of publication, IAC/SRFB will provide copies to each person so requesting, the director of the Office of Financial Management, the rules review committee, and other state agencies that may reasonably be expected to have an interest in this subject.

Contact Greg Lovelady, Rules Coordinator, (360) 902-3008, GregL@IAC.WA.GOV.

Subject of possible rule making	Reasons why rules on this subject may be needed and what might be accomplished
WAC 286-26-100 NOVA program.	1. Acquisition projects - reduce the minimum land acquisition lease period for consistency with the recently adopted NOVA plan. 2. Development projects - revise outdated IAC-federal agency master agreement provisions.
WAC 286-13-085(2) Retroactive and increased costs.	Authorizes IAC's director to grant a waiver of retroactivity (provides approval to incur reimbursable costs) for development costs when state budget office directives suspend or otherwise delay grant program funding. Without this amendment, the standard rule prohibits reimbursement for certain expenditures or costs incurred without prior IAC approval.

Greg Lovelady
Rules Coordinator

WSR 03-03-009
AGENDA
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 6, 2003, 4:45 p.m.]

The Department of Labor and Industries Semi-annual Rules Development Agenda (January 1, 2003 - June 30, 2003)

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
Insurance Services						
Chapter 296-15 WAC	Workers compensation self-insurance rules and regulations	George Pickett Self Insurance (360) 902-6907	7/19/02	1/3/03	4/1/03	Modifications in the following areas: Certification requirements, including both financial requirements and claims administration structure requirements, vocational reporting requirements, including ninety day EARs and rehab outcome reporting, reporting requirements when initiating and terminating time loss, financial information reporting requirements submissions of protests to the department, timeframes for payment of penalties.

Chapter 296-17 WAC	General reporting rules, classifications, audit and record keeping, rates and rating system for workers' compensation insurance	Frank Romero Retrospective Rating (360) 902-4835	3/20/03	8/03	10/03	Retrospective rating program rules - update rule to allow use of paperless record management systems such as microfiche or imaging in lieu of maintaining paper copies of contracts. Add rule that covers disqualified employer participants and continued participation in previously approved group.
Chapter 296-17 WAC	General reporting rules, classifications, audit and record keeping, rates and rating system for workers' compensation insurance	Ken Woehl Employer Services (360) 902-4775 John Blomstrand Employer Services (360) 902-4748	2/5/03	3/19/03	5/21/03	To amend temporary help classification rules to clarify language and make rules easier to understand. And general housekeeping of classification manual.
WAC 296-30-010	Definitions	Janice Deal Crime Victims Compensation (360) 902-5369	Potential filing 5/03	To be determined	To be determined	RCW 7.68.070(17) authorizes a benefit of counseling for immediate family members of a homicide victim. The statute refers to "immediate near term consequences of the related effects of the homicide." Currently the crime victims compensation program has an internal policy defining the language of RCW 7.68.070(17). The crime victims compensation program is considering a rule to replace the internal policy.
WAC 296-30-010	Definitions	Janice Deal Crime Victims Compensation (360) 902-5369	CR-101 filed 9/14/02	To be determined	To be determined	RCW 7.68.015 instructs the crime victims compensation program to operate within the appropriations provided for this program. The new rule will provide the remedy should there be a financial shortfall.
WAC 296-20-135	Conversion factors	Tom Davis Health Services Analysis (360) 902-6687	12/18/02	2/19/03	4/22/03	Update the conversion factors used by the department for calculating reimbursement rates for most professional health care and anesthesia services.
WAC 296-23-220	Physical therapy rules	Tom Davis Health Services Analysis (360) 902-6687	12/18/02	2/19/03	4/22/03	Update the maximum daily reimbursement level for physical therapy services so the department may, if necessary, give cost-of-living increases to affected providers.
WAC 296-23-230	Occupational therapy rules—Maximum daily reimbursement	Tom Davis Health Services Analysis (360) 902-6687	12/18/02	2/19/03	4/22/03	Update the maximum daily reimbursement level for occupational therapy services so the department may, if necessary, give cost-of-living increases to affected providers.

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WAC 296-255-270	Industrial insurance—Independent medical examinations (IMEs)	Dave Overby Health Services Analysis (360) 902-6791	1/03	5/03	8/03	This rule will amend the current rules to improve the quality of independent medical examinations (IMEs).
Chapter 296-19A WAC	Vocational rehabilitation	Roy Plaeger-Brockway Health Services Analysis (360) 902-5052	12/18/01	10/22/02	4/22/03	The proposed changes to the rule were filed with a CR-102 in late October. The proposed revisions include extending the amount of time providers have to obtain credentials. This is meant to mitigate impacts the rule has on providers who lack credentials. In addition, other sections of the rules propose improvements to clarify sections relating to forensic services, job modifications, prejob accommodations, ability to work assessments, labor market surveys, job analyses, internship requirements, and corrective action. The changes are in response to stakeholder commentary gathered as part of the CR-101.
Chapter 296-14 WAC	Industrial insurance—Mortality assumptions	Valerie Grimm Policy and Quality Coordination (360) 902-5005	6/20/01	1/03	5/03	This rule making will provide updates to mortality assumptions used to determine pension reserves and actuarial benefit reductions.
Chapter 296-14 WAC	Industrial insurance—Wage calculations	Valerie Grimm Policy and Quality Coordination (360) 902-5005	10/3/01	10/02	3/03	This rule making will provide methods and factors included in the calculation of the worker's wage at the time of injury.
Chapter 296-14 WAC	Industrial insurance	Valerie Grimm Policy and Quality Coordination (360) 902-5005	8/02	6/03	11/03	This rule making will provide clarification on how to determine a worker's employment pattern at the time of injury or on the date of disease manifestation for the purpose of calculating the worker's wage.
Chapter 296-14 WAC	Industrial insurance	Valerie Grimm Policy and Quality Coordination (360) 902-5005	4/03	10/03	3/04	This rule making will provide definitions for terms used within chapter 296-14 WAC and will identify and move definitions currently in chapter 296-20 WAC that need to be placed in chapter 296-14 WAC, such as total temporary disability. The rule will include amendment of the definition of temporary partial disability.
Chapter 296-14 WAC	Fire fighter tobacco use	Jami Lifka Office of the Medical Director (360) 902-4941	7/3/02	1/2/03	5/1/03	Pursuant to RCW 51.32.185, the purpose of this new rule is to determine when fire fighters would be excluded from a presumption on heart and lung conditions due to current or past tobacco use.

WAC 296-20-051	Consultations	Jami Lifka Office of the Medical Director (360) 902-4941	2/5/03	6/4/03		The department may amend WAC 296-20-01002 and 296-20-051 to make it consistent with CPT definitions for consultations.
WAC 296-20-303	Attendant services	Jami Lifka Office of the Medical Director (360) 902-4941	Expedited rule making 2/5/03		4/2/03	The numbering of this WAC will be amended as a housekeeping change in order to place this section among like topics.
WAC 296-20-010, 296-20-01002, 296-23A-0710	General information, definitions	Jami Lifka Office of the Medical Director (360) 902-4941	Expedited rule making 2/5/03		4/2/03	As a housekeeping change, the department will amend the name of "health care financing administration" to "CMS."
Washington Industrial Safety and Health Act (WISHA)						
Chapter 296-24 WAC, General safety and health standards	Machine guarding	Steve Vik Policy and Quality Coordination (360) 902-5516 Sally Elliott Policy and Quality Coordination (360) 902-5484	2/21/01	6/03	To be determined	To revise and adopt requirements relating to machine guarding, while rewriting the standard in the clear rule-writing format.
Chapter 296-24 WAC, General safety and health standards	Portable power tools	Jim Hughes Policy and Quality Coordination (360) 902-4504 Sally Elliott Policy and Quality Coordination (360) 902-5484	7/17/02	12/4/02	4/4/03	To revise and adopt requirements relating to portable power tools, while rewriting the standard in the clear rule-writing format.
Chapter 296-52 WAC, Possession and handling explosives	Explosives	Sally Elliott Policy and Quality Coordination (360) 902-5484	11/19/02 Expedited rule making CR-105		3/5/03	To revise the explosives rule based upon chapter 370, Laws of 2002, 2SSB 6080.
Chapter 296-62 WAC, General occupational health standards	Bloodborne pathogens	Christine Swanson Policy and Quality Coordination (360) 902-4568 Sally Elliott Policy and Quality Coordination (360) 902-5484	10/2/02	12/18/02	4/3/03	To revise and adopt requirements relating to bloodborne pathogens, while rewriting the standard in the clear rule-writing format.
Chapter 296-62 WAC, General occupational health standards	Confined space	Carol Stevenson Policy and Quality Coordination (360) 902-4778 Sally Elliott Policy and Quality Coordination (360) 902-5484	6/19/02	6/17/03	9/3/03	To revise and adopt requirements relating to confined space, while re-writing the standard in the clear rule-writing format.
Chapter 296-62 WAC, General occupational health standards	Hazardous waste	Jim Hughes Policy and Quality Coordination (360) 902-4504 Sally Elliott Policy and Quality Coordination (360) 902-5484	4/26/00	3/19/03	7/03	To review for possible updates to Part P for requirements relating to hazardous waste operations and environmental controls, while rewriting the standard in the clear rule-writing format.

Chapter 296-62 WAC, General occupational health standards	Identifying and controlling respiratory hazards	Kim Rhoads Policy and Quality Coordination (360) 902-5008 Sally Elliott Policy and Quality Coordination (360) 902-5484	5/22/02	3/18/03	6/03	To revise and adopt requirements relating to identifying and controlling respiratory hazards, while rewriting the standard in the clear rule-writing format.
Chapter 296-62 WAC, General occupational health standards	Noise	Cindy Ireland Policy and Quality Coordination (360) 902-5522 Sally Elliott Policy and Quality Coordination (360) 902-5484	6/19/02	12/4/02	4/4/03	To revise and adopt requirements relating to hearing conservation, while rewriting the standard in the clear rule-writing format.
Chapter 296-62 WAC, General occupational health standards	Respirators	Kim Rhoads Policy and Quality Coordination (360) 902-5008 Sally Elliott Policy and Quality Coordination (360) 902-5484	5/22/02	3/18/03	6/03	To revise and adopt requirements relating to respiratory protection, while rewriting the standard in the clear rule-writing format.
Chapter 296-78 WAC, Safety standards for sawmills and woodworking operations	Sawmills	Jim Hughes Policy and Quality Coordination (360) 902-4504 Sally Elliott Policy and Quality Coordination (360) 902-5484	11/19/02 Expedited rule making CR-105		3/4/03	To revise and adopt requirements that are at-least-as-effective-as the federal equivalent.
Chapter 296-155 WAC, Safety standards for construction work	Signs, signals, and barricades	Kim Rhoads Policy and Quality Coordination (360) 902-5008 Sally Elliott Policy and Quality Coordination (360) 902-5484	11/19/02 Expedited rule making CR-105		3/4/03	To revise and adopt requirements that are at-least-as-effective-as the federal equivalent.
Chapter 296-304 WAC, Ship repairing and shipbreaking	Ship repairing and shipbreaking	Christine Swanson Policy and Quality Coordination (360) 902-4568 Sally Elliott Policy and Quality Coordination (360) 902-5484	10/22/02 Expedited rule making CR-105		1/21/03	To revise and adopt requirements that are at-least-as-effective-as the federal equivalent.
Chapter 296-307 WAC, Safety standards for agriculture	Agriculture and anhydrous ammonia	Christine Swanson Policy and Quality Coordination (360) 902-4568 Sally Elliott Policy and Quality Coordination (360) 902-5484	1/21/03 Expedited rule making CR-105		4/1/03	To incorporate dip tanks, manufacturers, importers, and distributors, emergency washing, and bloodborne pathogens into the agriculture standard. Changes will also be made to anhydrous ammonia in order to make the state standard at-least-as-effective-as the federal equivalent.

Chapter 296-307 WAC, Safety standards for agriculture	Cholinesterase monitoring	Cindy Ireland Policy and Quality Coordination (360) 902-5522 Sally Elliott Policy and Quality Coordination (360) 902-5484	3/6/02	To be determined	To be determined	The Washington State Supreme Court ruling, *Rios v. Dept of Labor and Industries*, ordered the department to initiate rule making on a mandatory cholinesterase program for agricultural pesticide handlers.
DIVISION: Specialty Compliance Services						
Chapter 296-130 WAC	Family care	Rich Ervin (360) 902-5310 Josh Swanson (360) 902-6411	5/22/02	10/22/02	1/3/03	The purpose of this rule making is to: • Make changes resulting from the enactment of chapter 243, Laws of 2002 (SSB 6426); and • Make clarifying and house-keeping changes.
Chapter 296-128 WAC	Minimum wages	Rich Ervin (360) 902-5310 Josh Swanson (360) 902-6411	12/5/01	11/20/02	1/10/03	Rules are necessary to clarify the requirements for salary basis pay as a result of a Washington State Supreme Court decision (*Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn. 2d 291 (2000)).
Chapters 296-150C, 296-150F, 296-150M, 296-150P, 296-150R, and 296-150V WAC	Commercial coaches, factory-built housing and commercial structures, manufactured homes, recreational park trailers, recreational vehicles, and conversion vendor units and medical units	Pete Schmidt (360) 902-5571 Josh Swanson (360) 902-6411	1/15/01	1/21/03	2/26/03	The purpose of this rule making is to: • Make changes resulting from the enactment of chapter 268, Laws of 2002 (SSB 6364); • Permanently adopt the emergency rules that went into effect on June 28, 2002 (see WSR 02-14-073); • Adopt the most recent versions of several consensus codes; and • Make clarifying and house-keeping changes.
Chapter 296-96 WAC	Safety regulations and fees for all elevators, dumbwaiters, escalators and other conveyances	Josh Swanson (360) 902-6411	1/2/02	2/1/03	3/12/02	The purpose of this rule making is to: • Make changes resulting from the enactment of chapter 98, Laws of 2002 (SSB 2629); • Make substantive changes to the elevator rules that were adopted on 12/22/00 (see WSR 01-02-026); and • Make clarifying and house-keeping changes.

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Chapter 296-200A WAC	Contractor certificate of registration renewals—Security—Insurance	Pete Schmidt (360) 902-5571 Josh Swanson (360) 902-6411	6/20/01	1/21/03	2/26/03	The purpose of this rule making is to: • Make changes resulting from the enactment of chapter 159, Laws of 2001 (SSB 5101); • Review the rules for possible substantive changes; and • Make clarifying and house-keeping changes.
Chapters 296-13, 296-46A, 296-401B, and 296-402A WAC	Practice and procedure—Electrical board; safety standards—Installing electric wires and equipment—Administrative rules; certification of competency for journeyman electricians; and electrical evaluation/certification laboratory accreditation	Ron Fuller (360) 902-5249 Josh Swanson (360) 902-6411	7/24/02	1/21/03	2/26/03	The purpose of this rule making is to: • Make changes resulting from the enactment of chapter 249, Laws of 2002 (ESB 6630); • Adopt the latest edition of the National Electrical Code; and • Make clarifying and house-keeping changes.
Chapter 296-104 WAC	Board of boiler rules—Substantive	Robert Marvin (360) 902-5270 Josh Swanson (360) 902-6411	4/15/03	8/5/03	10/1/03	The Board of Boiler Rules will review these rules for possible changes.
Chapter 296-125 WAC	Nonagricultural employment of minors	Rich Ervin (360) 902-5310 Josh Swanson (360) 902-6411	9/19/01	To be determined	To be determined	Rules are being reviewed for possible changes to ensure conformity with federal laws pertaining to employment of minors where those laws are more restrictive.
Chapter 296-400A WAC	Certification of competency for journeyman plumbers	Pete Schmidt (360) 902-5571 Josh Swanson (360) 902-6411	4/17/02	To be determined	To be determined	The purpose of this rule making is to: • Make changes resulting from the enactment of chapter 82, Laws of 2001 (ESHB 2470); • Review the rules for possible substantive changes; and • Make clarifying and house-keeping changes.
Chapter 296-127 WAC	Prevailing wage	Rich Ervin (360) 902-5310 Josh Swanson (360) 902-6411	7/19/00	To be determined	To be determined	The purpose of this rule making is to repeal and/or revise WAC 296-127-018 Coverage and exemptions of workers involved in the production and delivery of gravel, concrete, asphalt, or similar materials.

Chapter 296-127 WAC	Prevailing wage	Rich Ervin (360) 902-5310	7/19/00	7/31/03	10/31/03	The purpose of this rule making is to make substantive changes to the scope of work description rules that were adopted July 19, 2000 (WSR 00-15-077) with the assistance of an advisory committee. Clear rule-writing principles will be applied to these rules.
Chapters 296-150C, 296-150F, 296-150M, 296-150P, 296-150R, 296-150T, 296-150V, 296-96, 296-200A, 296-46A, 296-401B, 296-104, and 296-400A WAC	Washington administrative codes for factory assembled structures; Safety regulations and fees for all elevators, dumbwaiters, escalators and other conveyances; Contractor certificate of registration renewals—Security—Insurance; Safety standards—Installing electric wires and equipment—Administrative rules; Journeyman electricians—Certification of competency; Board of boiler rules—Substantive; and Certification of competency for journeyman plumbers	Josh Swanson (360) 902-6411	1/15/03	4/1/03	5/30/03	These rules will be reviewed for possible fee adjustments.

Please contact Carmen Moore at (360) 902-4206 or e-mail moog235@lni.wa.gov, if you have any questions.

Carmen Moore, Esq.
Rules Coordinator

MISC.

WSR 03-03-011
NOTICE OF PUBLIC MEETINGS
FOREST PRACTICES BOARD
[Memorandum—January 6, 2003]

CORRECTION Notice of 2003 Regular and Special Meetings of the Forest Practices Board

Per WAC 222-08-0040, the Forest Practices Board will hold meetings on:

February 12, 2003	Regular Meeting Cancelled
February 19, 2003 9 a.m. - 5 p.m. **Special Meeting**	Natural Resources Building 1111 Washington Street S.E. Room 172 Olympia
May 14, 2003 9 a.m. - 5 p.m.	Natural Resources Building 1111 Washington Street S.E. Room 172 Olympia
August 13, 2003 9 a.m. - 5 p.m.	Natural Resources Building 1111 Washington Street S.E. Room 172 Olympia
September 9 - 11, 2003 8 a.m. - 5 p.m. **Special Meeting**	Location undetermined at this time
November 12, 2003 9 a.m. - 5 p.m.	Natural Resources Building 1111 Washington Street S.E. Room 172 Olympia

Mailing agendas to all individuals and groups on the board's mailing list also provides notice of these meetings. To be added to this distribution list, please contact Board Coordinator, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1758, fax (360) 902-1428, e-mail forest.practicesboard@wadnr.gov.

To view this and other board related information on-line, log on to the Forest Practices Board web site at www.wa.gov/dnr.

WSR 03-03-013
NOTICE OF PUBLIC MEETINGS
BELLINGHAM TECHNICAL COLLEGE
[Memorandum—January 3, 2003]

Pursuant to RCW 42.30.075, the Bellingham Technical College board of trustees' regular meetings during 2003 will be held on the third Thursday of each month except July. Meetings will be held at 9 a.m. in the College Services Building Board Room, Bellingham Technical College, 3028 Lindbergh Avenue, Bellingham, WA 98225.

WSR 03-03-014
RULES COORDINATOR
BELLINGHAM TECHNICAL COLLEGE
[Filed January 7, 2003, 10:35 a.m.]

Pursuant to RCW 34.05.312, following is the name, office location, mailing address and telephone number of the rules coordinator for Bellingham Technical College: Ronda Laughlin, Presidents Assistant, 3028 Lindbergh Avenue, Bellingham, WA 98225, phone (360) 738-3105, ext. 334, fax (360) 715-8359, e-mail rlaughli@btc.ctc.edu.

Gerald Pumphrey
President

MISC.

WSR 03-03-015
NOTICE OF PUBLIC MEETINGS
SKAGIT VALLEY COLLEGE
[Memorandum—January 7, 2003]

NOTICE OF SPECIAL MEETING
BOARD OF TRUSTEES
COMMUNITY COLLEGE DISTRICT NO. 4
SKAGIT VALLEY COLLEGE

2405 East College Way
Mount Vernon, WA 98273
Monday, January 6, 2003
1:00 p.m.
Board Room

Chairperson, Elizabeth Hancock, has called a special meeting of the board of trustees for **Monday, January 6, 2003, 1:00 p.m.** This meeting is being held as a study and visioning session for the board of trustees. Items discussed will include an update on the 2001-02 operating budget and a review of the proposed 2003-05 system-wide operating and capital budgets. Action may be taken, if necessary, as a result of items discussed.

WSR 03-03-020
NOTICE OF PUBLIC MEETINGS
STATE INVESTMENT BOARD
[Memorandum—January 8, 2003]

Pursuant to WAC 287-01-030, this is to notify you that the Washington State Investment Board's regular board meetings for 2003 will be held on the third Thursday of each month, beginning at 9:30 a.m. at the board's office at 2424 Heritage Court S.W., Olympia, WA 98504-0916.

If you have any questions, please feel free to call Sue Hedrick at (360) 664-8265.

WSR 03-03-021
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF GENERAL ADMINISTRATION
(Capitol Campus Design Advisory Committee)
[Memorandum—December 23, 2002]

Following are the year 2003 **Capitol Campus Design Advisory Committee** (CCDAC) quarterly meeting dates:

February 13, Thursday
May 29, Thursday
September 18, Thursday
November 13, Thursday

The CCDAC meetings are held in the General Administration Building, 210 11th Avenue S.W., Olympia, WA, in Room 207, beginning at 10:00 a.m.

If you have any questions regarding these meetings, please contact Kim Buccarelli at (360) 902-0955.

WSR 03-03-022
AGENDA
UNIVERSITY OF WASHINGTON
[Filed January 8, 2003, 10:26 a.m.]

The University of Washington's Semiannual Agenda for Rules Under Development (Per RCW 34.05.314) January 2003

1. Rule making continues for WAC 478-132-030 University calendar, during the first half of 2003.

2. Expedited adoption of housekeeping amendments to various Title 478 WAC rules continues during the first half of 2003.

3. Rule making for chapter 478-04 WAC, Organization, is anticipated for the first half of 2003.

4. Rule review for chapter 478-124 WAC, General conduct code for the University of Washington, is rescheduled for the second half of 2003.

5. Rule review for chapter 478-138 WAC, Use of university stadium boat moorage facilities, is scheduled for the second half of 2003.

6. Rule making for a new chapter concerning shared facilities at the University of Washington, Bothell and Cascadia Community College colocated campus is anticipated during the second half of 2003.

For more information concerning the above rules under review or development contact Rebecca Goodwin Deardorff, Director, Administrative Procedures Office, University of Washington, 4014 University Way N.E., Seattle, WA 98105-6302, campus mail Box 355509, phone (206) 543-9199, fax (206) 616-6294, or e-mail adminpro@u.washington.edu.

WSR 03-03-023
POLICY STATEMENT
UNIVERSITY OF WASHINGTON
[Filed January 8, 2003, 10:28 a.m.]

The University of Washington has recently revised the following policy statements:

Administrative Policy Statement 10.2, "Contacting Governmental Agencies Regarding Health, Safety, and Environmental Matters," December 23, 2002.

Administrative Policy Statement 44.3, "University Employment of Minors," December 10, 2002.

Administrative Policy Statement 45.10, "Shared Leave Program for WPRB- and Contract-Classified Staff, Professional Staff Employees, and Librarians," December 10, 2002.

To view any policy statement, go to the UW *Administrative Policy Statements* website: http://www.washington.edu/admin/adminpro/APS/APSIndex.html or contact Rebecca Goodwin Deardorff, Director, Administrative Procedures Office, University of Washington, 4014 University Way N.E., Seattle, WA 98105-6203, or by e-mail adminpro@u.washington.edu or fax (206) 616-6294.

WSR 03-03-030
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF CORRECTIONS
(Office of Correctional Operations)
[Memorandum—January 9, 2003]

Department of Corrections
Office of Correctional Operations
Correctional Industries
Board of Directors

March 21, 2003	Clallam Bay Corrections Center*	1:00 p.m. to 5:00 p.m.
March 22, 2003	Port Angeles Red Lion Inn	8:00 a.m. to 1:00 p.m.
June 20, 2003	Washington Corrections Center*	1:00 p.m. to 5:00 p.m.
June 21, 2003	The Phoenix Inn Suites, Olympia	8:00 a.m. to 1:00 p.m.
September 19, 2003	Airway Heights Corrections Center*	1:00 p.m. to 5:00 p.m.
September 20, 2003	Spokane/Location TBD	8:00 a.m. to 1:00 p.m.
December 5, 2003	Department of Corrections, Olympia	1:00 p.m. to 5:00 p.m.
December 6, 2003	Olympia/Location TBD	8:00 a.m. to 1:00 p.m.

*Tour of facility.

Contact Rose E. Marquis, (360) 586-7551.

WSR 03-03-031
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE UNIVERSITY
[Memorandum—January 3, 2003]

This is to provide notice that the Washington State University board of regents has moved the location of the January 24 board meeting from Spokane to Seattle.

The updated 2003 schedule follows:

January 24, 2003	Seattle
March 14, 2003	Pullman
May 9, 2003	Pullman
June 13, 2003	TBA
September 19, 2003	Pullman
October 24, 2003	Pullman
November 21, 2003	Seattle

MISC.

WSR 03-03-032
NOTICE OF PUBLIC MEETINGS
MILITARY DEPARTMENT
(Emergency Management Council)
[Memorandum—January 7, 2003]

The Emergency Management Council will hold an all-day strategic planning workshop on February 13, 2003, beginning at 8 a.m. in Building 101 at Camp Murray, Washington.

If you have any questions regarding this information, please contact Dianna Staley at (253) 512-7462.

WSR 03-03-036
NOTICE OF PUBLIC MEETINGS
PUBLIC WORKS BOARD
[Memorandum—January 10, 2003]

NOTICE OF SPECIAL MEETING

The Public Works Board will conduct a special meeting on February 4, 2003, at the Wyndham Garden Hotel in SeaTac, Washington. Interested persons may participate in the meeting by appearing at the above location.

Board business will be conducted from the published agenda.

MISC.

WSR 03-03-037
NOTICE OF PUBLIC MEETINGS
OFFICE OF THE INTERAGENCY COMMITTEE
(Interagency Committee for Outdoor Recreation)
[Memorandum—January 9, 2003]

The Interagency Committee for Outdoor Recreation (IAC) will meet Thursday, January 23, beginning at 4:00 p.m. in the Wyndham Seattle-Tacoma Airport Hotel.

This is a one-topic meeting focusing on the NOVA fuel study.

If you have comments on the NOVA fuel study for committee review, please submit information to the IAC no later than noon on January 21, 2003. This will allow for distribution to committee members in a timely fashion.

IAC public meetings are held in locations accessible to people with disabilities. Arrangements for individuals with hearing or visual impairments can be provided by contacting IAC by January 16, at (360) 902-2637 or TDD (360) 902-1996.

WSR 03-03-046
NOTICE OF PUBLIC MEETINGS
HIGHER EDUCATION COORDINATING BOARD
[Memorandum—January 9, 2003]

In accordance with RCW 28B.80.420, 42.30.075, and WAC 250-10-070, the Higher Education Coordinating Board established the enclosed board meeting schedule for 2003, at its regular meeting held December 12, 2002. Public notice is given before each meeting, including any changes in date, time, and venue.

If anyone wishes to request disability accommodations, notice should be given to the Higher Education Coordinating Board, at least ten days in advance of the meeting in question. Notice may be given by phone at (360) 753-7800 or fax (360) 753-7808.

Preliminary HECB 2003 Meeting Calendar

Date	Location
January 29, Wednesday	The Evergreen State College Longhouse 101 Rooms B & C Olympia
February 26, Wednesday	Utilities and Transportation Commission Board Room Olympia
March 26, Wednesday	Department of Information Services Board Room Olympia
April 23, Wednesday	St. Martin's College Worthington Center Lacey
May 28, Wednesday	Department of Labor and Industries Building S-117 Tumwater
July 30, Wednesday	Pierce College Puyallup
September 24, Wednesday	Washington State University Pullman
October 29, Wednesday	Renton Technical College Renton
December 3, Wednesday	Department of Information Services Board Room Olympia

WSR 03-03-048
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF FISH AND WILDLIFE
(Fish and Wildlife Commission)
[Memorandum—January 10, 2003]

CORRECTION TO MEETING DATES

In a letter dated October 29, 2002, dates were submitted for the Washington Fish and Wildlife Commission public meetings, workshops, and conference calls for 2003. The dates for the November commission workshop were incorrect. The correct dates are:

Date	Function	Location
November 21-22, 2003	Workshop	Tri Cities

WSR 03-03-049
NOTICE OF PUBLIC MEETINGS
CENTRAL WASHINGTON UNIVERSITY
[Memorandum—January 7, 2003]

Board of Trustees Meeting Dates for 2002-03 - Revised Location

There is a small change to the list of meeting dates for 2003 that was sent in July. Our board will be meeting at the CWU Steilacoom Center March 14, 2003, rather than the CWU SeaTac Center. Meeting dates remain unchanged.

Regular meetings of the Central Washington University board of trustees will be held in Barge Hall, Room 412, on the Central Washington University Ellensburg campus, except where noted, at 1:00 p.m. on the following dates:

February 14, 2003
March 14, 2003 *(CWU Steilacoom Center)*
May 9, 2003
June 13, 2003
August 7-8, 2003 *(Board Retreat)*

**CWU Steilacoom Center is located at Pierce College, Building P10, 9401 Farwest Drive S.W., Lakewood, WA.*

WSR 03-03-050
NOTICE OF PUBLIC MEETINGS
GUARANTEED EDUCATION TUITION PROGRAM
[Memorandum—December 20, 2002]

In accordance with RCW 28B.95.020 and WAC 14-276-030, the Advanced College Tuition Program, known as Guaranteed Education Tuition Program has scheduled the following regular GET committee meetings:

February 11, 2003 Tuesday	2:00 - 5:00 p.m.	Olympia, Washington State Investment Board (board room)
April 14, 2003 Monday	2:00 - 5:00 p.m.	Olympia, Washington State Investment Board (board room)
August 4, 2003 Monday	3:00 - 5:00 p.m.	Olympia, Washington State Investment Board (board room)
November 3, 2003 Monday	3:00 - 5:00 p.m.	Olympia, Washington State Investment Board (board room)

Public notice will be given prior to the meeting in question if there will be a different starting time.

If anyone wishes to request disability accommodations, notice should be given to the Guaranteed Education Tuition Program at least ten days in advance of the meeting in question. Notice may be given by any of the following methods: (360) 753-7860 (voice); (360) 753-7809 (TDD); or (360) 704-6260 (fax).

WSR 03-03-051
NOTICE OF PUBLIC MEETINGS
SOUTH PUGET SOUND COMMUNITY COLLEGE
[Memorandum—January 9, 2003]

To ensure a quorum, the South Puget Sound Community College board of trustees changed their regular Thursday, February 13, 2003, meeting to Thursday, January 30, 2003.

If you have any questions, please contact Diana Toledo at 596-5206.

WSR 03-03-057
NOTICE OF PUBLIC MEETINGS
STATE INVESTMENT BOARD
[Memorandum—January 13, 2003]

Pursuant to WAC 287-01-030, this is to notify you that the location for the Washington State Investment Board's regular board meetings for 2003 will change, effective February 18, 2003. As of that date, they will be held at the board's new office at 2100 Evergreen Park Drive S.W., Olympia, WA 98504-0916.

The meeting dates and times will not change. They will continue to be held on the third Thursday of each month, beginning at 9:30 a.m.

If you have any questions, please feel free to call Sue Hedrick at (360) 664-8265.

WSR 03-03-058
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF SERVICES FOR THE BLIND
(Statewide Rehabilitation Council)
[Memorandum—January 13, 2003]

The date and location for the next Washington State Department of Services for the Blind, State Rehabilitation Council meeting is as follows:

Saturday, March 1, 2003
9 a.m. - 4 p.m.
Department of Services for the Blind
3411 South Alaska Street
Seattle, WA 98118-1631

WSR 03-03-059
NOTICE OF PUBLIC MEETINGS
LOTTERY COMMISSION
[Memorandum—January 13, 2003]

Following is the year 2003 amended meeting schedule for the Washington Lottery Commission:

Thursday, January 16, 2003	Cancelled
Thursday, March 27, 2003	Olympia
Thursday, May 15, 2003	Yakima
Thursday, July 17, 2003	Yakima
Thursday, September 18, 2003	Spokane
Thursday, November 13, 2003	Vancouver

WSR 03-03-073
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF AGRICULTURE
(Beef Commission)
[Memorandum—January 13, 2003]

Following is year 2003 meeting dates for the Washington State Beef Commission:

January 23, 2003	Board meeting	Ellensburg
March 6/7, 2003	Strategic planning	Seattle
May 8, 2003	Budget meeting	Ellensburg
June 12, 2003	Annual meeting	Ellensburg
August 2003	Board meeting	Washington Cattle Feeders Convention TBD
November 2003	Board meeting	Washington Cattlemen's Convention TBD

Should you have questions, please contact Rosalee Mohney at (206) 444-2902.

WSR 03-03-074
AGENDA
WHATCOM COMMUNITY COLLEGE
[Filed January 15, 2003, 9:15 a.m.]

Semi-Annual Rule Agenda

Following is the Whatcom Community College's semi-annual rules development agenda, which is being sent to you in compliance with RCW 34.05.314.

If you have any questions, please call Jennifer Dixon at (360) 676-2170 ext. 3275 or e-mail jdixon@whatcom.ctc. edu.

WAC	Rule Title	Purpose of Rule	Agency Contact	CR-101	CR-102	CR-103
Chapter 132U-120	Student rights and responsibilities.	To update and clarify process.	Jennifer Dixon (360) 676-2170 ext. 3275	3/5/02	9/30/02	12/12/02
Chapter 132U-52	Control of dogs.	To update and bring into compliance the current wording.	Jennifer Dixon (360) 676-2170 ext. 3275	3/5/02	9/30/02	12/12/02

WSR 03-03-075
AGENDA
STATE BOARD OF HEALTH
DEPARTMENT OF HEALTH
[Filed January 15, 2003, 9:19 a.m.]

State Board of Health and Department of Health
January 2003 Rules Agenda

This report details the anticipated rule-making activities of the State Board of Health and the Department of Health for the next six months. If you have any questions regarding this report or Department of Health rule-making activities please contact Michelle Davis at (360) 236-4044. If you have any questions regarding State Board of Health rule-making activities please contact Don Sloma at (360) 236-4102.

State Board of Health Rules

WAC	RCW	Authority	Subject	SBOH Staff and DOH Program Contact	WSR/Date
CR-101 Filed (State Board of Health Rules)					
246-xxx	70.83 43.20	State Board of Health/Department of Health joint rules	Storage, retention and use of specimens in public health lab	Don Sloma (360) 236-4102 State Board of Health Michelle Davis (360) 236-4044 Department of Health	03-02-101 1/2/03
246-100-166	28A.210.140	State Board of Health	Immunization of child care and school children	Doreen Garcia (360) 236-4101 State Board of Health Michelle Davis (360) 236-4044 Department of Health	02-10-066 4/26/02
246-215	43.20.050	State Board of Health	Food service	Marianne Seifert (360) 236-4103 State Board of Health Michelle Davis (360) 236-4044 Department of Health	01-23-096 11/21/01
246-217-010 246-217-015	69.06	State Board of Health	Food worker cards	Marianne Seifert (360) 236-4103 State Board of Health Michelle Davis (360) 236-4044 Department of Health	02-20-075 9/30/02
246-260	70.90.120 70.90.150 43.20.050	State Board of Health	Water recreation facilities	Marianne Seifert (360) 236-4103 State Board of Health Michelle Davis (360) 236-4044 Department of Health	00-22-112 11/1/00
246-272	43.20.050	State Board of Health	On-site wastewater sewage systems	Marianne Seifert (360) 236-4103 State Board of Health Michelle Davis (360) 236-4044 Department of Health	02-03-137 1/23/02
246-290	70.90 70.119	State Board of Health	Group A public water system—Arsenic standards	Marianne Seifert (360) 236-4103 State Board of Health Michelle Davis (360) 236-4044 Department of Health	02-19-061 9/12/02
246-290	43.20.050	State Board of Health delegated*to secretary on 6/13/02	Group "A" public water system	Environmental Health Programs Jan Haywood (360) 236-3011	01-17-111 8/22/01
246-360	70.62	State Board of Health	Transient accommodations	Craig McLaughlin (360) 236-4106 State Board of Health Michelle Davis (360) 236-4044 Department of Health	02-01-084 12/17/01
246-650	70.83 43.20	State Board of Health	Newborn screening	Doreen Garcia (360) 236-4101 State Board of Health Michelle Davis (360) 236-4044 Department of Health	02-03-136 1/23/02

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WAC	RCW	Authority	Subject	SBOH Staff and DOH Program Contact	WSR/Date
Pending Adoption (State Board of Health Rules)					
246-100 246-101	43.20.050	State Board of Health	Emergency powers of local health officers Hearing Date: 12/10/02	Craig McLaughlin (360) 236-4106 State Board of Health Michelle Davis (360) 236-4044 Department of Health	02-22-107 11/6/02
246-680	48.21.244 48.443.344 48.46.375	State Board of Health/Department of Health joint rules	Prenatal screening	Doreen Garcia (360) 236-4101 State Board of Health Michelle Davis (360) 236-4044 Department of Health	02-22-078 11/5/020

*Note: The State Board of Health may delegate rule making or rescind delegation to the Department of Health under RCW 43.20.050(3).

Department of Health Rules

WAC	RCW	Authority	Subject	Program/Contact	WSR/Date
CR-105 Expedited Rule Making					
246-12-040	43.70.280	Secretary	Renew credential	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-09-042 4/12/02 Anticipate CR-102 by 2/1/03
246-812-010 246-812-130 246-812-160	18.30.065	Denturist Board	Denturist expired license and training course approval	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	03-01-113 12/18/02
246-851-390	18.54.070	Optometry Board	Practice under trade name	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-22-080 11/5/02
Pre CR-101					
246-243 246-244	70.98.050	Secretary	Dosimetry and well logging	Environmental Health Programs Jan Haywood (360) 236-3011	Anticipate CR-101 by 1/03
246-924-354	18.83	Psychology Board	Maintenance and retention of records	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	Anticipate CR-101 by 1/03
CR-101 Filed					
246-224 246-225 246-227 246-228 246-229	70.98	Secretary	X-ray rules (radiation protection)	Environmental Health Programs Jan Haywood (360) 236-3011	00-16-106 8/2/00
246-249-080	70.98.050 70.98.080	Secretary	Naturally occurring radioactive materials	Environmental Health Programs Jan Haywood (360) 236-3011	96-11-129 5/22/96
246-310	70.38	Secretary	Certificate of need—Cardiac methodologies	Facilities and Services Licensing Yvette Harrison (360) 705-6661	00-08-097 4/5/00
246-310-280	70.127 70.38	Secretary	Certificate of need—Hospice methodology and hospice care center fees	Facilities and Services Licensing Yvette Harrison (360) 705-6661	02-14-047 6/27/02

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246-314-990	43.70.250 43.20B.020	Secretary	Construction review fees	Facilities and Services Licensing Yvette Harrison (360) 705-6661	01-10-123 5/2/01
246-320	70.41.150	Secretary	Emergency contraception	Facilities and Services Licensing Yvette Harrison (360) 705-6661	02-11-076 5/13/02
246-323 246-325 246-326	71.12	Secretary	Residential care facilities	Facilities and Services Licensing Yvette Harrison (360) 705-6661	00-05-097 2/16/00
246-380	43.70.040 43.70.130	Secretary	Sanitation and health care standards for state institutions	Facilities and Services Licensing Yvette Harrison (360) 705-6661	98-15-085 7/16/98
246-808	18.130.050	Chiropractic Commission	Independent chiropractic exams	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	00-22-123 11/1/00
246-809	18.225	Secretary	Confidential communications for licensed counselors, therapist, and social workers	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-04-032 1/25/02
246-809	18.225	Secretary	Boundary requirements for counselors	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-04-042 1/29/02
246-809	18.225	Secretary	Disclosure information for counselors	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-04-043 1/29/02
246-809	18.225	Secretary	Licensed counselor—Experience requirements	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-22-068 11/1/01
246-809-600 246-809-650	18.225	Secretary	CE for mental health counselor, marriage and family therapist, and social worker	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-22-067 11/1/01
246-815-020 246-815-050 246-815-100 246-815-110 246-815-115	18.29.120	Secretary	Dental hygiene, exam, application—Licensure	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-19-083 9/16/02
246-817-110 246-817-120	18.32.0365 18.32.040	Dental Commission	Dental licensure—Initial eligibility and application requirements	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-15-160 7/23/02
246-828	18.35.40 [18.35.040]	Hearing and Speech Board	Fitter/dispenser program	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-02-043 12/27/01
246-828-020	43.70.280	Hearing and Speech Board	Examinations hearing and speech	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-02-041 12/27/01
246-828-510	18.35.090	Hearing and Speech Board	Hearing/speech—Continuing education requirements	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	97-15-097 7/21/97

MISC.

246-828-990	43.70.280	Secretary	Hearing and speech fees and renewal cycle	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-02-042 12/27/01
246-830	18.108.025	Secretary	Massage therapy examinations	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-21-080 10/21/98
246-834	18.130.050	Secretary	Midwifery standards of practice	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-17-052 8/18/02
246-834	18.122.140	Secretary	Reactivation of midwifery license	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-21-081 10/21/98
246-834-220 246-834-230 and 246-834-240	18.50.040	Secretary	Educational requirements for nonlicensed midwives	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	97-22-024 10/29/97
246-834-250	18.50.115	Secretary	Legend drugs and devices	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-17-053 8/15/02
246-834-990	18.130.250	Secretary	Retired active status—Midwives	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	99-06-090 3/3/99
246-840	18.79.110	Nursing Commission	Telenursing	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	99-11-033 5/13/99
246-840-010 246-840-020 246-840-565 246-840-760 246-840-920	18.79.110	Nursing Commission	Nursing definitions	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	99-11-032 5/13/99
246-840-020 246-840-030 246-840-040 246-840-050 246-840-060 246-840-070	18.79.110	Nursing Commission	Nursing licensing rules	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-04-033 1/25/02
246-840-080 246-840-090	18.79.110	Nursing Commission	Licensure of graduates of foreign schools and licensure by interstate endorsement	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-04-031 1/25/02
246-840-500 to 246-840-575	18.70.110	Nursing Commission	Approval of RN and PN education	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	00-11-163 5/24/00
246-841-400 through 246-841-510	18.88A	Secretary	Nursing assistants	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	00-03-072 1/19/00
246-850	18.200	Secretary	Continuing competency for orthotists and prosthetists	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	00-08-098 4/5/00
246-853	18.57.080 18.57.005 18.130.050	Osteopathic Board	COMSPEX—USA exam	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	99-11-035 5/13/99

246-853	18.57.005 18.57.020	Osteopathic Board	Approved schools of osteopathic medicine	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	99-13-020 6/7/99
246-853-225	18.57.005 18.57.020	Osteopathic Board	Osteopathic pain management guidelines	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-22-086 11/3/98
246-854	18.57A.020	Osteopathic Board	Review of controlled substances issued by physician assistants	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-02-078 3/17/98
246-865 246-869 246-887	69.50.301 18.64.005	Pharmacy Board	Faxing of prescriptions	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-14-090 7/5/01
246-869-260	18.64.005	Pharmacy Board	Legal use of needles and syringes	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	00-03-071 1/19/00
246-870	18.64.005	Pharmacy Board	Electronic transfer of prescription information	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-14-118 7/1/98
246-873-090	18.64.005(7)	Pharmacy Board	Hospital standards—Administration of drugs	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-12-101 6/5/02
246-879-090	18.64.005 18.64.046	Pharmacy Board	Exporting drugs wholesaler	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-09-087 4/18/01
246-883 246-889	69.43 18.64.005	Pharmacy Board	Restricting the sale of ephedrine, pseudoephedrine or phenylpropanolamine	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-13-116 6/20/01
246-883-030	18.64.450	Pharmacy Board	Ephedrine prescription restrictions	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	97-10-033 4/30/97
246-915	18.74.023	Physical Therapy Board	Sexual misconduct—Physical therapist	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-13-106 6/17/98
246-915-010 246-915-078 246-915-140-246-915-170	18.74.023	Physical Therapy Board	Defining professional responsibilities—Physical therapists	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-13-104 6/17/02
246-915-010 246-915-085	18.74.023	Physical Therapy Board	Continuing competency—Physical therapists	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-15-088 7/16/98
246-915-020 246-915-030 246-915-120	18.74.023 18.74.035	Physical Therapy Board	Application requirements—Physical therapists	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-13-107 6/17/98
246-915-150	18.74.023 18.74.010	Physical Therapy Board	Physical therapy supervision ratio	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-13-105 6/17/98
246-915-210 to 246-915-280	18.74.023 18.130.070	Physical Therapy Board	Mandatory reporting—Physical therapists	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-13-103 6/17/98

246-918-120	18.71A	Medical Commission	Physician assistant remote site criteria	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-15-089 7/18/01
246-922-195	18.22.015	Podiatry Board	Podiatry pain management	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-22-084 11/3/98
246-924	18.83.050 18.83.070	Psychology Board	Psychology education requirements/prerequisites	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-22-088 11/3/98
246-924-370	18.83.050 18.83.121	Psychology Board	Child custody evaluations	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	98-22-087 11/3/98
246-927	70.24.27 [70.24.270]	Secretary	AIDS education and training for recreation therapy	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	03-02-020 12/23/02
246-930-010 246-930-030 246-930-040 246-930-200 246-930-410	18.155.040	Secretary	Education and exams requirements for sex offender treatment provider program	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	00-08-099 4/5/00
246-930-050	18.155.040	Secretary	Sex offender treatment provider	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-24-103 12/5/01
246-930-330	18.155.040 18.13.050	Secretary	Standards for treatment sexual offender treatment providers	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	99-14-001 6/23/99
246-933	18.92.030	Secretary	Authorizing animal care and control agencies	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-13-057 6/14/02
246-933-255	18.92.030 18.92.070	Veterinary Board	Exams for out of state veterinarians	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	00-11-157 5/24/00
246-935	18.92.030	Veterinary Board	Continuing education and competency for animal technicians	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	99-15-102 7/21/99
246-935-070	18.92.030	Veterinary Board	Examination for registration as animal technician	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-21-133 10/24/01
246-976-161 246-976-171	18.71.205	Secretary	CE, skills maintenance, and ongoing training and evaluation	Emergency Medical and Trauma Prevention Tami Schweppe (360) 705-6748	02-11-077 5/13/02
246-976-485 through 246-976-885- 246-976-890	70.168.060p	Secretary	Designation standards for trauma care	Emergency Medical and Trauma Prevention Tami Schweppe (360) 705-6748	02-23-069 11/19/02
Pending Hearing, CR-102 Filed					
246-310-261 246-310-262 246-310-263	70.38.135, chapter 59, Laws of 2000	Secretary	Certificate of need—Cardiac methodologies Hearing Date: February 5, 2003	Facilities and Services Licensing Yvette Harrison (360) 705-6661	03-01-112 12/18/02

246-830-005 246-830-435	18.108	Massage Board	Animal therapy Hearing Date: February 5, 2003	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	03-01-111 12/18/02
246-887-045	69.50.402	Pharmacy Board	Nonnarcotic stimulants Hearing Date: January 8, 2003	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	02-24-078 12/4/02
246-926-100	18.84.040	Secretary	Radiologic technologists Hearing Date: January 23, 2003	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	03-01-110 12/18/02
Pending Adoption					
246-841	18.79 18.88A	Nursing Commission	Nurse delegation	Health Professions Quality Assurance Pam Lovinger (360) 236-4985	01-19-078 9/19/01

KEY:
CR-101 Filed: The statement of inquiry has been filed with the Code Reviser's Office.
Pending Hearing: The CR-102 has been filed but the hearing has not been held yet.
Pending Adoption: The hearing has been held OR the rule qualifies under the Expedited Repeal or Adoption processes (RCW 34.05.354 and 34.05.356), but the CR-103 has not been filed.

WSR 03-03-087
NOTICE OF PUBLIC MEETINGS
WASHINGTON SCHOOL FOR THE DEAF
[Memorandum—January 14, 2003]

The Washington School for the Deaf board of trustees has moved the location of their February 5, 2003, board meeting to Olympia.

WSR 03-03-088
NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE
[Memorandum—January 15, 2003]

The board of trustees of Bates Technical College will meet in special session on January 22, 2003, from 8:00 a.m. to approximately 4:00 p.m. in the Clyde Hupp Board Room, 1101 South Yakima Avenue, Tacoma, for the purpose of the board retreat.

WSR 03-03-092
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE CENTER
[Memorandum—January 15, 2003]

A regular meeting of the Washington State Convention and Trade Center board of directors will be held on **Tuesday, January 21, 2003, at 2:00 p.m.** in Room 303, of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call (206) 694-5000.

WSR 03-03-093
OFFICE OF THE INSURANCE COMMISSIONER
[Filed January 16, 2003, 4:47 p.m.]

TECHNICAL ASSISTANCE ADVISORY T 03-01

TO: **Authorized Property/Casualty Insurers**
ATTENTION: **President; State Filings Manager**
SUBJECT: **Rate Filings Related to Insurance Scoring (Credit Scoring)**
DATE: **January 16, 2003**

The purpose of this advisory is to remind you of Washington's new requirements pertaining to insurance scoring, which is commonly referred to as "credit scoring." Under ESHB 2544, passed by the 2002 legislature, new requirements apply to insurers that use insurance scoring models for underwriting and/or rating personal lines policies. These requirements are now included in our Insurance Code as RCW 48.18.545 and 48.19.035. These new statutes are being implemented under rules that were adopted in September 2002, as chapter 284-24A WAC.

RCW 48.19.035 applies to all companies that use insurance scoring for personal lines insurance pricing. The law applies to all rating and tiering plans - regardless of whether the pricing is applied:

- By discounts or surcharges;
- In a single company rate-tiering structure; or
- By offering different rates within a group of companies.

At this time the June 30, 2003, effective date included in RCW 48.19.035(6) is particularly important. Any company that uses insurance scoring as a rating tool for personal lines must:

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- File an insurance scoring model that complies with RCW 48.19.035(3);
- File rates based on that insurance scoring model, including a multivariate analysis as described in WAC 284-24A-045; and
- Implement this rate filing in time to apply to all new and renewal policies issued on or after June 30, 2003.

The timelines associated with this June 30 effective date are now relatively short. For example, if an insurer processes renewals forty-five days before the effective date of the renewal policy, it must be ready to implement its new rate filing by May 15, 2003. Given the programming time needed to implement a rate change, some insurers may require approval of their rate filings in mid to late April. In addition, all insurers will need to allow time for the rate review and approval process, as personal lines rates are filed under a prior approval system in Washington.

Therefore, we would strongly encourage you to submit these rate filings to us promptly. We believe that insurers that submit their filings to us by February 28, 2003, will have the best chance of complying with the June 30, 2003, effective date of the new law.

To the extent that our actuarial resources will allow, we will give priority to filings that are submitted for the purpose of complying with the June 30 effective date. We will also make use of e-mail and telephone communication to speed up the process. However, we cannot guarantee immediate approval, since we expect the filings to be relatively complex.

As always, we are available to answer questions and provide guidance on what is needed to improve the chances a filing will be promptly approved. If you have any question, please contact senior actuary Lee Barclay at (360) 725-7115 or LeeB@oic.wa.gov; actuarial analyst Jim Antush at (360) 725-7112 or JimA@oic.wa.gov; or actuarial analyst Eric Slavich at (360) 725-7137 or EricS@oic.wa.gov.

Our website, www.insurance.wa.gov, also provides convenient access to this technical assistance advisory, the statutes and regulations it refers to, and other information that may be helpful to those who file rates and forms.

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WSR 03-03-094
NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE
[Memorandum—January 16, 2003]

Special Board Meeting - REVISED
Board of Trustees

The board of trustees of Bates Technical College will meet in special session on January 22, 2003, from 8:00 a.m. to approximately 4:00 p.m. in the Clyde Hupp Board Room, 1101 South Yakima Avenue, Tacoma, for the purpose of the board retreat. At approximately 3:00 p.m. the board will convene into executive session for the purpose of discussing personnel issues. No action will be taken during executive session.

WSR 03-03-103
NOTICE OF PUBLIC MEETINGS
WENATCHEE VALLEY COLLEGE
[Memorandum—January 15, 2003]

The Wenatchee Valley College board of trustees needs to change the date of their March board meeting from March 12 to March 19. The time will remain the same. This change will accommodate the schedule of a presenter on the agenda.

If you have any questions, please call my assistant Janet Franz at (509) 664-2553.

WSR 03-03-104
NOTICE OF PUBLIC MEETINGS
BENTON CLEAN AIR AUTHORITY
[Memorandum—January 2, 2003]

Regular Board Meeting Schedule for 2003

The meetings are held on the third Thursday of each month. The meetings begin at 7:00 p.m.

The location for the meetings will be the conference room at 114 Columbia Point Drive, Richland, WA 99352.

WSR 03-03-105
NOTICE OF PUBLIC MEETINGS
WESTERN WASHINGTON UNIVERSITY
[Memorandum—January 16, 2003]

Following is a notice of a special meeting of Western Washington University board of trustees.

The special meeting has been scheduled for Friday, January 24, 2003, in Seattle, Washington.

If you have any questions, please contact Suzanne Baker by phone at (360) 650-3117 or by e-mail at Suzanne.Baker@wwu.edu.

WESTERN WASHINGTON UNIVERSITY
BOARD OF TRUSTEES
STUDY SESSION
JANUARY 24, 2003

Time: 9:30 a.m.

Place: Preston Gates & Ellis
IDX Tower
925 4th Avenue
Suite 2900
Seattle, WA

WSR 03-03-106
AGENDA
WHATCOM COMMUNITY COLLEGE
[Filed January 21, 2003, 9:49 a.m.]

Semi-Annual Rule Agenda

Following is the Whatcom Community College's semi-annual rules development agenda, which is being sent to you in compliance with RCW 34.05.314.

If you have any questions, please call Jennifer Dixon at (360) 676-2170 ext. 3275 or e-mail jdixon@whatcom.ctc.edu.

WAC	Rule Title	Purpose of Rule	Agency Contact	CR-101	CR-102	CR-103
Chapter 132U-300	Grievances—Discrimination.	To update and clarify process.	Jennifer Dixon (360) 676-2170 ext. 3275			

WSR 03-03-107
NOTICE OF PUBLIC MEETINGS
JAIL INDUSTRIES BOARD
[Memorandum—January 16, 2003]

NOTICE OF PUBLIC MEETINGS
JAIL INDUSTRIES BOARD

2003 BOARD MEETING SCHEDULE-REVISED

January 10, 2003	Criminal Justice Training Center Room # E-290 Burien
May 16, 2003	Criminal Justice Training Center Room # E-103 Burien
September 19, 2003	Criminal Justice Training Center Room # E-103 Burien
November 21, 2003	Criminal Justice Training Center Room # E-290 Burien

All regular meetings run from 10:00 a.m. through 2:00 p.m. For further information, please contact Jill Will, Executive Director, Jail Industries Board at 3060 Willamette Drive N.E., Suite 100, Lacey, WA 98516, phone (360) 486-2440, fax (360) 486-2380, e-mail jwill@cjtc.state.wa.us, web www.jib.wa.gov.

WSR 03-03-116
INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE
[Filed January 21, 2003, 4:19 p.m.]

ISSUANCE OF INTERPRETIVE STATEMENTS

This announcement is being published in the Washington State Register pursuant to the requirements of RCW 34.05.230(4).

The Department of Revenue issued the following Property Tax Advisories (PTAs) effective January 17, 2003:

PTA 7.0.2003 (Sales Tax as an Element of Value). This advisory updates information previously provided in Property Tax Bulletin 75-1. It explains the reasoning behind including sales tax as an element of value when applying the cost approach (trended investment methodology) in real property assessments and excluding the sales tax cost from personal property listings and valuation methods.

PTA 8.0.2002 (Appraisal of Bed and Breakfast Establishments). This advisory updates information previously provided in Property Tax Bulletin 89-2. It explains the appraisal process for bed and breakfast establishments in counties that do not have a sufficient number of sales of these properties to use a standard sales comparison approach.

PTA 9.0.2003 (Assessment of Supplies). This advisory updates information previously provided in Property Tax Bulletin 90-3. The difference between exempt business inventory and taxable supplies is clarified in this advisory.

PTA 10.0.2003 ("True Lease" or Security Agreement). This advisory updates information previously provided in PTB 97-2. PTA 10 clarifies the difference between true leases and installment contracts to answer the question "who is the owner and taxpayer" and aids in the determination of when leased personal property is exempt from personal property taxes when the lessee is exempt.

PTA 12.0.2003 (Classification of Land Used for Christmas Tree Production). This advisory updates information previously provided in PTB 86-1. It clarifies the statutory guidelines for designation of Christmas tree lands under chapter 84.33 RCW. The key points of this advisory are identification of the disqualifying conditions, an explanation of the difference between stump removal or scarification as opposed to plowing and tilling the soil, and classification under open space farm and agriculture if the property meets the requirements contained in RCW 84.34.020.

Requests for copies of these advisories may be directed to Velinda Brown, Property Tax Division, P.O. Box 47471, Olympia, WA 98504-7471, phone (360) 570-5865, fax (360) 586-7602.

Alan R. Lynn
Rules Coordinator

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WSR 03-03-117
INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE
[Filed January 21, 2003, 4:21 p.m.]

Issuance of Interpretive Statement

This announcement of the issuance of this interpretive statement is published in the Washington State Register pursuant to the requirements of RCW 34.05.230.

The department issued the following Excise Tax Advisory (ETA) on January 17, 2003:

ETA 2011.32 Withdrawal of published determinations. ETA 2011 explains the situations under which the department will announce the withdrawal of a Washington Tax Decision (WTD) via an ETA or ETA supplement. This document also announces the withdrawal of Det. 89-38, 7 WTD 125.

A copy of this advisory is available via the Internet at http://dor.wa.gov/docs/rules/eta/2011.pdf. Alternatively, a request for a copy of this advisory may be directed to Roseanna Hodson, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6119, fax (360) 664-0693.

Alan R. Lynn
Rules Coordinator

WSR 03-03-118
INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE
[Filed January 21, 2003, 4:22 p.m.]

CANCELLATION OF INTERPRETIVE STATEMENTS

This announcement is being published in the Washington State Register pursuant to the requirements of RCW 34.05.230(4).

The Department of Revenue cancelled the following Property Tax Bulletins (PTBs) effective January 17, 2003:

PTB 75-1 (Sales Tax as an Element of Value). The information provided in this document has been updated and incorporated into Property Tax Advisory (PTA) 7.0.2003.

PTB 89-2 (Appraisal of Bed and Breakfast Establishments). The information provided in this document has been updated and incorporated into PTA 8.02.2003.

PTB 90-3 (Assessment of Supplies). The information provided in this document has been updated and incorporated into PTA 9.0.2003.

PTB 97-2 ("True Lease" or Security Agreement). The information provided in this document has been updated and incorporated into PTA 10.0.2003.

PTB 86-1 (Classification of Land Used for Christmas Tree Production). The information provided in this document has been updated and incorporated into PTA 12.0.2003.

Questions regarding these cancellations may be directed to Velinda Brown, Property Tax Division, P.O. Box 47471, Olympia, WA 98504-7471, phone (360) 570-5865, fax (360) 586-7602.

Alan R. Lynn
Rules Coordinator

WSR 03-03-125
NOTICE OF PUBLIC MEETINGS
EASTERN WASHINGTON UNIVERSITY
[Memorandum—January 22, 2003]

EASTERN WASHINGTON UNIVERSITY
BOARD OF TRUSTEES
January 24, 2003

Academic Affairs Committee at 7:30 a.m. (PUB 261)
Committee of the Whole at 8:00 a.m. (PUB 205/206)
Executive Session at 12:00 p.m. (PUB 261)
Open Public Meeting at 1:00 p.m. (PUB 263-5-7)

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling the president's office, (509) 359-6598.

WSR 03-03-126
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF GENERAL ADMINISTRATION
(State Capitol Committee)
(Legislative Building Renovation Oversight Committee)
[Memorandum—January 17, 2003]

Following are the Joint State Capitol Committee and Legislative Building Renovation Oversight Committee meetings:

Date:	Thursday, March 13, 2003
Time:	12:00 a.m. to 2:00 p.m.
Location:	General Administration Building, Room 207
Date:	Thursday, October 23, 2003
Time:	12:00 a.m. to 2:00 p.m.
Location:	General Administration Building

If you have any questions, call Patricia McLain at (360) 902-0979.

WSR 03-03-127

NOTICE OF PUBLIC MEETINGS

UNIVERSITY OF WASHINGTON

[Memorandum—January 22, 2003]

Following is a list of the regular meeting notices for January 2003 to December 2003 for the University of Washington.

In accordance with RCW 42.30.075, the University of Washington is providing the following list of governing bodies of schools, colleges, departments and programs at the university that maintain regular meeting schedules at the University of Washington Public Records Office.

Regular Meetings 2003

Committee	Chair
Applied Mathematics	Ku Kit Tung
Aquatic and Fishery Sciences	
ASUW Board of Directors	
ASUW Finance and Budget	Derek Huoth
ASUW Special Appropriations	Derek Huoth
Biochemistry	Alan M. Weiner
Bioengineering	Yongmin Kim
Biology/Botany/Zoology (Joint Faculty)	Thomas Daniel
Biomedical and Health Informatics	Peter Tarczy-Hornoch
Board of Regents	
Bothell, Business	Steven Holland
Bothell, Computing and Software	Charles F. Jackels
Bothell, IAS	JoLynn Edwards
Bothell, Nursing	Mary A. Baroni
Chemical Engineering	Eric M. Stuve
Childcare Program	
Classics	James J. Clauss
Communications	Jerry Baldasty
Comparative Medicine	Melvin B. Dennis
Computer Science and Engineering	David Notkin
Construction Management	John Schaufelberger
Dental Public Health	Timothy A. DeRouen
Dental School, Chairs	Martha Somerman
Dental School, Faculty Council	Greg King
Drama	
Environmental Health	David Kalman
Epidemiology	
Facilities Committee	Norm Arkans
Faculty Executive Committee	
Faculty Senate	
Forest Resources	F. Bruce Bare
Forest Resources, Ecosystem Science	
Forest Resources, Management and Engineering	
Geography	James Harrington
Germanics	Sabine Wilke
GPSS, Executive	David Mitsuo Nixon
GPSS, Senate	David Mitsuo Nixon
Graduate School Council	John Slattery
Harborview, Board Meeting	
Harborview, Board Educational Session	
Harborview, Finance Committee	
Harborview, Executive Committee	
Harborview, Health Care Committee	
Harborview, Joint Conference Committee	
Harborview-Strategic Planning	
Harborview-Facilities Ad Hoc	
Health Services	
History	John Findlay
Immunology	Christopher Wilson
Information School	Michael Eisenberg
Law	W. H. Knight
Mathematics	Selim Tuncel
Mechanical Engineering	William R. D. Wilson
Medical Education	Frederic Wolf
Medical History and Ethics	Wylie Burke
Microbiology	James J. Champoux
Music	Robin McCabe
Near Eastern Languages and Civilizations	Michael Williams
Nursing, APT Committee	Nancy Hooyman
Nursing, Ad Hoc Committee	Nancy Hooyman
Nursing, Deans and Chairs	Nancy Hooyman
Nursing, Department Faculty	Nancy Hooyman
Nursing, Faculty Council	Nancy Hooyman
Oceanography	Bruce Frost
Orthodontics	Gregory J. King
Pathobiology	Kenneth Stuart
Pediatric Dentistry	Joel Berg
Pediatrics	F. Bruder Stapleton
Periodontics	Murray R. Robinovitch
Pharmacy, Faculty	Danny D. Shen
Pharmacy, Curriculum	Valerie Daggett
Philosophy	Kenneth Clatterbaugh

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Physiology and Biophysics	Stan Froehner
Physics	David G. Boulware
Prosthodontics	L. Brian Toolson
Psychiatry, Advisory	Richard Veith
Psychiatry, Faculty	Peter Roy Byrne
Psychiatry, CHRMC	Elizabeth McCauley
Public Health, Executive	Patricia Wahl
Restorative Dentistry	Richard McCoy
Robinson Center for Young Scholars	Kathleen Noble
Scandinavian Studies	Terje Leiren
Sociology	Robert Crutchfield
Spanish and Portuguese Studies	Anthony Geist
Speech and Hearing Sciences	Carol Stoel-Gammon
Statistics	Peter Guttorp
Tacoma, Building and Facility Use	Charles Lord
Tacoma, Business	Patricia M. Fandt
Tacoma, IAS	
Tacoma, Nursing	Marjorie Dubratz
Tacoma, Review and Approval	Jack Nelson
Tacoma, Social Work	Marcie Lazzari
Women's Studies	Judith Howard

[These schedules are available for public inspection at the following address: Public Records Office, University of Washington, 4014 University Way N.E., Box 355502, Seattle, WA 98105-6203].

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
-X = Expedited rule making
-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 #
16- 54-155	NEW-E	03-03-085
16-157-020	AMD	03-03-044
16-157-030	AMD	03-03-044
16-157-100	REP	03-03-044
16-157-110	REP	03-03-044
16-157-200	REP	03-03-044
16-157-220	AMD	03-03-044
16-157-230	AMD	03-03-044
16-157-240	AMD	03-03-044
16-157-245	NEW	03-03-044
16-157-250	AMD	03-03-044
16-157-255	AMD	03-03-044
16-157-260	AMD	03-03-044
16-157-270	AMD	03-03-044
16-157-280	REP	03-03-044
16-157-290	AMD	03-03-044
16-160-010	AMD	03-03-045
16-160-020	AMD	03-03-045
16-160-025	REP	03-03-045
16-160-035	AMD	03-03-045
16-160-060	AMD	03-03-045
16-160-070	AMD	03-03-045
16-200-7401	NEW	03-02-100
16-200-7402	NEW	03-02-100
16-200-7403	NEW	03-02-100
16-200-7404	NEW	03-02-100
16-200-7405	NEW	03-02-100
16-200-7406	NEW	03-02-100
16-200-7407	NEW	03-02-100
16-228-1231	AMD-P	03-02-099
16-228-1262	NEW-P	03-02-098
16-228-1264	NEW-P	03-02-098
16-228-1266	NEW-P	03-02-098
16-303-200	AMD-P	03-03-130
16-303-210	AMD-P	03-03-130
16-303-230	AMD-P	03-03-130
16-303-250	AMD-P	03-03-130
16-303-300	AMD-P	03-03-130
16-303-310	AMD-P	03-03-130
16-303-317	AMD-P	03-03-130
16-303-320	AMD-P	03-03-130
16-303-330	AMD-P	03-03-130
16-321-001	REP-X	03-03-124
16-321-010	REP-X	03-03-124
16-321-020	REP-X	03-03-124
16-321-030	REP-X	03-03-124
16-321-040	REP-X	03-03-124
16-321-050	REP-X	03-03-124
16-321-060	REP-X	03-03-124
16-321-070	REP-X	03-03-124
16-321-080	REP-X	03-03-124
16-321-090	REP-X	03-03-124
16-321-100	REP-X	03-03-124
16-321-110	REP-X	03-03-124
16-321-120	REP-X	03-03-124
16-328-010	PREP	03-03-121
16-328-011	PREP	03-03-121
16-333-040	PREP	03-03-120
16-333-041	PREP	03-03-120
16-657	PREP	03-03-122
16-659	PREP	03-03-122
16-662-100	AMD-X	03-03-123
16-662-105	AMD-X	03-03-123
16-662-110	AMD-X	03-03-123
16-662-115	AMD-X	03-03-123
132X- 60-065	AMD	03-03-089
139- 05-915	AMD-C	03-03-091
173- 26	PREP	03-03-019
173-157-010	NEW	03-03-081
173-157-020	NEW	03-03-081
173-157-030	NEW	03-03-081
173-157-040	NEW	03-03-081
173-157-050	NEW	03-03-081
173-157-100	NEW	03-03-081
173-157-110	NEW	03-03-081
173-157-120	NEW	03-03-081
173-157-130	NEW	03-03-081
173-157-140	NEW	03-03-081
173-157-150	NEW	03-03-081
173-157-160	NEW	03-03-081
173-157-170	NEW	03-03-081
173-157-180	NEW	03-03-081
173-157-200	NEW	03-03-081
173-157-210	NEW	03-03-081
173-157-220	NEW	03-03-081
173-157-230	NEW	03-03-081
173-303-071	AMD-E	03-03-047
173-350-010	NEW	03-03-043
173-350-020	NEW	03-03-043
173-350-025	NEW	03-03-043
173-350-030	NEW	03-03-043
173-350-040	NEW	03-03-043
173-350-100	NEW	03-03-043
173-350-200	NEW	03-03-043
173-350-210	NEW	03-03-043
173-350-220	NEW	03-03-043
173-350-230	NEW	03-03-043
173-350-240	NEW	03-03-043
173-350-300	NEW	03-03-043
173-350-310	NEW	03-03-043
173-350-320	NEW	03-03-043
173-350-330	NEW	03-03-043
173-350-350	NEW	03-03-043
173-350-360	NEW	03-03-043
173-350-400	NEW	03-03-043
173-350-410	NEW	03-03-043
173-350-490	NEW	03-03-043
173-350-500	NEW	03-03-043
173-350-600	NEW	03-03-043
173-350-700	NEW	03-03-043
173-350-710	NEW	03-03-043
173-350-715	NEW	03-03-043
173-350-900	NEW	03-03-043
173-350-990	NEW	03-03-043
180- 10-001	REP-W	03-03-060
180- 10-003	REP-W	03-03-060
180- 10-005	REP-W	03-03-060
180- 10-007	REP-W	03-03-060
180- 10-010	REP-W	03-03-060
180- 10-015	REP-W	03-03-060

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180- 10-020	REP-W	03-03-060
180- 10-025	REP-W	03-03-060
180- 10-030	REP-W	03-03-060
180- 10-035	REP-W	03-03-060
180- 10-040	REP-W	03-03-060
180- 10-045	REP-W	03-03-060
180- 38-065	AMD-W	03-03-062
180- 55-032	NEW-W	03-03-061
196- 30	PREP	03-03-111
197- 11-070	AMD-P	03-03-082
197- 11-250	AMD-P	03-03-082
197- 11-310	AMD-P	03-03-082
197- 11-800	AMD-P	03-03-082
197- 11-820	AMD-P	03-03-082
197- 11-835	AMD-P	03-03-082
197- 11-850	AMD-P	03-03-082
197- 11-855	AMD-P	03-03-082
197- 11-902	AMD-P	03-03-082
197- 11-904	AMD-P	03-03-082
197- 11-908	AMD-P	03-03-082
220- 44-050	AMD-P	03-02-105
220- 52-07300A	REP-E	03-03-002
220- 52-07300B	NEW-E	03-03-002
220- 52-07300B	REP-E	03-03-068
220- 52-07300C	NEW-E	03-03-068
232- 12-106	AMD	03-03-016
232- 12-181	AMD	03-03-016
232- 12-289	NEW-P	03-02-103
232- 28-02201	REP-P	03-02-103
232- 28-02202	REP-P	03-02-103
232- 28-02203	REP-P	03-02-103
232- 28-02204	REP-P	03-02-103
232- 28-02205	REP-P	03-02-103
232- 28-02206	REP-P	03-02-103
232- 28-02280	REP-P	03-02-103
232- 28-271	AMD	03-03-016
232- 28-282	AMD	03-03-016
232- 28-331	NEW-P	03-02-103
232- 28-332	NEW-P	03-02-103
232- 28-333	NEW-P	03-02-103
232- 28-334	NEW-P	03-02-103
232- 28-335	NEW-P	03-02-103
232- 28-336	NEW-P	03-02-103
232- 28-42600C	NEW-E	03-03-102
232- 28-42600C	REP-E	03-03-102
232- 28-61900C	NEW-E	03-03-004
232- 28-61900C	REP-E	03-03-004
232- 28-61900D	NEW-E	03-03-098
232- 28-61900D	REP-E	03-03-098
246-290-002	AMD-P	03-03-079
246-290-010	AMD-P	03-03-079
246-290-025	AMD-P	03-03-079
246-290-060	AMD-P	03-03-078
246-290-060	AMD-P	03-03-079
246-290-100	AMD-P	03-03-079
246-290-105	AMD-P	03-03-079
246-290-125	AMD-P	03-03-079
246-290-220	AMD-P	03-03-079
246-290-300	AMD-P	03-03-079
246-290-310	AMD-P	03-03-079
246-290-320	AMD-P	03-03-079
246-290-416	AMD-P	03-03-079
246-290-451	AMD-P	03-03-079
246-290-480	AMD-P	03-03-079
246-290-490	AMD-P	03-03-079
246-290-495	REP-P	03-03-079
246-290-601	AMD-P	03-03-079
246-290-630	AMD-P	03-03-079
246-290-634	AMD-P	03-03-079
246-290-638	AMD-P	03-03-079
246-290-654	AMD-P	03-03-079
246-290-660	AMD-P	03-03-079
246-290-662	AMD-P	03-03-079
246-290-664	AMD-P	03-03-079
246-290-666	AMD-P	03-03-079
246-290-672	AMD-P	03-03-079
246-290-674	AMD-P	03-03-079
246-290-676	AMD-P	03-03-079
246-290-690	AMD-P	03-03-079
246-290-691	AMD-P	03-03-079
246-290-692	AMD-P	03-03-079
246-290-694	AMD-P	03-03-079
246-290-696	AMD-P	03-03-079
246-290-71001	NEW-P	03-03-079
246-290-71002	NEW-P	03-03-079
246-290-71003	NEW-P	03-03-079
246-290-71004	NEW-P	03-03-079
246-290-71005	NEW-P	03-03-079
246-290-71006	NEW-P	03-03-079
246-290-71007	NEW-P	03-03-079
246-290-72001	AMD-P	03-03-079
246-290-72005	AMD-P	03-03-079
246-290-72007	AMD-P	03-03-079
246-290-72010	AMD-P	03-03-079
246-290-72012	AMD-P	03-03-079
246-310-290	NEW-P	03-03-097
246-310-295	NEW-P	03-03-097
246-310-990	AMD-P	03-03-097
246-802-990	AMD-P	03-03-077
246-815-990	AMD-P	03-03-077
246-830-990	AMD-P	03-03-077
246-836-990	AMD-P	03-03-077
246-887-165	NEW-X	03-03-096
251- 04-035	NEW-E	03-03-042
260- 08-595	NEW	03-03-041
260- 13-420	PREP	03-03-067
260- 20-035	PREP	03-03-025
260- 28-030	AMD-P	03-03-040
284- 07-010	AMD	03-03-133
284- 22-020	AMD	03-03-052
284- 22-050	AMD	03-03-052
284- 22-060	AMD	03-03-052
284- 22-080	AMD	03-03-052
284- 24A-070	NEW-W	03-03-063
284- 30-390	AMD-P	03-03-132
284- 30-3901	NEW-P	03-03-132
284- 30-3902	NEW-P	03-03-132
284- 30-3903	NEW-P	03-03-132
284- 30-3904	NEW-P	03-03-132
284- 30-3905	NEW-P	03-03-132
284- 30-3906	NEW-P	03-03-132
284- 30-3907	NEW-P	03-03-132
284- 30-3908	NEW-P	03-03-132
284- 30-3909	NEW-P	03-03-132
284- 30-3910	NEW-P	03-03-132
284- 30-3911	NEW-P	03-03-132
284- 30-3912	NEW-P	03-03-132
284- 30-3913	NEW-P	03-03-132
284- 30-3914	NEW-P	03-03-132
284- 30-3915	NEW-P	03-03-132
284- 43-220	AMD-X	03-03-134
296- 17-757	PREP	03-03-026
296- 17-758	PREP	03-03-026
296- 17-759	PREP	03-03-026
296- 17-760	PREP	03-03-026
296- 17-761	PREP	03-03-026
296- 17-762	PREP	03-03-026
296- 17-76201	PREP	03-03-026
296- 17-76202	PREP	03-03-026
296- 17-76203	PREP	03-03-026
296- 17-76204	PREP	03-03-026
296- 17-76205	PREP	03-03-026
296- 17-76206	PREP	03-03-026
296- 17-76207	PREP	03-03-026
296- 17-76208	PREP	03-03-026
296- 17-76209	PREP	03-03-026
296- 17-76210	PREP	03-03-026
296- 17-76211	PREP	03-03-026
296- 17-76212	PREP	03-03-026
296- 24	PREP	03-03-110
296- 56	PREP	03-03-110
296- 59	PREP	03-03-110
296- 79	PREP	03-03-110
296-104	PREP	03-03-129
296-128-500	AMD	03-03-109
296-128-532	NEW	03-03-109
296-128-533	NEW	03-03-109
296-130-010	AMD	03-03-010
296-130-020	AMD	03-03-010
296-130-030	AMD	03-03-010
296-130-035	AMD	03-03-010
296-130-040	AMD	03-03-010
296-130-050	AMD	03-03-010
296-130-060	AMD	03-03-010
296-130-065	AMD	03-03-010
296-130-070	AMD	03-03-010
296-130-080	AMD	03-03-010
296-130-100	NEW	03-03-010
296-130-500	REP	03-03-010
296-878	PREP	03-03-110
308- 17-120	AMD	03-03-024
308- 17-240	AMD	03-03-024
308- 20-210	AMD-P	03-03-119
308- 56A-250	AMD-P	03-03-095
308- 56A-265	AMD-P	03-03-095
308- 56A-270	AMD-P	03-03-095
308- 56A-275	AMD-P	03-03-095
308-124H-029	PREP	03-03-080
308-124H-061	PREP	03-03-080
308-129-100	AMD	03-03-055
308-420-010	REP	03-03-054
308-420-020	AMD	03-03-054
308-420-050	AMD	03-03-054
308-420-060	AMD	03-03-054
308-420-070	AMD	03-03-054
308-420-080	REP	03-03-054

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308-420-100	AMD	03-03-054
308-420-130	REP	03-03-054
308-420-140	AMD	03-03-054
308-420-190	AMD	03-03-054
308-420-200	AMD	03-03-054
308-420-210	AMD	03-03-054
308-420-230	AMD	03-03-054
314- 12-170	REP-P	03-02-097
314- 12-180	REP-P	03-02-097
314- 12-300	REP-P	03-02-097
314- 12-310	REP-P	03-02-097
314- 12-320	REP-P	03-02-097
314- 12-330	REP-P	03-02-097
314- 12-340	REP-P	03-02-097
314- 29-003	NEW-P	03-02-097
314- 29-015	NEW-P	03-02-097
314- 29-020	NEW-P	03-02-097
314- 29-025	NEW-P	03-02-097
314- 29-030	NEW-P	03-02-097
314- 29-035	NEW-P	03-02-097
314- 29-040	NEW-P	03-02-097
388- 32-0025	PREP	03-03-056
388- 32-0025	AMD-E	03-03-069
388- 32-0030	PREP	03-03-056
388- 32-0030	AMD-E	03-03-069
388- 78A	REP-P	03-03-018
388- 78A-0010	NEW-P	03-03-018
388- 78A-0020	NEW-P	03-03-018
388- 78A-0030	NEW-P	03-03-018
388- 78A-0040	NEW-P	03-03-018
388- 78A-0050	NEW-P	03-03-018
388- 78A-0060	NEW-P	03-03-018
388- 78A-0070	NEW-P	03-03-018
388- 78A-0080	NEW-P	03-03-018
388- 78A-0090	NEW-P	03-03-018
388- 78A-010	REP-P	03-03-018
388- 78A-0100	NEW-P	03-03-018
388- 78A-0110	NEW-P	03-03-018
388- 78A-0120	NEW-P	03-03-018
388- 78A-0130	NEW-P	03-03-018
388- 78A-0140	NEW-P	03-03-018
388- 78A-0150	NEW-P	03-03-018
388- 78A-0160	NEW-P	03-03-018
388- 78A-0170	NEW-P	03-03-018
388- 78A-0180	NEW-P	03-03-018
388- 78A-0190	NEW-P	03-03-018
388- 78A-020	REP-P	03-03-018
388- 78A-0200	NEW-P	03-03-018
388- 78A-0210	NEW-P	03-03-018
388- 78A-0220	NEW-P	03-03-018
388- 78A-0230	NEW-P	03-03-018
388- 78A-0240	NEW-P	03-03-018
388- 78A-0250	NEW-P	03-03-018
388- 78A-0260	NEW-P	03-03-018
388- 78A-0270	NEW-P	03-03-018
388- 78A-0280	NEW-P	03-03-018
388- 78A-0290	NEW-P	03-03-018
388- 78A-030	REP-P	03-03-018
388- 78A-0300	NEW-P	03-03-018
388- 78A-0310	NEW-P	03-03-018
388- 78A-0320	NEW-P	03-03-018
388- 78A-0330	NEW-P	03-03-018
388- 78A-0340	NEW-P	03-03-018
388- 78A-0350	NEW-P	03-03-018
388- 78A-0360	NEW-P	03-03-018
388- 78A-0370	NEW-P	03-03-018
388- 78A-0380	NEW-P	03-03-018
388- 78A-0390	NEW-P	03-03-018
388- 78A-040	REP-P	03-03-018
388- 78A-0400	NEW-P	03-03-018
388- 78A-0410	NEW-P	03-03-018
388- 78A-0420	NEW-P	03-03-018
388- 78A-0430	NEW-P	03-03-018
388- 78A-0440	NEW-P	03-03-018
388- 78A-045	REP-P	03-03-018
388- 78A-0450	NEW-P	03-03-018
388- 78A-0460	NEW-P	03-03-018
388- 78A-0470	NEW-P	03-03-018
388- 78A-0480	NEW-P	03-03-018
388- 78A-0490	NEW-P	03-03-018
388- 78A-050	REP-P	03-03-018
388- 78A-0500	NEW-P	03-03-018
388- 78A-0510	NEW-P	03-03-018
388- 78A-0520	NEW-P	03-03-018
388- 78A-0530	NEW-P	03-03-018
388- 78A-0540	NEW-P	03-03-018
388- 78A-055	REP-P	03-03-018
388- 78A-0550	NEW-P	03-03-018
388- 78A-0560	NEW-P	03-03-018
388- 78A-0570	NEW-P	03-03-018
388- 78A-0580	NEW-P	03-03-018
388- 78A-0590	NEW-P	03-03-018
388- 78A-060	REP-P	03-03-018
388- 78A-0600	NEW-P	03-03-018
388- 78A-0605	NEW-P	03-03-018
388- 78A-0610	NEW-P	03-03-018
388- 78A-0620	NEW-P	03-03-018
388- 78A-0630	NEW-P	03-03-018
388- 78A-0635	NEW-P	03-03-018
388- 78A-0640	NEW-P	03-03-018
388- 78A-0650	NEW-P	03-03-018
388- 78A-0660	NEW-P	03-03-018
388- 78A-0670	NEW-P	03-03-018
388- 78A-0680	NEW-P	03-03-018
388- 78A-0690	NEW-P	03-03-018
388- 78A-070	REP-P	03-03-018
388- 78A-0700	NEW-P	03-03-018
388- 78A-0710	NEW-P	03-03-018
388- 78A-0720	NEW-P	03-03-018
388- 78A-0730	NEW-P	03-03-018
388- 78A-0740	NEW-P	03-03-018
388- 78A-0750	NEW-P	03-03-018
388- 78A-0760	NEW-P	03-03-018
388- 78A-0770	NEW-P	03-03-018
388- 78A-0780	NEW-P	03-03-018
388- 78A-0790	NEW-P	03-03-018
388- 78A-080	REP-P	03-03-018
388- 78A-0800	NEW-P	03-03-018
388- 78A-0810	NEW-P	03-03-018
388- 78A-0820	NEW-P	03-03-018
388- 78A-0830	NEW-P	03-03-018
388- 78A-0840	NEW-P	03-03-018
388- 78A-0850	NEW-P	03-03-018
388- 78A-0860	NEW-P	03-03-018
388- 78A-0870	NEW-P	03-03-018
388- 78A-0880	NEW-P	03-03-018
388- 78A-0890	NEW-P	03-03-018
388- 78A-090	REP-P	03-03-018
388- 78A-0900	NEW-P	03-03-018
388- 78A-0910	NEW-P	03-03-018
388- 78A-0920	NEW-P	03-03-018
388- 78A-0930	NEW-P	03-03-018
388- 78A-0940	NEW-P	03-03-018
388- 78A-0950	NEW-P	03-03-018
388- 78A-0960	NEW-P	03-03-018
388- 78A-0970	NEW-P	03-03-018
388- 78A-0980	NEW-P	03-03-018
388- 78A-0990	NEW-P	03-03-018
388- 78A-100	REP-P	03-03-018
388- 78A-1000	NEW-P	03-03-018
388- 78A-1010	NEW-P	03-03-018
388- 78A-1020	NEW-P	03-03-018
388- 78A-1030	NEW-P	03-03-018
388- 78A-1040	NEW-P	03-03-018
388- 78A-1050	NEW-P	03-03-018
388- 78A-1060	NEW-P	03-03-018
388- 78A-1070	NEW-P	03-03-018
388- 78A-1080	NEW-P	03-03-018
388- 78A-1090	NEW-P	03-03-018
388- 78A-110	REP-P	03-03-018
388- 78A-1100	NEW-P	03-03-018
388- 78A-1110	NEW-P	03-03-018
388- 78A-1120	NEW-P	03-03-018
388- 78A-1130	NEW-P	03-03-018
388- 78A-1140	NEW-P	03-03-018
388- 78A-1150	NEW-P	03-03-018
388- 78A-1160	NEW-P	03-03-018
388- 78A-1170	NEW-P	03-03-018
388- 78A-1180	NEW-P	03-03-018
388- 78A-1190	NEW-P	03-03-018
388- 78A-120	REP-P	03-03-018
388- 78A-1200	NEW-P	03-03-018
388- 78A-1210	NEW-P	03-03-018
388- 78A-1220	NEW-P	03-03-018
388- 78A-1230	NEW-P	03-03-018
388- 78A-130	REP-P	03-03-018
388- 78A-140	REP-P	03-03-018
388- 78A-150	REP-P	03-03-018
388- 78A-160	REP-P	03-03-018
388- 78A-170	REP-P	03-03-018
388- 78A-180	REP-P	03-03-018
388- 78A-190	REP-P	03-03-018
388- 78A-200	REP-P	03-03-018
388- 78A-210	REP-P	03-03-018
388- 78A-220	REP-P	03-03-018
388- 78A-230	REP-P	03-03-018
388- 78A-240	REP-P	03-03-018
388- 78A-250	REP-P	03-03-018
388- 78A-260	REP-P	03-03-018
388- 78A-265	REP-P	03-03-018
388- 78A-268	REP-P	03-03-018
388- 78A-280	REP-P	03-03-018
388- 78A-290	REP-P	03-03-018
388- 78A-300	REP-P	03-03-018
388- 78A-310	REP-P	03-03-018

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388-78A-320	REP-P	03-03-018
388-78A-330	REP-P	03-03-018
388-78A-335	REP-P	03-03-018
388-78A-340	REP-P	03-03-018
388-78A-990	REP-P	03-03-018
388-406-0015	PREP-W	03-03-112
388-424-0005	PREP	03-03-007
388-424-0010	PREP	03-03-007
388-424-0015	PREP	03-03-007
388-450-0045	AMD	03-03-071
388-450-0050	AMD-P	03-03-008
388-460-0005	AMD	03-03-072
388-474-0012	NEW	03-03-114
388-478-0055	AMD	03-03-114
388-502-0010	PREP	03-03-017
388-502-0010	AMD-E	03-03-027
388-730-0010	AMD	03-03-070
388-730-0060	AMD	03-03-070
388-730-0065	AMD	03-03-070
388-730-0070	AMD	03-03-070
388-730-0090	AMD	03-03-070
388-820-020	AMD-E	03-03-115
388-820-060	AMD-E	03-03-115
388-820-120	AMD-E	03-03-115
388-825-020	AMD-E	03-03-115
388-825-055	AMD-E	03-03-115
388-825-100	AMD-E	03-03-115
388-825-120	AMD-E	03-03-115
388-825-180	AMD-E	03-03-115
388-825-205	AMD-E	03-03-115
388-825-252	AMD-E	03-03-115
388-825-254	AMD-E	03-03-115
388-825-500	NEW-E	03-03-115
388-825-505	NEW-E	03-03-115
388-825-510	NEW-E	03-03-115
388-825-515	NEW-E	03-03-115
388-825-520	NEW-E	03-03-115
388-825-525	NEW-E	03-03-115
388-825-530	NEW-E	03-03-115
388-825-535	NEW-E	03-03-115
388-825-540	NEW-E	03-03-115
388-825-545	NEW-E	03-03-115
388-825-546	NEW-E	03-03-115
388-825-550	NEW-E	03-03-115
388-825-555	NEW-E	03-03-115
388-825-560	NEW-E	03-03-115
388-825-565	NEW-E	03-03-115
388-825-570	NEW-E	03-03-115
388-825-571	NEW-E	03-03-115
388-825-575	NEW-E	03-03-115
388-825-576	NEW-E	03-03-115
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