

# Washington State Register

February 4, 2004

OLYMPIA, WASHINGTON

ISSUE 04-03



## IN THIS ISSUE

Agriculture, Department of  
Attorney General's Office  
Barley Commission  
Bates Technical College  
Beef Commission  
Building Code Council  
Capitol Campus Design Advisory Committee  
Children's Administration  
Clemency and Pardons Board  
Community and Technical Colleges, State Board  
for  
Conservation Commission  
Convention and Trade Center  
Dairy Products Commission  
Eastern Washington University  
Ecology, Department of  
Economic Development Finance Authority  
Economic Services Administration  
Edmonds Community College  
Employment and Assistance Programs, Division  
of  
Environmental Hearings Office  
Financial Institutions, Department of  
Fish and Wildlife, Department of  
General Administration, Department of  
Governor, Office of the  
Green River Community College  
Health Care Authority  
Health, Department of  
Higher Education Coordinating Board  
Highline Community College  
Hop Commission  
Interagency Committee, Office of the  
Investment Board, State  
Labor and Industries, Department of  
Law Enforcement Officers' and Fire Fighters'  
Plan 2 Retirement Board  
Licensing, Department of  
Medical Assistance Administration  
Medical Quality Assurance Commission  
Pharmacy, Board of  
Physical Therapy, Board of  
Public Employment Relations Commission  
Public Works Board  
Puget Sound Clean Air Agency  
Real Estate Commission  
Revenue, Department of  
Skagit Valley College  
Social and Health Services, Department of  
Spokane County Air Pollution Control  
Authority  
State Capitol Committee  
Transportation, Department of  
University of Washington  
Utilities and Transportation Commission  
Washington State University  
Western Washington University  
Whatcom Community College  
Workforce Training and Education  
Coordinating Board

## CITATION

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

## PUBLIC INSPECTION OF DOCUMENTS

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

## REPUBLICATION OF OFFICIAL DOCUMENTS

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

## CERTIFICATE

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

DENNIS W. COOPER  
Code Reviser

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## STATE MAXIMUM INTEREST RATE

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

The maximum allowable interest rate applicable for the month of February 2004 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

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

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# WASHINGTON STATE REGISTER

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

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# 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].

2003-2004

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

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

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

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

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

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

## **REGULATORY FAIRNESS ACT**

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

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

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

### **Mitigation**

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

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

When:

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

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

When:

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

There is less than minor economic impact on business;

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

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

The rule is pure restatement of state statute.



**WSR 04-03-002****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF LICENSING**

[Filed January 8, 2004, 9:54 a.m.]

Subject of Possible Rule Making: Chapter 308-96A WAC, Vehicle licenses, to include but not limited to WAC 308-96A-005.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.01.110, 46.16.135, 46.16.225, 46.16.490, 46.17.276.

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

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

Process for Developing New Rule: Negotiated rule making.

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

January 6, 2004

D. McCurley, Administrator  
Title and Registration Services

**WSR 04-03-003****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF LICENSING**

[Filed January 8, 2004, 9:54 a.m.]

Subject of Possible Rule Making: Chapter 308-96A WAC, Vehicle licenses, to include but not limited to WAC 308-96A-311.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.16.381.

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

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

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting by mail Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, Vehicle Services, Mailstop 48001, P.O. Box 2957, Olympia, WA 98507-2957,

or by phone (360) 902-3718, fax (360) 664-0831, TTY (360) 664-8885, e-mail kvasquez@dol.wa.gov.

January 6, 2004

D. McCurley, Administrator  
Title and Registration Services

**WSR 04-03-004****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF AGRICULTURE**

[Filed January 8, 2004, 9:57 a.m.]

Subject of Possible Rule Making: WAC 16-228-1231 (1)(4), 16-228-1250, 16-230-400 through 16-230-470, 16-230-600 through 16-230-675, 16-230-800 through 16-230-868, 16-231-100 through 16-231-183, 16-231-200 through 16-231-235, 16-231-300 through 16-231-335, 16-231-400 through 16-231-425, 16-231-500 through 16-231-530, 16-231-600 through 16-231-620, 16-231-700 through 16-231-725, 16-231-800 through 16-231-840, 16-231-900 through 16-231-935, 16-232-001 through 16-232-077, 16-232-100 through 16-232-120, 16-232-200 through 16-232-225, and 16-232-300 through 16-232-315.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 15.58, 17.21 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Define herbicides and related container sizes that should be considered restricted use or have use restrictions due to product volatility causing phytotoxicity.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Federal Environmental Protection Agency, normal coordination procedures.

Process for Developing New Rule: Stakeholder technical advisory group.

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 Laurie Mauerman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2093, e-mail lmauerman@agr.wa.gov.

January 7, 2004

Bob Arrington  
Assistant Director

**WSR 04-03-005****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF AGRICULTURE**

[Filed January 8, 2004, 10:00 a.m.]

Subject of Possible Rule Making: WAC 16-228-1220(4) What are the restrictions applying to any person holding, handling, using or disposing of pesticides and their containers, application by airblast sprayers or aircraft near schools, hospitals or similar establishments. Determine rule language pertaining to these applications.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 15.58, 17.21 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Considerable public comment was received during the general rule (chapter 16-228 WAC) revision process concerning the need to review this section of rule further. Additional stakeholder work and opportunity for public comment is needed before the department can consider possible rule revision and the extent of changes, if any.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Environmental Protection Agency.

Process for Developing New Rule: Stakeholder technical advisory group.

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 Laurie Mauerman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2093, e-mail lmauerman@agr.wa.gov. To participate in the stakeholder technical advisory group contact Ann Wick, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-2051, fax (360) 902-2093, e-mail awick@agr.wa.gov.

January 7, 2004

Bob Arrington  
Assistant Director

#### WSR 04-03-010

#### PREPROPOSAL STATEMENT OF INQUIRY STATE BOARD OF HEALTH

[Filed January 9, 2004, 8:51 a.m.]

Subject of Possible Rule Making: The State Board of Health has directed the Department of Health (DOH) to begin rule making to revise chapter 246-272B WAC, the rules regarding large on-site sewage systems (LOSS). These rules include design, construction, installation, management and operation requirements for LOSS. The rule revision will consider jurisdictional relationships between local health jurisdictions, DOH and the Department of Ecology as they relate to LOSS. Design criteria for wastewater tanks will also be considered.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.20.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: LOSS and wastewater tank design and construction are approved by DOH. DOH recommends that design criteria and standards for both LOSS and wastewater tanks that are currently in guidance be placed into rule.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: LOSS are regulated by the Departments of Health and Ecology. Some local health jurisdictions have chosen to regulate LOSS through a contract with DOH. DOH will establish a committee to advise the department of rule revisions

that will have representatives of local health jurisdictions and the Department of Ecology.

Process for Developing New Rule: DOH and the State Board of Health are forming a workgroup of interested parties to assist with the development of these rules. Further public input will be solicited through mailings and workshops.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The State Board of Health welcomes public comment on this proposal and invites interested parties to attend workgroup meetings or provide written comments. For information about the rule revision process or to obtain a draft revised chapter 246-272B WAC when available, please contact Jeanne Robitaille, LOSS Rule Development Committee Meeting Coordinator, (509) 456-4431, jeanne.robitaille@doh.wa.gov, or Marianne Seifert, Washington State Board of Health, P.O. Box 47990, Olympia, WA 98504, (360) 236-4103, e-mail marianne.seifert@doh.wa.gov.

January 8, 2004

Don Sloma  
Executive Director

#### WSR 04-03-011

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF TRANSPORTATION

[Filed January 12, 2004, 9:22 a.m.]

Subject of Possible Rule Making: WAC 468-310-020, 468-310-050.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 47.60.816.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: RCW 47.60.810 et seq. authorizes WSDOT to procure new auto ferries under a modified request for proposals process. RCW 47.60.816 states, in part: "The department shall modify the financial prequalification rules in chapter 468-310 WAC in order to maximize competition among otherwise qualified proposers." The proposed rule revision is intended to implement such statutory direction.

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 Mr. Tim McGuigan, Contracts, Legal Services Manager, 2911 Second Avenue, Seattle, WA 98121, phone (206) 515-3601, fax (206) 515-3605.

January 5, 2004

Mike Thorne  
CEO/Director  
Washington State Ferries



**WSR 04-03-030**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed January 13, 2004, 4:43 p.m.]

Subject of Possible Rule Making: Fish receiving ticket descriptions.

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: Housekeeping change to bring rule into compliance with current practices. This will provide information that will reduce confusion among those who fill out fish receiving tickets.

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 Morris Barker, State Marine Resource Manager, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826. Contact by June 18, 2004. Expected filing date is June 23, 2004.

January 13, 2004  
Evan Jacoby  
Rules Coordinator

**WSR 04-03-032**

**PREPROPOSAL STATEMENT OF INQUIRY  
STATE BOARD FOR  
COMMUNITY AND TECHNICAL COLLEGES**

[Filed January 14, 2004, 8:19 a.m.]

Subject of Possible Rule Making: Title 131 WAC, governing Washington's community and technical college system.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 28B.50 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Revision to existing rules related to this program required by passage of EHB 1403 by the 2003 legislature.

Process for Developing New Rule: Normal rule-making process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting DelRae Oderman, Executive Assistant and Agency Rules Coordinator, State Board for Community and Technical Colleges, P.O. Box 42495, Olympia, WA 98504-2495.

January 13, 2004  
DelRae Oderman  
Executive Assistant  
Agency Rules Coordinator

**WSR 04-03-052**

**WITHDRAWAL OF  
PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:16 p.m.]

The Economic Services Administration (ESA) is requesting the withdrawal of CR-101 Preproposal statement of inquiry, filed as WSR 00-09-032 on April 14, 2000, relating to chapters 388-426 and 399-440 [388-440] WAC.

Brian Lindgren, Manager  
Rules and Policies Assistance Unit

**WSR 04-03-080**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
FINANCIAL INSTITUTIONS**

[Filed January 20, 2004, 9:36 a.m.]

Subject of Possible Rule Making: Regulating check cashers, check sellers and small loan lenders licensed under chapter 31.45 RCW, and implementing chapter 86, Laws of 2003.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.320.040, 31.45.030, 31.45.050, 31.45.200.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Existing rules must be amended and new sections developed to implement and be consistent with chapter 31.45 RCW as extensively amended by chapter 86, Laws of 2003.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Treasury Department of the United States. Department staff has consulted with appropriate Treasury Department staff to determine check casher and seller duties under federal law, and to ensure there is no conflict between federal responsibilities and the contemplated rule.

Process for Developing New Rule: Negotiated rule making; and agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Chuck Cross, Acting Assistant Director, Consumer Services, P.O. Box 41200, Olympia, WA 98504-1200, (360) 902-8733, fax (360) 664-2258, ccross@dfi.wa.gov.

January 20, 2004  
David D. Cheal  
Rules Coordinator  
Consumer Services

PREPROPOSAL

**WSR 04-03-084**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed January 20, 2004, 11:38 a.m.]

Subject of Possible Rule Making: Chapter 296-155 WAC, Safety standards for construction work.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: After the department adopted rules protecting flaggers in construction sites in January 2001, we received requests from stakeholders to review the rules regulating protection of construction workers on the construction sites. There have been five fatalities since 1999 that could have been prevented with rules that are more protective of construction workers. This rule making would help reduce the number of serious injuries and fatalities by increasing worker protection from vehicular traffic on construction sites. In addition, the department will update references to the Washington State Department of Transportation's Manual of Uniform Traffic Control Devices.

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

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

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jamie Scibelli, Team Leader, 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 scij235@lni.wa.gov.

January 20, 2004

Paul Trause  
 Director

**WSR 04-03-087**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 [Filed January 20, 2004, 3:43 p.m.]

The Medical Assistance Administration would like to withdraw preproposal statement of inquiry, filed as WSR 03-14-078 on June 27, 2003.

Brian Lindgren, Manager  
 Rules and Policies Assistance Unit

**WSR 04-03-089**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medical Assistance Administration)  
 [Filed January 20, 2004, 3:44 p.m.]

Subject of Possible Rule Making: WAC 388-530-1850 Drug utilization and education (DUE) council.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.05.160, 74.04.050, 74.04.057, and 74.08.090, SB 6088 (section 10, chapter 29, Laws of 2003 1st sp.s.)

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The DUE council is being renamed the drug use review (DUR) board to be in accordance with 42 C.F.R. 456.716. Language must be incorporated into this rule to include the Pharmacy and Therapeutics Committee as established by the 2003 legislature (SB 6088, chapter 29, Laws of 2003) which will serve the consolidated prescription drug project of HCA, MAA and labor and industries. These rules are necessary to implement and manage the prescription drug programs established by the 2003 legislature and chapter 41.05 RCW.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The department will coordinate development of this rule with the Department of Health and Washington State Board of Pharmacy.

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 Wendy Boedigheimer, MAA Program Manager, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1306, e-mail boediwl@dshs.wa.gov, fax (360) 586-9727, TDD 1-800-848-542955 [1-800-848-5429].

January 20, 2004

Brian H. Lindgren, Manager  
 Rules and Policies Assistance Unit

**WSR 04-03-090**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medical Assistance Administration)  
 [Filed January 20, 2004, 3:45 p.m.]

Subject of Possible Rule Making: WAC 388-550-4900 Disproportionate share payments, 388-550-5000 Payment method—LIDSH, 388-550-5100 Payment method—MIDSH, 388-550-5200 Payment method—SRHAPDSH, and possible new sections in chapter 388-550 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.04.050, 43.88.290.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Per legislative direction, the rule will incorporate two new sections for the small rural indigent DSH and nonrural indigent DSH programs and establish payment calculation methods for these programs. The rule will also clarify and update payment methods for other disproportionate share hospital (DHS) programs. In addition, MAA is proposing a new section that will establish an administrative appeal process for DSH program participants.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this WAC. Draft material and information about how to participate are available by contacting the DSHS representative identified below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kathy Sayre, Rules Program Manager, Medical Assistance Administration, Olympia, WA 98504-5533, phone (360) 725-1342, fax (360) 586-9727, TTY 1-800-848-5429, e-mail sayrek@dshs.wa.gov.

January 20, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**WSR 04-03-091**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed January 20, 2004, 3:45 p.m.]

Subject of Possible Rule Making: WAC 388-550-2800 Inpatient payment methods and limits and 388-550-2900 Payment limits—Inpatient hospital services.

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The amendment incorporates into rule that the department is adding certain newborn screening tests to the newborn metabolic screening panel and lists the specific disorders the screening tests can detect. These newborn screening tests were approved through legislative direction and are to be performed for medical assistance clients in conjunction with the Department of Health. The rule amendment clarifies that the department pay hospitals an additional flat fee to cover the cost of the tests.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Department of Health (DOH), the department is coordinating this rule with DOH's chapter 246-650 WAC.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this proposed WAC amendment. Draft material and information about how to participate are available by contacting the DSHS representative identified below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before pub-

lication by contacting Kathy Sayre, Rules Program Manager, Medical Assistance Administration, Mailstop 45533, Olympia, WA 98504-5533, phone (360) 725-1342, fax (360) 586-9727, e-mail sayrek@dshs.wa.gov, TDD 1-800-848-5429.

January 20, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**WSR 04-03-092**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed January 20, 2004, 3:46 p.m.]

Subject of Possible Rule Making: New sections in chapter 388-550 WAC, Hospital services.

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: In order to improve the area of outpatient hospital expenditures, the department has elected to implement a new Medicaid payment method for outpatient hospital services provided to Medicaid clients. The outpatient prospective payment system (OPPS) uses claims and cost data to calculate payments for outpatient hospital services provided to eligible medical assistance clients. OPPS is expected to provide consistency for providers when billing for outpatient hospital services that are reimbursed by state agencies.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Department of Labor and Industries (L&I) and the Health Care Authority (HCA) have implemented OPPS. DSHS/MAA is developing rules that are consistent and equitable with the L&I and HCA OPPS.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this proposed WAC amendment. 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 Kathy Sayre, Rules Program Manager, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1342, fax (360) 586-9727, e-mail sayrek@dshs.wa.gov, TDD 1-800-848-5429.

January 20, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

PREPROPOSAL

## WSR 04-03-101

PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF REVENUE

[Filed January 20, 2004, 4:14 p.m.]

Subject of Possible Rule Making: WAC 458-20-186 Tax on cigarettes and 458-20-18601 Wholesale and retail cigarette vendor licenses.

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 458-20-186 (Rule 186) provides tax-reporting information to persons who sell, use, consume, handle, possess, or distribute cigarettes. The rule explains who is liable for the tax, how and when the cigarette tax imposed by chapter 82.24 RCW is to be paid, and the record-keeping requirements. WAC 458-20-18601 (Rule 18601) explains the application process for wholesale and retail cigarette vendor licenses. It includes references to statutory fees, bonding requirements, and explains the conditions for and process of application for a reinstatement of a license following a revocation under the Administrative Procedure Act.

The department anticipates revising Rule 186 to update existing information and incorporate legislative amendments to chapter 82.24 RCW. The department plans to update information now found in Rule 18601, clarify that cigarette wholesalers may sell only to licensed retailers and must post the statutory bond prior to commencing sales, clarify that retailers may purchase only from licensed wholesalers, and explain the responsibilities of persons making "delivery sales" into this state, as codified in chapter 70.155 RCW. The department anticipates consolidating this information into Rule 186 and repealing Rule 18601.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: While the Department of Revenue has the exclusive authority to administer the cigarette tax program, the Liquor Control Board has primary authority for enforcement of the cigarette tax laws. The department has and will continue to consult with the Liquor Control Board during any rule-making activity.

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. A preliminary discussion draft of a possible new or revised rule(s) is available upon request. Written comments on and/or requests for copies of the draft may be directed to Margaret Partlow, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6123, e-mail MargaretPa@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 March 2, 2004, at 10:00 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) 725-7499.

January 20, 2004

Alan R. Lynn

Rules Coordinator

Legislation and Policy Division

## WSR 04-03-106

PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed January 21, 2004, 8:24 a.m.]

Subject of Possible Rule Making: WAC 246-919-480 Retired active credential.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.71.017, 18.130.050(12), and 18.130.250.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: There are a number of physicians in Washington state who have retired from active practice and wish to be part of a pool of practitioners who can be mobilized to render medical services in the event of a national or regional emergency or disaster situation at a level of service beyond providing emergency assistance requiring immediate attention (as is allowed under RCW 18.71.030 (1)), such as manning a triage station or augmenting hospital staff. The commission has determined to explore whether amendment of this rule may provide assistance in this area for those physicians who currently have a Washington physician license.

Process for Developing New Rule: Collaborative rule making: The commission will conduct public workshops to allow interested persons to participate in the development of the language for these rules. Notification of the meetings will be sent to those individuals and organizations who have indicated they are to be notified of any rule-making process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Beverly A. Thomas, Health Administrator, Department of Health, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504-7866, (360) 236-4788.

November 14, 2003

Doron N. Maniece

Executive Director

## WSR 04-03-118

PREPROPOSAL STATEMENT OF INQUIRY  
UTILITIES AND TRANSPORTATION  
COMMISSION

[Docket No. UT-040015—Filed January 21, 2004, 11:21 a.m.]

Subject of Possible Rule Making: This rule making would consider possible corrections and changes to rules in chapter 480-120 WAC, Telephone companies, and chapter

480-80 WAC, Utilities general—Tariffs, price lists, and contracts, relating to telecommunications.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 80.01.040 and 80.04.160.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The commission completed a comprehensive review of its rules in chapter 480-120 WAC, Telephone companies, in 2002. The rules in chapter 480-80 WAC took effect in June 2002. The rules in chapter 480-120 WAC took effect in July 2003. While implementing these rules, stakeholders and agency staff have identified a variety of issues with the rules, including unclear provisions, incomplete cross-references, inconsistencies with federal law, and provisions that have been struck down in court. In addition, there are provisions from the prior rules that were not an issue during the comprehensive review that have since become an issue. This rule making would consider possible corrections, changes, and clarifications to address the above issues and others that may emerge during the rule-making process.

**Process for Developing New Rule:** Agency study; and the commission will ask for initial comments, and will provide the opportunity for additional comments. The commission will schedule one or more workshops with representatives of affected companies and constituencies to discuss issues related to this rule making and any rule proposal.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by filing comments with the Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, phone (360) 664-1174, fax (360) 586-1150, by February 20, 2004. An initial workshop is scheduled for March 11, 2004.

**WRITTEN COMMENTS AND STAKEHOLDER WORKSHOP:**

Written comments may be submitted to the commission at the address given above and should be filed with the commission no later than **Friday, February 20, 2004**, for consideration at the **March 11, 2004, stakeholder workshop**.

**Electronic copies.** The commission requests that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. Comments may be submitted by electronic mail to the commission's records center at [records@wutc.wa.gov](mailto:records@wutc.wa.gov). Please include:

- The docket number of this proceeding (UT-040015).
- The commenting party's name.
- The title and date of the comment or comments.

An alternative method for submitting comments may be by mailing/delivering an electronic copy on a 3 1/2 inch, IBM-formatted, high-density disk, in .pdf Adobe Acrobat format or in Word 97 or later. Include all of the information requested above. The commission will post on the commission's website all comments that are provided in electronic format. The website is located at <http://www.wutc.wa.gov/040015>. If you are unable to file your comments electronically or to submit them on a disk, the commission will always accept a paper document.

Opportunity for further comment is anticipated. Information about the schedule and other aspects of the rule making, including comments, will be posted on the commission's website as it becomes available. If you wish to receive further information on this rule making you may (1) call the commission's records center at (360) 664-1234, (2) e-mail the commission at [records@wutc.wa.gov](mailto:records@wutc.wa.gov), or (3) mail written comments to the address above to the attention of Carole J. Washburn, Secretary. When contacting the commission, please refer to Docket No. UT-040015 to ensure that you are placed on the appropriate service list. Questions may be addressed to Sharyn Bate, (360) 664-1295 or e-mail at [sbate@wutc.wa.gov](mailto:sbate@wutc.wa.gov).

**NOTICE**

**TO CONTINUE RECEIVING NOTICES AND INFORMATION ABOUT THIS RULE MAKING—**The commission wants to ensure its mailings are sent to persons who are interested in the topic and want to receive that information. **ANY PERSON WHO COMMENTS** will continue to receive notices and information. If you do not submit comments but wish to remain on the mailing list for this rule making, please advise the records center by any one of the following methods: (1) Send a note with your name, address (or a copy of your mailing label), and telephone and fax numbers referencing Docket No. UT-040015, and the words "Please keep me on the mailing list"; or (2) e-mail your name, address, telephone and fax numbers, referencing Docket No. UT-040015, and the words "Please keep me on the mailing list" to [records@wutc.wa.gov](mailto:records@wutc.wa.gov). Please note that all information in the mailings will be accessible through the commission's internet web site at <http://www.wutc.wa.gov/040015>. **THOSE PARTIES WHO DO NOT RESPOND MAY NOT RECEIVE FURTHER MAILINGS OR INFORMATION ON THE RULE MAKING.**

January 21, 2004  
C. Robert Wallace  
for Carole J. Washburn  
Executive Secretary



**WSR 04-01-160**  
**PROPOSED RULES**  
**SPOKANE COUNTY AIR**  
**POLLUTION CONTROL AUTHORITY**

[Filed December 22, 2003, 12:10 p.m.]

**Original Notice.**

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

**Title of Rule:** Spokane County Air Pollution Control Authority (SCAPCA) Regulations I and II, repeal all of Regulation II; revise Regulation I, Articles I, II, III, IV, V, VI, and X; repeal Regulation I, Article VII.

**Purpose:** Amend the existing Regulation I and repeal the existing Regulation II. Revisions include deletion of sections that no longer apply (i.e., delete Articles and Sections that contain outdated compliance schedules, limitations, and requirements established in the original Regulation's inception; Article VII), delete sections that are duplicative within the Regulation or that are duplicative of state regulations (i.e. where it is not necessary for SCAPCA to have certain sections, since SCAPCA implements and enforces the equivalent state regulation sections). Incorporate EPA required changes to Regulation I, Articles I, II, IV, and V so that they can be incorporated into the SIP. Centralize, revise and add to the definitions in Article I. Make corrections to spelling, punctuation, sentence structure, references to other section. Add some fees (Article X). Revise paragraph formats to be consistent throughout the Regulation. Attempt to make the Regulation more understandable and readable.

**Statutory Authority for Adoption:** RCW 70.94.141 and 70.94.380.

**Statute Being Implemented:** Chapter 70.94 RCW and 42 U.S.C. 7401 et seq.

**Summary:** Nearly every Article in Regulation I was revised in some manner, for differing reasons: SCAPCA attempted to make regulations consistent with Washington state and other local regulations and incorporate changes required by EPA to make SCAPCA's Regulations SIP acceptable. Regulation II is being repealed.

**Reasons Supporting Proposal:** Portions or all of Articles I, II, and VII had not been revised since their inception in 1969, thus they were significantly outdated. EPA required the state and local authorities to update their registration and NSR regulations (in SCAPCA's case, Articles IV and V) and incorporate them into the SIP. EPA also made recommendations that SCAPCA revise other sections of Regulation I, so that they are in line with present federal and state law. Article X has been updated to ensure that SCAPCA receives compensation for work that is requested by the proponent or is required by state law.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Spokane County Air Pollution Control Authority, 1101 West College, #403, Spokane, WA 99201, (509) 477-4727.

**Name of Proponent:** Spokane County Air Pollution Control Authority, governmental.

**Explanation of Rule, its Purpose, and Anticipated Effects:** SCAPCA's Regulation addresses different aspects and impacts of air pollution in Spokane County in order to secure and maintain such levels of air quality that protect

human health and safety, including the health and safety of the most sensitive members of the population, to comply with the requirements of the Federal Clean Air Act (FCAA) and the Washington Clean Air Act (WCAA), to prevent injury to plant and animal life and to property, to foster the comfort and convenience of its inhabitants, to promote the economic and social development of the county and to facilitate the enjoyment of the natural attractions of the county.

Further, it is the intent of this Regulation to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

SCAPCA's Regulation was developed to control the emissions of air contaminants from stationary sources within Spokane County, to provide for the uniform administration and enforcement of the Authority's Regulation, and to carry out the requirements and purposes of the Washington Clean Air Act (WCAA).

It has been historically proven that this Regulation has been instrumental in improving the air quality in Spokane County by:

1. Reducing criteria pollutant (PM<sub>10</sub>, PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>x</sub>, CO, ozone, lead) emissions;
2. Reducing public exposure to toxic air pollutants, as listed in chapter 173-460 WAC;
3. Reducing emissions of precursors to the formation of tropospheric ozone and other photochemical oxidants;
4. Improving visibility in Spokane County; and
5. Encouraging pollution prevention.

**Proposal Changes the Following Existing Rules:** The Regulation is more understandable and better organized.

**Definitions,** for the most part, were moved to Section 1.04 to centralized terms that are used throughout the Regulation.

Regulation I, Article VII and all of Regulation II are repealed.

Articles I, II, III, IV, V, Section 6.13; and Article X have been extensively revised, mostly because of EPA's requirements so that the Registration (Article IV) and New Source Review (Article V) Regulations will be federally enforceable by being acceptable for incorporation into the SIP.

Article II, Sections 2.03, 2.04, 2.05, 2.07, 2.09, 2.11, 2.12; Article VI, Sections 6.06, 6.07, 6.08, 6.09, and 6.11 have been deleted, because SCAPCA implements and enforces the equivalent sections in chapter 173-400 WAC, therefore, those sections are not needed in SCAPCA's Regulation I.

Section 2.13 was added in order to centralize updating the date of the federal laws and regulations that are being implemented and enforced by SCAPCA.

Control Officer discretion for exempting sources was eliminated in Article IV.

Exhibit "R" of Article IV was revised in a number of places and a few new sources were added to the list.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule. RCW 34.05.328 does not apply to local air pollution control authority rule development/amendments.

PROPOSED

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), 34.05.328 does not apply to this rule amendment.

Hearing Location: Spokane County Public Works Building, 1206 West Broadway, Hearing Room Lower Level, Spokane, WA 99201, on March 4, 2004, at 8:30 a.m.

Assistance for Persons with Disabilities: Contact Charles Studer by 4:30 p.m., March 1, 2004, TDD (509) 477-4727 ext. 107.

Submit Written Comments to: Charles E. Studer, Spokane County Air Pollution Control Authority, 1101 West College, Suite #403, Spokane, WA 99201, fax (509) 459-6828, by 4:30 p.m., March 1, 2004.

Date of Intended Adoption: March 4, 2004.

December 19, 2003

Charles E. Studer

Environmental Engineer

ARTICLE I

POLICY, SHORT TITLE, AND DEFINITIONS

ADOPTED: June 9, 1969

REVISED: ?

EFFECTIVE: ?

AMENDATORY SECTION (Amending Order Res. 92-06, filed 4/9/92)

SECTION 1.01 POLICY

The Spokane County Air Pollution Control Authority, co-extensive with the boundaries of Spokane County, having been activated by the Washington Clean Air Act, Chapter 70.94 RCW as amended, adopts the following Regulation to control the emissions of air contaminants from all stationary sources within the jurisdiction of the Authority; to provide for the uniform administration and enforcement of ((this)) the Authority's Regulation; and to carry out the requirements and purposes of the Washington Clean Air Act (WCAA).

It is hereby declared to be the public policy of the Spokane County Air Pollution Control Authority to secure and maintain such levels of air quality that protect human health and safety, including the health and safety of the most sensitive members of the population, to comply with the requirements of the ((f))Federal ((e))Clean ((a))Air ((a))Act (FCAA), to prevent injury to plant and animal life and to property, to foster the comfort and convenience of its inhabitants, to promote the economic and social development of the County and to facilitate the enjoyment of the natural attractions of the County. It is further the intent of this Regulation to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Wherever ((this)) the Authority's Regulation ((C))constitutes a restatement of the requirements and purposes of Chapter 70.94 RCW, it is the intent of the Authority that the Regulation be interpreted in the same manner as the statute adopted by the Legislature. Any deviation from the statute,

except where the statute allows an Authority to be more stringent, is intended for purposes of clarity.

AMENDATORY SECTION (Amending Board Adoption, 6/9/69)

SECTION 1.02 NAME OF AUTHORITY

The name of the County Air Pollution Control Authority, co-extensive with the boundaries of Spokane County, shall be known as the "SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY" (SCAPCA).

SECTION 1.03 SHORT TITLE

This regulation shall be known and cited as "Regulation I of the Spokane County Air Pollution Control Authority.

AMENDATORY SECTION (Amending Order Res. 94-28, filed 11/9/94)

SECTION 1.04 GENERAL DEFINITIONS

Unless otherwise defined differently in an Article of this Regulation, ((When used in)) the following definitions apply to all of this Regulation ((I of the Spokane County Air Pollution Control Authority)):

A. Actual Emissions means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with 1. through 3. of this subsection.

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal stationary source operation. The Authority shall allow the use of a different time period upon a determination that it is more representative of normal stationary source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The Authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

3. For any emissions unit, which has not begun normal operations on the particular date, actual emissions shall equal the potential-to-emit of the emissions unit on that date.

(A. Agricultural Operation means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or proof that the land is registered for agricultural use. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.)

((B. Agricultural Burning means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the Agricultural Burning Practices and Research Task Force established in RCW 70.94.650 or other authoritative source on agricultural practices.))

PROPOSED



B. ((C)) Air Contaminant means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance or any combination thereof. ("Air pollutant" means the same as "air contaminant".)

C. Air Contaminant Source means the same as "source".

D. Air Operating Permit Source means any facility required to have an air operating permit pursuant to Chapter 173-401 WAC.

E. Air Pollutant means the same as "air contaminant".

F. ((D)) Air Pollution means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property; or which unreasonably interferes with enjoyment of life and property. For the purposes of this Regulation, air pollution shall not include air contaminants emitted in compliance with Chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

G. Allowable Emissions means the emission rate of a stationary source, calculated using the maximum rated capacity of the stationary source (unless the stationary source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as in 40 CFR Part 60 or 61, or 63;

2. Any applicable SIP emissions limitation including those with a future compliance date; or

3. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

H. Alteration means the act of altering, which means to change or make different. Alteration includes, but is not limited to, any enlargement, replacement, or change in the design, operation, capacity, or arrangement of a process; any increase in the connected loading of process or control equipment; and any change in fuels, method of operation or hours of operation not previously approved by the Agency.

I. ((E)) Ambient Air means the surrounding outside air.

J. Ambient Air Quality Standard means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which shall not be exceeded.

K. Attainment Area means a geographic area, designated by EPA at 40 CFR Part 81, as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

L. ((F)) Authority means Spokane County Air Pollution Control Authority (SCAPCA) or with regard to new source review, any other designated permitting agency.

M. Begin Actual Construction means, in general, initiation of physical on-site construction activities on an emissions unit, which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

N. Best Available Control Technology (BACT) means an emission limitation, based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter 70.94 RCW emitted from, or which results from, any new or modified stationary source, which the Authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

O. Best Available Control Technology for Toxics, or "Toxic Best Available Control Technology (TBACT)" means an emission limitation applied to each, or each mixture of, toxic air pollutants (TAPs) identified in WAC 173-460-150 & 160 discharged, taking in account the potency, quantity, and toxicity of each TAP or mixture of TAPs discharged, in addition to the meaning given for "BACT", herein.

P. ((G)) Board means Board of Directors of the Spokane County Air Pollution Control Authority.

Q. Burn Out Oven means any oven used to clean or remove dirt, grease, grime, paint, varnish, or any other unwanted substance or contaminant, from any object by using controlled incineration, without burning the object itself.

R. Closure or shutdown means permanently stopping or terminating all processes that produce air contaminant emissions at a stationary source or emissions unit.

1. Except as provided for in subsections 3., 4., and 5., whether a closure or shutdown was permanent depends on the intention of the owner and operator at the time of the closure or shutdown, as determined from all facts and circumstances, including the cause of the closure or shutdown and whether registration fees have been paid;

2. A closure or shutdown lasting two or more years is presumed to be permanent, except that this presumption does not apply in the case of a temporary/portable stationary source operating under a valid permit to operate as provided for in Article V, Section 5.08 of this Regulation;

3. A closure or shutdown is permanent, if the owner or operator files a "Source Closure Notification Form", as provided for in Article IV, Section 4.02 of this Regulation. Failure to file such a report does not mean that closure or shutdown was temporary and not permanent.

4. If the owner/operator of the stationary source, fails to pay registration fees for one year or more, then the stationary source is considered permanently closed.

5. A closure or shutdown lasting five or more years is considered permanent even if registration fees have been paid and even in the case of temporary/portable stationary sources.

S. ((H)) Certified Observer means a person who has met the requirements, pursuant to 40 CFR 60, Appendix A, Method 9.

T. Class I Area means any area designated under Section 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

1. Alpine Lakes Wilderness;
2. Glacier Peak Wilderness;
3. Goat Rocks Wilderness;
4. Mount Adams Wilderness;
5. Mount Rainier National Park;
6. North Cascades National Park;
7. Olympic National Park;
8. Pasayten Wilderness; and
9. Spokane Indian Reservation.

~~(I. Combustion means the exothermic reaction of any material with oxygen.)~~

U. Combustion and Incineration Unit means an emissions unit using combustion for waste disposal, steam production, chemical recovery or other process requirements; excluding outdoor burning.

V. Commenced, as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the stationary source, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the stationary source to be completed within a reasonable time.

For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the State Implementation Plan (SIP).

W. Concealment means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

X. Construction means fabrication, erection, or installation of a stationary source.

Y. ((J)) Control Equipment means any equipment which has the primary function of regulating or controlling emissions from a process, fuel burning or refuse burning equipment and thus reduces the formation of, or the emission of, air contaminants into the atmosphere, or both.

Z. ((K)) Control Officer means the Air Pollution Control Officer for the Spokane County Air Pollution Control Authority or his/her duly authorized representative. ("Director" means the same as "control officer").

AA. Criteria Pollutant means a pollutant for which there is established a National Ambient Air Quality Standard in 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), ozone (O<sub>3</sub>) sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

BB. Ecology means the Washington State Department of Ecology.

CC. ((L)) Emission means a release of air contaminants into the ambient air.

DD. ((M)) Emission Point means the point at which emissions are released into the ambient air, such as, but not limited to; a duct, vent, stack, pipe, or other opening to the ambient air.

EE. Emission Reduction Credit means a credit granted, by the Authority, to a stationary source for a voluntary reduction in actual emissions per WAC 173-400-131.

FF. Emission Standard and Emission Limitation means a requirement established under the Federal Clean Air Act or Chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act or Chapter 70.94 RCW.

GG. ((N)) Emissions Unit means any part of a stationary source which emits, or would have the potential-(( ))to(( ))-emit, any pollutant subject to rules and regulation(s) ((under)) pursuant to the Federal Clean Air Act ((FCAA)), the Washington State Clean Air Act (Chapter 70.94 RCW), the Washington Nuclear Energy and Radiation ACT (Chapter 70.98 RCW), or ((Regulations of)) the Authority. This term does not include non-road engines.

HH. ((O)) Episode means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as given in ((Chapter)) RCW 70.94.715 ((RCW)).

II. ((P)) Federal Clean Air Act (FCAA) means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq, as ((last)) amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990 and subsequent amendments.

JJ. Federal Class I Area means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

1. Alpine Lakes Wilderness;
2. Glacier Peak Wilderness;
3. Goat Rocks Wilderness;
4. Mount Adams Wilderness;
5. Mount Rainier National Park;
6. North Cascades National Park;
7. Olympic National Park; and
8. Pasayten Wilderness.

KK. Federal Land Manager means the secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior - National Park Service, the U.S. Department of Agriculture - Forest Service, and/or the U.S. Department of the Interior - Bureau of Land Management.

LL. Federally enforceable means all limitations and conditions which are enforceable by EPA, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of approval under a SIP approved new source review regulation.

or any voluntary limits on emissions pursuant to WAC 173-400-091.

**MM. ((Q)) Fire Protection Agency** means a city fire department, county fire department, local fire protection district, or the Washington State Department of Natural Resources.

**NN. Fugitive Dust** means particulate emissions made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust. Fugitive dust is a type of fugitive emission.

**OO. Fugitive Emissions** means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**PP. ((R)) Garbage** means putrescible animal or vegetable waste resulting from the handling, preparation, cooking or serving of food.

**QQ. Good Engineering Practice (GEP)**, as used in Chapter 173-400 WAC, refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

**RR. ((S)) Incinerator** means a furnace used primarily for the thermal destruction of waste.

**SS. In Operation** means engaged in activity related to the primary design function of the stationary source.

**TT. Installation** means the act of installing, which means placing, assembling or constructing process equipment or control equipment at the premises where the equipment will be used. Installation includes all preparatory work at such premises.

**UU. Lowest Achievable Emission Rate (LAER)** means for any stationary source, that rate of emissions which reflects the more stringent of:

1. The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed new or modified stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emission limitation which is achieved in practice by such class or category of stationary source.

3. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable New Source Performance Standards (NSPS).

**VV. 1. Major Modification**, as it applies in nonattainment areas, is defined in WAC 173-400-112.

2. Major Modification, as it applies in attainment or unclassified areas, is defined in WAC 173-400-113.

**WW. 1. Major Stationary Source**, as it applies in nonattainment areas, is defined in WAC 173-400-112.

2. Major Stationary Source, as it applies in attainment or unclassified areas, is defined in WAC 173-400-113.

**XX. Masking** means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

**YY. Materials Handling** means the handling, transporting, loading, unloading, storage, or transfer of materials with no significant chemical or physical alteration.

**ZZ. Modification** means any physical change in, or change in the method of operation of, a stationary source that

increases the amount of any air contaminant emitted by such stationary source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code (USC), and with rules implementing that section.

**AAA. National Ambient Air Quality Standard (NAAQS)** means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

**BBB. National Emission Standards for Hazardous Air Pollutants (NESHAP)** means the federal rules in 40 CFR Part 61.

**CCC. National Emission Standards for Hazardous Air Pollutants for Source Categories** means the federal rules in 40 CFR Part 63. These rules are commonly referred to as Maximum Available Control Technology (MACT) standards.

**DDD. 1. Net Emissions Increase**, as it applies to stationary sources subject to requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.

2. Net Emissions Increase, as it applies to stationary sources subject to requirements for new sources in attainment or unclassified areas, is defined in WAC 173-400-113.

**EEE. New Source** means one or more of the following:

1. The construction or modification of a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emission of any air contaminant not previously emitted;

2. Any other project that constitutes a new source under the Federal Clean Air Act,

3. Restart of a "stationary source" after permanent shutdown; or

4. Relocation of a "stationary source" to a new location, except in the case of portable stationary sources operating under a valid "permit to operate" as provided in Article V, Section 5.08.A.2 through 5.08.A.5.

**FFF. New Stationary Air Contaminant Source**, as used in this Regulation, means the same as "new source".

**GGG. New Source Performance Standards (NSPS)** means the Federal rules in 40 CFR Part 60.

**HHH. Nonattainment Area** means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a NAAQS for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

**III. Nonroad Engine** means:

1. Except as provided in 2. of this subsection, any internal combustion engine:

a. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

b. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

c. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Meth-

ods of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

2. An internal combustion engine is not a nonroad engine if:

a. The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under Section 202 of the FCAA; or

b. The engine is regulated by a NSPS promulgated under Section 111 of the FCAA; or

c. The engine otherwise included in 1.c. of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced, will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

JJJ. Notice of Construction (NOC) Application or Notice of Construction and Application for Approval means a written application to permit construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source. Affected activities include, but are not limited to, equipment modifications or alterations, changes to process or control equipment, establishment of emission limits, installation of "new sources," control technology determinations, PSD determinations (by Ecology), and other items specified by the Authority.

KKK. ((F)) Odor means that property of a substance, which allows its detection by the sense of smell or through the use of instruments designed for that purpose.

LLL. ((U)) Opacity means the degree to which an object seen through a plume is obscured, stated as a percentage.

MMM. Outdoor Burning or Open Burning means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion in a manner approved by the Authority. For the purposes of this Regulation, "Outdoor burning" means all types of outdoor burning except agricultural burning and silvicultural burning (RCW 70.94.743)

((V. Open Fire, Outdoor Fire or Open Burning means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion in a manner approved by the Authority.))

NNN. Order means any order issued by Ecology or the Authority pursuant to Chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, permit

to operate, compliance schedule order, consent order, order of denial, notice of violation, and regulatory order.

OOO. Order of Approval, Approval Order or Permit means a regulatory order issued by Ecology or the Authority to approve the Notice of Construction Application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

PPP. Ozone depleting substance means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

QQQ. ((W)) Particulate Matter or P((P))articulates means any airborne finely((-))divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

RRR. Particulate Matter Emissions means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air, as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40 Chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

SSS. Parts per Million by Volume (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume, exclusive of water or particulate matter.

TTT. Permit to Operate, Permission to Operate and Temporary or Portable Permit means a regulatory order issued by Ecology or the Authority to approve the Notice of Intent to Install and Operate a Temporary Source Application for the relocation of a proposed temporary or portable stationary source.

UUU. Permitting Agency means the Authority, except that Ecology is the permitting agency pursuant to WAC 173-400-141 (PSD) and for air pollution sources that have been retained by Ecology's Industrial Sector, pursuant to RCW 70.94.422, in Spokane County.

VVV. ((X)) Person means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

WWW. PM<sub>10</sub> means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

XXX. PM<sub>10</sub> Emissions means finely-divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

YYY. ((Y)) Pollution Control Hearings Board of Washington(=) means the body established under Chapter 43.21 RCW to adjudicate hearings pertaining to decisions and orders of the Authority ((Department of Ecology and other pollution control agencies)).

ZZZ. Portable Stationary Source means a stationary source consisting of one or more emission units that is portable or transportable (excluding non-road engines) that emits pollutants at a specific site for a brief period and then moves to another site(s) and emits pollutants for a brief period and

PROPOSED

that is established at any specific site for less than 12 consecutive months. Portable equipment includes, but is not limited to: portable rock crushers, portable asphalt plants, portable concrete batch plants and each of their auxiliary emissions producing equipment). The act of installing a portable source at a particular site is considered to be the construction of a new source or modification of an existing source and therefore is subject to the requirements of new source review the first time that the Portable Stationary Source locates in Spokane County; thereafter, the Portable Stationary Source is subject to the requirements of Sections 5.08.A.2 through 5.08.A.5 of this Regulation. A Portable Stationary Source is a subset of Temporary Stationary Source.

**AAAA.** Potential-to-emit (PTE) means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not included in determining the potential-to-emit of a stationary source.

**BBBB.** Prevention of Significant Deterioration (PSD) means the program set forth in WAC 173-400-141.

**CCCC.** Reasonably Available Control Technology (RACT) means the lowest emission limit that a particular stationary source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual stationary source or source category, taking into account the impact of the stationary source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any stationary source or source category shall be adopted only after notice and opportunity for comment are afforded. RACT shall apply to existing stationary sources.

**DDDD.** ((Z)) Refuse means putrescible and non-putrescible solid wastes including garbage, rubbish, ashes, incinerator residue, dead animals, abandoned automobiles, solid market wastes, street cleanings, and solid commercial and industrial waste (including waste disposal in industrial salvage).

**EEEE.** Regulatory Order means an order issued to a stationary air contaminant source by Ecology, or the Authority, which subjects that stationary source to applicable provisions of Chapter 70.94 RCW, or the rules and regulations adopted thereunder.

**FFFF.** Secondary Emissions means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the sec-

ondary emissions. Secondary emissions may include, but are not limited to:

1. Emissions from ships or trains located at the new or modified stationary source; and
2. Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

G G G G. Significant:

1. As it applies to new sources in nonattainment areas, is defined in WAC 173-400-112.
2. As it applies to new sources in attainment or unclassified areas, is defined in WAC 173-400-113.
3. As it applies to stationary air contaminant sources subject to Articles IV and X of this Regulation, means:
  - a. Increased emissions of 10 tons per year of any one toxic air pollutant or hazardous air pollutant; or,
  - b. Increased emissions of a combined 25 tons per year of two or more toxic air pollutants or hazardous air pollutants; or,
  - c. In reference to a net emissions increase or the stationary source's potential-to-emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

<u>Pollutant and Emissions Rate</u>	
<u>Carbon monoxide:</u>	<u>100 tons per year (tpy)</u>
<u>Nitrogen oxides:</u>	<u>40 tpy</u>
<u>Sulfur dioxide:</u>	<u>40 tpy</u>
<u>Particulate matter (PM):</u>	<u>25 tpy of PM emissions</u> <u>15 tpy of PM-10 emissions</u>
<u>Volatile organic compounds:</u>	<u>40 tpy</u>
<u>Fluorides:</u>	<u>3 tpy</u>
<u>Lead:</u>	<u>0.6 tpy</u>
<u>Sulfuric acid mist:</u>	<u>7 tpy</u>
<u>Hydrogen sulfide (H<sub>2</sub>S):</u>	<u>10 tpy</u>
<u>Total reduced sulfur (including H<sub>2</sub> S):</u>	<u>10 tpy</u>
<u>Reduced sulfur compounds (including H<sub>2</sub>S):</u>	<u>10 tpy</u>
<u>Municipal waste combustor organics: (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)</u>	<u>3.2 grams per year (0.112 oz. per year or 49 grains per year)</u>
<u>Municipal waste combustor metals: (measured as particulate matter)</u>	<u>14 megagrams per year (15 tpy)</u>
<u>Municipal waste combustor acid gases: (measured as sulfur dioxide and hydrogen chloride)</u>	<u>36 megagrams per year (40 tpy)</u>

Pollutant and Emissions Rate

Municipal solid waste land-fill emissions: (measured as nonmethane organic compounds) 45 megagrams per year (50 tpy)

Ozone-depleting substances (in effect on the date listed in Article II, Section 2.13 of this Regulation): 100 tpy

d. Regardless of the definition in GGGG.3, significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification which constructs a stationary air contaminant source within 10 kilometers of a Class I area, and has an ambient air quality impact on such area equal to, or greater than, 1 microgram per cubic meter (twenty-four-hour average), demonstrated through an Authority approved dispersion model.

HHHH. ((AA)) Silvicultural Burning means burning on unimproved land the Department of Natural Resources projects pursuant to RCW 70.94.030(20), 70.94.660, 70.94.690 and pursuant to Chapter ((RCW)) 76.04 RCW.

III. ((BB)) Source means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

JJJJ. Source Category means all sources of the same type or classification.

KKKK. Stack means any point in a stationary source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

LLLL. Stage I Vapor Recovery means the capture of all gasoline vapors at gasoline dispensing facilities during the transfer of gasoline from a transport tank into a stationary storage tank, except motor vehicle refueling. Regulations relating to Stage I vapor recovery are found in Chapter 173-491 WAC.

MMMM. Stage II Vapor Recovery means the capture of gasoline vapors at gasoline dispensing facilities during the transfer of gasoline from a stationary storage tank into a motor vehicle fuel tank. Regulations relating to Stage II vapor recovery are found in Chapter 173-491 WAC.

NNNN. ((CC)) Standard Conditions means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) ((760 mm)) of mercury.

OOOO. State Implementation Plan (SIP) or Washington SIP means the Washington SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

PPPP. Stationary Air Contaminant Source means the same as "Stationary Source".

QQQQ. Stationary Source means any building, structure, facility, or installation that emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle, as defined in Section 216(11) of the Federal Clean Air Act.

RRRR. Synthetic Minor means any stationary source whose potential-to-emit has been limited below applicable major stationary source thresholds by means of a federally enforceable order, rule, or permit condition.

SSSS. Temporary Stationary Source means a stationary source consisting of one or more emission units that is portable or transportable (excluding non-road engines) that emits pollutants at a specific site for a brief period and then not again for the foreseeable future and that is established at any site for less than 12 consecutive months. A temporary stationary source includes, but is not limited to: a temporary boiler, while a permanent boiler is undergoing maintenance; fugitive dust emissions associated with the construction of a new building; non-stationary stump grinders and each of their auxiliary emissions producing equipment). The act of installing a Temporary Stationary Source at a particular site may or may not be considered to be the construction of a new source or modification of an existing source and therefore may or may not be subject to the requirements of new source review.

TTTT. Total Actual Annual Emissions means the total of all criteria and toxic air pollutant emissions for the most recent complete year that is available to the Authority.

UUUU. Total Reduced Sulfur (TRS) means the sum of the mass of sulfur compounds, hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides, emitted and measured by EPA method 16 in Appendix A to 40 CFR Part 60 or an approved equivalent method and expressed as hydrogen sulfide.

VVVV. Total Suspended Particulate means the mass of particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

WWWW. Toxic Air Pollutant (TAP) or Toxic Air Contaminant means any Class A or B toxic air pollutant listed in WAC 173-460-150 and 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds, if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

XXXX. Upset condition means a failure, breakdown, or malfunction of any piece of process equipment or pollution control equipment that causes, or has the potential to cause, excess emissions.

YYYY. Unclassifiable Area means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 CFR Part 81.

ZZZZ. United States Environmental Protection Agency (USEPA) shall be referred to as EPA.

PROPOSED

AAAAA. Visibility impairment means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

BBBBB. Visibility impairment of Class I areas means visibility impairment within the Class I area and visibility impairment of any formally designated integral vista associated with the Class I area.

CCCCC. Volatile Organic Compound (VOC) means any carbon compound that participates in atmospheric photochemical reactions.

1. Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF3)2CFCF2OC2H5); methyl acetate and perfluorocarbon compounds that fall into these classes:

a. Cyclic, branched, or linear completely fluorinated alkanes;

b. Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

c. Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

d. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For the purpose of determining compliance with emission limits, VOC is measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds are excluded as VOC, if

the amount of the compounds is accurately quantified, and the exclusion is approved by the Authority, or EPA.

3. As a precondition to excluding these negligibly-reactive compounds as VOC or at any time thereafter, the Authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Authority, the amount of negligibly-reactive compounds in the stationary source's emissions.

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

## ARTICLE II

### GENERAL PROVISIONS

ADOPTED: June 9, 1969

REVISED: ?

EFFECTIVE: ?

AMENDATORY SECTION (Amending Order Res. 74-09 filed 4/1/74)

### SECTION 2.01 POWERS AND DUTIES OF THE BOARD

A. Pursuant to, and consistent with, the provisions of the ((=))Washington Clean Air Act ((="RCW 70.94)) Chapter 70.94 RCW, the Board shall establish such procedures and take such action as may be required to implement Section 1.01 of this Regulation ((=consistent with the State Act and other applicable laws)). The Board may take such action as may be necessary to prevent air pollution, including control and measurement of the emission of any air contaminant from a source. The Board shall appoint a Control Officer, competent in the control of air pollution who shall, with the Board's advice and approval, enforce the provisions of ((this Regulation and)) all ordinances, orders, resolutions, ((=)) rules and regulations of this Authority, pertinent to the control and prevention of air pollution in ((the)) Spokane County.

B. The Board shall have the power to hold hearings relating to any aspect of or matter in the administration of this Regulation and in connection therewith; issue subpoenas to compel the attendance of witnesses and production of evidence, administer oaths and take the testimony of any person under oath.

C. The Board shall have the power to adopt, amend and repeal its own ordinances, resolutions, rules, ((=)) orders and regulations. Any adoption, amendment, or repeal of the Board's ordinances, resolutions, rules, ((=)) orders and regulations shall be made after due consideration at a public hearing held in accordance with Chapter 42.30 RCW, and shall have the same force and effect as all other of the Board's ordinances, resolutions, rules, or orders and regulations as soon as adopted by the Board. (See RCW 70.94.141)

**AMENDATORY SECTION (Amending Order Res. 02-01, filed 1/3/02)****SECTION 2.02 CONTROL OFFICER'S DUTIES AND POWERS**

A. The Control Officer and/or his authorized ~~((agent))~~ representatives shall observe and enforce the provisions of the ~~((State Law))~~ Washington Clean Air Act and all orders, ordinances, resolutions, ~~((of))~~ rules and regulations of the Authority pertaining to the control and prevention of air pollution pursuant to the policies set forth ~~((down))~~ by the Board.

B. The Control Officer, with the approval of the Board, shall have the authority to appoint and remove such employees as are necessary to the performance of the duties assigned to him and to incur necessary expenses within the limitations of the budget.

C. The Control Officer shall maintain appropriate records and submit reports as required by the Board, ~~((the State Agency))~~ Ecology, and EPA ~~((the appropriate Federal Agencies))~~.

D. The Control Officer may engage, at the Authority's expense, within the limitation of the budget, qualified individuals or firms to make independent studies and reports as to the nature, extent, quantity or degree of any air contaminants which are or may be discharged from any source within the Authority's jurisdiction.

E. For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer, Ecology, or their duly authorized representatives shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person shall refuse entry or access to the Control Officer, Ecology, or their duly authorized representative who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

F. If an authorized employee of the Authority, during the course of an inspection desires to obtain a sample of air contaminant, fuel, process material or other material that affects or may affect the emission of air contaminants, he/she shall notify the owner or lessee of the time and place of obtaining a sample so the owner or lessee has the opportunity to take a similar sample at the same time and place, and the Control Officer or the authorized representative of the Authority shall give a receipt to the owner or lessee for the sample obtained.

G. The Control Officer shall be empowered by the Board to sign official complaints or issue citations or initiate court suits or use other legal means to enforce the provisions of ~~((this))~~ the Authority's Regulation.

H. The Control Officer or his/her duly authorized representative may obtain, from the owner or operator of an air contaminant source, information or analyses that discloses the nature, extent, or quantity of air contaminants which are, or may be, discharged by such an air contaminant source, and the control equipment in use on such air contaminant source ~~((, when the information or analyses is available or reasonably capable of being assembled))~~.

I. The Control Officer or his/her duly authorized representative may require that safe access and adequate sampling facilities be provided to the Authority by the owner or operator of an air contaminant source that is to be tested. ((The Authority shall request and receive, of the owner or operator of the facility, access to the facility at least fifteen (15) days prior to the date when the air contaminant source will be tested.))

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

**AMENDATORY SECTION (Amending Order Res. 92-06, filed 4/9/92)****SECTION 2.03 CONFIDENTIAL OR PROPRIETARY INFORMATION (SEE RCW 70.94.205)**

The Authority implements and enforces RCW 70.94.205. ((Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Authority, pursuant to Chapter 70.94 RCW, relate to processes or production unique to the owner or operator, or is likely to adversely affect the competitive position of such owner or operator if released to the public or to a competitor and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Department of Ecology or the Authority. (RCW 70.94.205)))

**AMENDATORY SECTION (Amending Order Res. 97-04, filed 4/3/97)****SECTION 2.04 VIOLATIONS (SEE RCW 70.94.211)**

The Authority implements and enforces RCW 70.94.211.

A. ((At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 or RCW 70.94.431, the Authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of Chapter 70.94 RCW, or any regulation, ordinance, or resolution in force pursuant thereto, alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable amount of time. In lieu of an order, the Board or the Control Officer may require that the alleged violator or violators appear before the Board of Directors for a hearing. Every Notice of Violation shall offer to the alleged violator an opportunity to meet with the Authority prior to the commencement of enforcement action.

B. The Control Officer may, in place of an order or hearing after service of a notice of violation, request the County Prosecutor to prosecute a criminal action against the violator.



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

**AMENDATORY SECTION (Amending Order Res. 74-09, filed 4/1/74)**

**SECTION 2.05 ORDERS AND HEARINGS (SEE RCW 70.94.221)**

The Authority implements and enforces RCW 70.94.221.

~~(A. Any order issued by the Board or by the Control Officer, which is not preceded by a hearing, shall become final, unless such order is appealed to the Hearings Board no later than thirty (30) days after the date the notice and order are served. All petitions of appeal from the notice and order are to be filed with the offices of the Pollution Control Hearings Board of Washington. (Chapter 43.21B RCW))~~

**AMENDATORY SECTION (Amending Order Res. 74-09, filed 4/1/74)**

**SECTION 2.06 APPEAL ~~((S))~~ OF ~~((FROM))~~ BOARD ORDERS ~~((JUDICIAL REVIEW))~~**

A. Any order issued by the board or by the control officer, shall become final unless such order is appealed to the hearings board as provided in chapter 43.21B RCW. This is the exclusive means of appeal of such an order.

B. The Control Officer may stay the effectiveness of an order during the pendency of such an appeal. At any time during the pendency of such an appeal of such an order to the PCHB, the appellant may apply to the PCHB pursuant to Chapter 43.21B RCW and Chapter 371-08 WAC for a stay of the order or for the removal thereof.

C. Upon failure to comply with any final order of the Board or Control Officer, the attorney for the Authority, upon request of the Board or Control Officer, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary.

~~((A. Any order issued by the Board after a hearing shall become final, unless no later than thirty days after the issuance of such order, a notice of appeal is filed with the Hearings Board as provided in RCW 43.21(B)).~~

~~B. Any order issued by the Board after the hearing shall become final unless no later than thirty days after the issuance of such order, a petition requesting judicial review is filed in accordance with the provisions of Chapter 34.04 RCW and now or hereafter amended. When such a petition is filed, the Superior Court shall initiate a hearing pursuant to RCW 34.04.130 within ninety days after the receipt of the petition requesting judicial review. Every appeal from a decision of the Superior Court shall be heard by the appropriate appellate courts as soon as possible. Such appeals shall be considered a case involving issues of broad public import, requiring prompt and ultimate determination.~~

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

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

**SECTION 2.07 (RESERVED) ~~((STATUS OF ORDERS OR APPEAL~~**

~~A. Any order of the Board or the Control Officer shall be stayed, pending final determination of any hearing or appeal taken in accordance with the provisions herein, unless after notice and hearing, the Superior Court shall determine that an emergency exists, which is of such nature as to require that such order be in effect during the pendency of such hearing or appeal.~~

~~B. Nothing in this Regulation shall prevent the Board or Control Officer from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means. (RCW 70.94.223))~~

**AMENDATORY SECTION (Amending Order Res. 97-04, filed 4/3/97)**

**SECTION 2.08 FALSIFICATION OF STATEMENTS OR DOCUMENTS, AND TREATMENT OF DOCUMENTS**

A. No person shall willfully make a false or misleading statement to the Board or their authorized representative as to any matter within the jurisdiction of the Board.

B. No person shall reproduce or alter, or cause to be reproduced or altered, any order, registration certificate, or other paper issued by the Authority if the purpose of such reproduction or alteration is to evade or violate any provision of Chapter 70.94 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

C. Any order or registration certificate required to be obtained by Chapter 70.94 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto, shall be available for review on the premises designated on the order or certificate.

D. In the event the Authority requires a notice to be displayed, it shall be posted. No person shall mutilate, obstruct or remove any notice unless authorized to do so by the Authority.

E. No person shall make any false material statement, representation or certification in any form, in any notice or report required under Chapter 70.94 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

F. No person shall render inaccurate any monitoring device or method required under Chapter 70.94 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

**AMENDATORY SECTION (Amending Order Res. 74-09, filed 4/1/74)**

**SECTION 2.09 (RESERVED) ~~((SERVICE OF NOTICE~~**

~~A. Service of any written notice required by this Regulation shall be made on the owner or lessee of equipment, or his agent as follows:~~

PROPOSED

~~1. Either by mailing the notice in a prepaid envelope directed to the owner or lessee of the equipment, or his agent, at the address listed on his application or order of registration certificate, or at the address where the equipment is located, by United States Postal Service Certified Mail, return receipt requested, or,~~

~~2. By leaving the notice with owner or lessee of the equipment, or his agent, or if the owner or lessee is not an individual, then a member of the partnership or other concerned or with an officer or managing agent of the corporation.~~

~~B. Service of any written notice required by this Regulation shall be made to the Authority as follows:~~

~~1. Either by mailing the notice in a prepaid envelope directed to the Authority at its office, by United States Postal Service Certified Mail, return receipt requested, or~~

~~2. By leaving the notice at the Authority office with an employee of the Authority.))~~

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

#### AMENDATORY SECTION (Amending Board Adop- tion, 6/9/69)

#### SECTION 2.10 SEVERABILITY

If any phrase, clause, subsection or section of this Regulation shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the Board ((of Directors)) would have enacted the Regulation without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the Regulation shall not be affected as a result of said part being held unconstitutional or invalid. ((RCW 70.94.911))

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

#### AMENDATORY SECTION (Amending Order Res. 97- 04, filed 4/3/97)

#### SECTION 2.11 (SEE RCW 70.94.430 (CRIMINAL PEN- ALTIES), 431 (CIVIL PENALTIES), & 435 (ADDI- TIONAL MEANS FOR ENFORCEMENT)) ((PENAL- TIES))

The Authority implements and enforces Chapter  
70.94.430, 431, & 435 RCW.

##### A. Criminal Penalties

~~1. Any person who knowingly violates any of the provisions of Chapter 70.94 RCW or any regulation, ordinance, or resolution in force pursuant thereto, is guilty of a crime and upon conviction is subject to punishment by a fine or by imprisonment in county jail or by both fine and imprisonment, as provided by Chapter 70.94 RCW, for each separate violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.~~

~~2. Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a crime and upon conviction is subject to punishment by a fine or by imprisonment or both, as provided by Chapter 70.94 RCW.~~

~~3. Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a crime and upon conviction is subject to punishment by a fine or by imprisonment or both, as provided by Chapter 70.94 RCW.~~

~~4. Any person who knowingly fails to disclose a potential conflict of interest under Chapter 70.94 RCW is guilty of a gross misdemeanor, and upon conviction thereof, is subject to a fine as provided by Chapter 70.94 RCW.~~

##### B. Other Penalties

~~1. a. In addition to, or as an alternative to, any other penalty provided by law, any person who violates any of the provisions of Chapter 70.94 RCW or any of the rules and regulations of the Department of Ecology or this Authority in force under this chapter may incur a civil penalty in an amount not to exceed that provided by Chapter 70.94 RCW for each violation. Each such violation is a separate and distinct offense, and in case of a continuing violation, each day's continuance is a separate and distinct violation.~~

~~b. Any person who fails to take action as specified by an order issued pursuant to Chapter 70.94 RCW or this Regulation is liable for a civil penalty in an amount not to exceed the penalty authorized by Chapter 70.94 RCW for each day of continued noncompliance.~~

~~2. Penalties incurred but not paid shall accrue interest, beginning on the ninety first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty first day following final resolution of the appeal.~~

~~3. Each act of commission or omission, which procures, aids, or abets in the violation, is a violation under the provisions of this section and subject to the same penalty.~~

~~4. The penalty is due and payable on the later of:~~

~~a. Thirty days after receipt of the notice imposing the penalty;~~

~~b. Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or,~~

~~c. Thirty days after receipt of the notice of decision of the Pollution Control Hearings Board of Washington if the penalty is appealed.~~

~~If the penalty is not paid within thirty days after it becomes due and payable, the Authority may bring an action to recover such penalty in the Superior Court of Spokane County. The penalties provided by Chapter 70.94 RCW and this section are imposed pursuant to RCW 43.21B.300.~~

PROPOSED

~~5. All penalties recovered under this section by the Authority shall be payable to the treasury of the Authority and credited to its funds.~~

~~6. To secure the penalty incurred under this section, the Authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.~~

~~7. In addition to other penalties provided by this section, persons falsifying emission data or other information used to set fees, or persons required to pay emission, registration, permit, or any other fee payable to the Authority, who are more than ninety days late with such payments, are subject to a penalty equal to three times the amount of the original fee. The penalty shall be in addition to the fee.)~~

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

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

**SECTION 2.12 (SEE RCW 70.94.425) ((RESTRAINING ORDER—INJUNCTION—OTHER COURT ORDER**

The Authority implements and enforces RCW 70.94.425.

~~Notwithstanding the existence or use of any other remedy whenever any person has engaged in, or is about to engage in, acts or practices which constitute or will constitute a violation of any provision of this regulation or any rule, regulation or order issued by the Board, or Control Officer or his authorized agent, the Board, or their designee, after notice to such person and an opportunity to comply, may petition the County Superior Court for a restraining order or a temporary or permanent injunction or another appropriate order. (RCW 70.94.425))~~

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

**NEW SECTION**

**SECTION 2.13 FEDERAL REGULATION REFERENCE DATE**

Whenever federal laws or regulations are referenced in this Regulation, the effective date shall be July 1, 2001, unless otherwise noted.

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

**ARTICLE III**

**AMENDATORY SECTION [TITLE] (Amending Board Adoption, 6/9/69)**

**VARIANCES((, WHEN PERMITTED))**

**ADOPTED: June 9, 1969**

**REVISED: ?**

**EFFECTIVE: ?**

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

**SECTION 3.01 Variances—Application for—Considerations—Limitations—Renewals—Review.**

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

A. Any person, or group of persons, who own or is in control of any plant, building, structure, establishment, process(es) or ((hike)) equipment, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air ((process or equipment, including a group of persons who owns or controls like)) contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, provided that variances to state rules shall require Ecology's approval, prior to being issued by the Board. The total time period for a variance and renewal of such variance shall not exceed one year. Variances may be issued by either Ecology, where Ecology has retained jurisdiction, or the Board, but only after public ((hearing or due notice)) involvement per WAC 173-400-171, if it finds that:

- 1. The emissions occurring or proposed to occur do not endanger public health, ((or)) safety, or the environment; and
- 2. Compliance with the rules or regulations from which variance((s)) is sought would produce serious hardship without equal or greater benefits to the public.

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

**NEW SECTION**

B. In addition to the requirements of Section 3.01.A above, applications seeking a variance shall not be considered complete unless the applicant provides:

- 1. A list of interested parties and neighbors within 500 feet or more of the property on which the variance is proposed to occur, as deemed necessary by the Control Officer.

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

PROPOSED

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

C. ((B-)) No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. The Board shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within 500 feet of the property on which the variance is proposed. The Control Officer may require notice to parties beyond 500 feet, if deemed necessary. A 30-day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:

1. The time, date, and place of the hearing;
2. The name and address of the owner or operator and the source;
3. A brief description of the variance request; and
4. The deadline for submitting written comments to the Agency.

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

D. ((C-)) Any variance or renewal thereof shall be granted within the requirements of Section 3.01.A of this Regulation ((Subsection A and for a time period and)) under conditions consistent with the reasons therefor((e)), and within the following limitations:

1. If the variance is granted on the ground((s)) that there is no practicable means known or available for the adequate prevention, abatement or control of the 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 alternate measure that the Board may prescribe.
2. If the variance is granted on the ground that compliance with the particular requirement((s)) or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time((s)), as in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein, shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.
3. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Sections 3.01.D.1 and 3.01.D.2 of this Regulation ((Item 1 and 2 of this subsection)), it shall be for not more than one (1) year.

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

E. ((D-)) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance,

no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of Ecology or the Authority ((the Board)).

**AMENDATORY SECTION (Amending Order Res. 74-09 filed 4/1/74)**

F. ((E-)) A variance or renewal shall not be a right of the applicant or holder thereof, but shall be granted at the discretion of the Board. ((Any)) However, any applicant adversely affected by the denial ((of)) or the terms and conditions of the granting of an application for a variance or renewal of ((the)) a variance by the Board, may obtain judicial review thereof only under the provisions of ((Chapter 43.21B-RCW)) Chapter 34.05 RCW, as now or hereafter amended.

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

G. ((F-)) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW ((70.94.415 of the Washington Clean Air Act)) 70.94.710 through 70.94.730 to any person or his ((property. (RCW 70.94.181))) or her property.

**NEW SECTION**

H. An application for a variance, or for the renewal thereof, submitted to the Board pursuant to this Section shall be approved or disapproved by the Board within sixty-five days of receipt, unless the applicant and the Board agree to a continuance.

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

**NEW SECTION**

**Reviser's note:** No information supplied by the Spokane County Air Pollution Control Authority.

**NEW SECTION****SECTION 3.02 FILING**

A fee, as established in Section 10.08.D of this Regulation, shall be assessed to, and paid by, the applicant for requests pursuant to this Article. The applicant shall also be responsible to pay all costs associated with any legal notice(s) required pursuant to this Article.

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

## ARTICLE IV

## REGISTRATION

ADOPTED: June 9, 1969

REVISED: May 4, 2000

EFFECTIVE: June 8, 2000

AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

## SECTION 4.01 REGISTRATION REQUIRED

The Authority regulates the classes of ~~((air-contaminant))~~ stationary sources, listed in Exhibit R, under the authority of RCW 70.94.151. An ~~((air-contaminant))~~ stationary source, listed in Exhibit R, whether publicly or privately owned, shall register with the Authority, unless exempted under Section 4.03 of this Article.

AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

## SECTION 4.02 GENERAL REQUIREMENTS FOR REGISTRATION

A. Registration Responsibility. ~~The owner, operator, or a designated agent of an ((air-contaminant)) stationary source, shall register said ((Registration of an air-contaminant)) stationary source, except those stationary sources exempted under Section 4.03 of this Article((, shall be made by the owner or operator of the source, or an appointed agent)), ((on)) using forms furnished by the Authority. The owner ((of the source)) and operator of the stationary source are responsible for registration and for submitting accurate information.~~

B. Registration Information. ~~The owner, operator, or designated agent shall register ((Registration shall be required for)) each emissions unit, including quantifiable fugitive air emissions, located at the stationary source. The owner, operator, or designated agent shall provide ((make reports)) information to the Authority, ((containing information,)) as may be required by the Authority, concerning location, size, and height of air contaminant outlets, processes employed, nature of the air contaminant emission, and such other information, as is relevant to air pollution ((and available or reasonably capable of being assembled)). The owner, operator, or designated agent shall update ((R)) registration information ((shall be updated)) annually, ((by the owner or operator on)) using forms provided by the Authority.~~

C. Signature. ~~((Each registration shall be signed by)) The owner, ((or)) operator, or the designated agent for such owner or operator shall sign each registration form verifying that the information on the form is to his or her knowledge, complete and accurate.~~

D. ~~((New Sources. The owner or operator of an air-contaminant source shall file a Notice of Construction and Application for Approval, in accordance with Article V of this Regulation, prior to establishing any new or modified air-contaminant source. An approved Notice of Construction suf-~~

~~ices to meet the initial requirement to register the air-contaminant source. Registration information shall be updated annually thereafter.))~~

D. Reporting requirements for transfer or change of ownership of registered stationary sources. ~~((Transfer of Ownership.))~~

1. The new owner or operator, that assumes ownership and/or operational control of a registered stationary source, shall report any change of ownership or change of operator to the Authority, ~~((on forms provided by the Authority,))~~ within ninety (90) days of completing transfer of ownership and/or assuming operational control ((any such change)). The new owner or operator shall report the change on "Change of Ownership Forms" provided by the Authority. The report shall contain the following information:

a. Legal name of the company prior to transfer;

b. Site address;

c. Previous owner's name;

d. New legal name of company (if different)

e. New owner's name;

f. New owner's mailing address;

g. New owner's phone number;

h. Effective date of the transfer;

i. Description of the affected emission units; and

j. New owner's or responsible agent's signature.

2. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a stationary source.

E. ~~((F.))~~ Reporting requirements for permanent shut-down of registered stationary sources. ~~((Source Closure.))~~

1. The owner or operator shall file a "Source Closure Notification Form" ((A report of closure shall be filed by the owner or operator)) with the Authority within ninety (90) days after the owner or operator determines that operations, producing air contaminant emissions, have permanently ceased. The report shall contain the following information:

a. Legal name of the company prior to closure or shut-down;

b. Stationary source address;

c. Effective date of the stationary source closure or emissions unit shutdown;

d. Description of the affected emission units; and

e. Owner's or responsible agent's signature.

~~((In the event the owner or operator of a source discontinues operations, but continues payment of the annual registration fee to the Authority, the registration and the status of the source with the Authority are maintained as if the source were still in operation. In such a case, a report of closure is not required.))~~

~~((Prior to re-opening a closed source, or establishing a new source at a site for which the Authority has received a closure report, the proponent shall contact the Authority for a determination as to whether Notice of Construction and Application for Approval must be filed with, and approved by the Control Officer, per the requirements of SCAPCA Regulation I, Article V))~~

PROPOSED

2. In the event of a permanent closure, process and pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g. disconnection of power to equipment, mechanical positioning that inhibits processing; placing of padlocks on equipment to prevent operation).

#### F. ~~(G.))~~ New Sources.

1. The owner or operator of an stationary source shall file a Notice of Construction and Application for Approval, in accordance with Article V of this Regulation, prior to establishing any new or modified stationary source. An approved Notice of Construction and Application for Approval suffices to meet the initial requirement to register the stationary source. Registration information shall be updated annually thereafter.

2. Prior to re-opening a closed stationary source, or establishing a new source at a site for which the Authority has received a "Source Closure Notification Form", the proponent shall contact the Authority for a determination as to whether a Notice of Construction and Application for Approval must be filed with, and approved by, the Control Officer, per the requirements of Article V of this Regulation, prior to operation.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Spokane County Air Pollution Control Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

### AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

#### **SECTION 4.03 REGISTRATION EXEMPTIONS**

A. Operating Permit Sources. Stationary ((S))sources subject to Chapter 173-401 WAC (air operating permit sources) are exempt from the registration requirements of this Article.

B. Grain Handling Facilities that handle less than or equal to 10 million bushels of grain annually. If registration has been made and a registration fee has been paid for a stationary source that is properly classified as a grain warehouse or grain elevator under Standard Industrial Classification (SIC) code 5153/NAICS 422510, 1972, as amended by the 1977 Supplement, and that is licensed by the Department of Agriculture under Chapter 22.09 RCW or by the federal government for purposes similar to those of licensure under Chapter 22.09 RCW, and that handles less than or equal to 10 million bushels of grain annually, registration or a registration fee shall not be required again unless the licensed capacity of the stationary source increases to greater than 10 million bushels of grain annually. The stationary source is subject to all other applicable requirements of this Regulation.

If the licensed capacity increases to greater than 10 million bushels of grain annually, registration shall be made, and a registration fee paid, prior to the date that the stationary source receives grain from the first harvest season that occurs after the increase in its licensed capacity. In addition, if required under Article V of this Regulation, a Notice of Construction and Application for Approval ((application)) shall be filed with and approved by the Authority prior to increas-

ing the licensed capacity of the stationary source to greater than 10 million bushels of grain annually.

~~((C. Agricultural Operations. Agricultural operations as defined in RCW 70.94.640 (5)(a) are exempt from the registration requirements of this Article.))~~

~~C. ((D.)) Dwellings of Four Families or Less.~~ Fuel burning equipment that serves dwellings of four or less families is exempt from the registration requirements of this Article.

~~((E. Source Specific Facilities. Any person may submit a written request to the Control Officer for an exemption from the registration requirements of this Article, providing justification for such request.~~

1. ~~At a minimum, the request shall provide an inventory of emissions, emission points, and location, sufficient for the Authority to determine how the source impacts air quality and the public.~~

2. ~~Within 30 calendar days of receipt of an exemption request, the Authority may require additional information it deems necessary to determine if an exemption is appropriate.~~

3. ~~Within 15 calendar days of receiving of the additional information, the Control Officer shall make a determination as to whether an exemption will be granted. Consideration shall be given to:~~

a. ~~Potential impacts from the source on ambient air quality standards;~~

b. ~~Potential nuisance from odors and particulate matter emissions;~~

c. ~~Public exposure to toxic air pollutants; as defined in WAC 173-400-030;~~

d. ~~The source's ability to meet applicable emission standards;~~

e. ~~Potential damage to business or property; and~~

f. ~~Importance of periodic verification that emission units, including any associated air pollution control equipment, are being properly maintained and operated.~~

4. ~~Any source exempted from registration under this subsection shall maintain sufficient documentation, as may be required in the Control Officer's determination, to verify that the source is entitled to continued exemption under this section.~~

5. ~~The Authority, or an authorized representative, may periodically verify, through inspection, survey, records request, or other appropriate means, that the source is meeting applicable regulations and the conditions of the exemption approval letter, if the exemption is granted.))~~

~~((F. Source Category De Minimis Level Exemptions. The Control Officer may establish de minimis levels, based on the criteria presented in Section 4.03.D, or other relevant criteria, below which registration of a source category, as defined in Exhibit R, is not required. Any source exempted from registration under this subsection shall maintain sufficient documentation, as required by the Authority, to verify that the source is entitled to continued exemption under this section.))~~

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Spokane County Air Pollution Control Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)****EXHIBIT R - STATIONARY SOURCE AND STATIONARY SOURCE CATEGORIES SUBJECT TO REGISTRATION**

**NOTE:** Emission rates in this Section are based on ~~((actual))~~ uncontrolled PTE emissions, unless otherwise noted.

1. Acid production plants, including all acids listed in Chapter 173-460 WAC.

2. Abrasive blasting operations, except portable blasting operations operating at a construction site, or at a site for less than ~~30 ((60))~~ days in any running 12-month period and operations that are inside a building and any associated air pollution control equipment that exhausts inside of the building.

3. Agricultural chemicals, manufacturing, mixing, packaging and/or other related air contaminant emitting operations (fertilizer concentrates, pesticides, etc.).

4. Agricultural drying and dehydrating operations.

5. Alumina processing operations.

6. Ammonium sulfate manufacturing plants.

~~7. ((Any category of stationary sources subject to a federal standard of performance (NSPS) under 40 CFR Part 60, other than Subpart S (Primary Aluminum Reduction Plants), BB (Kraft Pulp Mills) or AAA (New Residential Wood Heaters).))~~ Any stationary source category that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 - New Source Performance Standards (NSPS), effective the date listed in Article II, Section 2.13 of this Regulation; except Part AAA, (New Residential Wood Heaters). Ecology is responsible for regulation of projects subject to BB (Kraft Pulp Mills) and Subpart S (Primary Aluminum Reduction Plants);

~~8.a. ((Any source category subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 CFR Parts 61 and 63, other than Subpart M (asbestos on roadways, asbestos demolition or renovation activities, or asbestos spraying).))~~ Any stationary source that qualifies as a new or modified stationary source within the meaning of 40 CFR 61.02 - National Emission Standards for Hazardous Air Pollutants (NESHAP), (effective the date listed in Article II, Section 2.13 of this Regulation); except for asbestos on roadways, asbestos demolition or renovation activities subject to 40 CFR 61.145 and;

b. Any stationary source that qualifies as a new stationary source within the meaning of 40 CFR 63.2 - National Emission Standards for Hazardous Air Pollutants for Source Categories (commonly referred to as MACT Standards), effective the date listed in Article II, Section 2.13 of this Regulation;

c. Any stationary source that qualifies as a new major stationary source, or a major modification;

d. Any modification to a stationary source that requires an increase either in a facility-wide emission limit or in a unit specific emission limit.

9. A stationary source listed in 9.e., below that:

a. emits any single criteria pollutant, or its precursors, as defined in 40 CFR § 51.852, exceeding emission rates of 0.5 tons per year, or in the case of lead, emissions rates greater than or equal to .005 tons per year, or

b. emits toxic air pollutants, as defined in Article I, Section 1.04 of this Regulation (~~((WAC 173-460-020(20)))~~), with emission rates exceeding the small quantity emission rates established in WAC 173-460-080 (~~((2)(e))~~), or

c. emits combined air contaminants (criteria, VOCs, or TAPs) in excess of 1.0 ton per year, or

d. emits combined toxic air pollutant and volatile organic compound emissions greater than ~~((€))~~ 0.5 tons per year.

e. The above criteria in 9.a. through 9.d. applies to the following stationary source categories:

1) Bakeries

2) Bed lining or undercoating production or application operations,

3) Degreasers/solvent cleaners, not subject to 40 CFR Part 63, Subpart T (Halogenated Solvent Cleaners); including, but not limited to, vapor, cold, open top and conveyORIZED cleaner,

4) Evaporators,

5) Graphic art systems including, but not limited to, lithographic and screen printing operations,

6) Organic vapor collection systems within commercial or industrial facilities,

7) Soil and groundwater remediation operations,

8) Sterilizing ~~((equipment))~~ operations, including, but not limited to EtO and hydrogen peroxide, and other sterilizing operations,

9) Utilities, combination electric and gas, and other utility services (SIC 493/NAICS 221111 through 221210, not in order given),

10) Wood furniture stripping and treatment operations (commercial only), and

11) Any stationary source or stationary source category not otherwise identified (~~((listed))~~) in this exhibit.

10. Any stationary source with significant emissions as defined in ~~((SCAPCA Regulation 1;))~~ Article I (~~((X))~~), Section 1(~~((9)).04~~ (~~((1))~~)) of this Regulation.

11. Any stationary source required to obtain an approved Notice of Construction and Application for Approval under Article V of this Regulation.

12. Any stationary source (including stationary sources that generate fugitive emissions ~~((sources)))~~ for which the Control Officer determines that registration is necessary in order to reduce the potential impact from the stationary source's air emissions on: the health, safety, and/or welfare of the public, or unreasonable interference with any other property owner's use and enjoyment of his property, or damage to other property owner's property or business.

13. Any stationary source where the owner or operator has elected to avoid one or more requirements of the operating permit program established in Chapter 173-401 WAC, by limiting its potential-to-emit (synthetic minor) through an order issued by the Authority.

14. Any stationary source that is required to report periodically to demonstrate nonapplicability to requirements under Sections 111 or 112 of the Federal Clean Air Act.

15. Asphalt and asphalt products production operations (asphalt roofing and application equipment excluded).

16. Brick and clay products manufacturing operations (tiles, ceramics, etc). Noncommercial operations are exempt.

PROPOSED

17. Bulk gasoline and aviation gas terminals, bulk gasoline and aviation gas plants, and gasoline and aviation gas loading terminals.

18. Cattle feedlots with operational facilities, which have an inventory of ((~~for~~) one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season.

19. Chemical manufacturing operations.

20. Coffee roasting operations.

21. Composting operations, including commercial, industrial and municipal, except noncommercial agricultural and noncommercial residential composting activities.

22. Concrete production operations and ready mix plants.

23. Dry cleaning operations, using solvents that emit toxic air pollutants or volatile organic compounds.

24. Materials handling and transfer facilities that generate fine particulate and that exhaust more than 1,000 acfm to the ambient air, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere.

25. Flexible polyurethane foam, polyester resin, and styrene production operations.

26. Flexible vinyl and urethane coating operations.

27. Fuel burning equipment, including but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs greater than or equal to:

a. 500,000 Btu/hr using coal or other solid fuels with ≤ 0.5% sulfur;

b. 500,000 Btu/hr using used/waste oil, per the requirements of RCW 70.94.610;

c. 1,000,000 Btu/hr using kerosene, #1, #2 fuel oil, or other liquid fuel, except used/waste oil; (~~and~~)

d. 4,000,000 Btu/hr using gaseous fuels, such as, natural gas, propane, methane, LPG, or butane, including but not limited to, boilers, dryers, heat treat ovens and deep fat fryers; and ((-))

e. 400,000 Btu/hr, wood, wood waste, or paper;

28. Gasoline dispensing facilities, subject to Chapter 173-491 WAC, and aviation gas dispensing facilities with total tank capacities greater than 10,000 gallons.

29. Grain handling; seed, pea and lentil processing facilities. Registration shall be in accordance with Section 4.03.B.

30. Hay cubing operations and pelletizers, established at a dedicated collection and processing site.

31. Incinerators; as defined in Section 1.04 of this Regulation, including human and pet crematories and other solid, liquid, and gaseous waste incinerators.

32. Insulation manufacturing operations.

33. Metal casting facilities and foundries, ferrous.

34. Metal casting facilities and foundries, nonferrous.

35. Metal plating and anodizing operations.

36. Metallic and nonmetallic mineral processing, including, but not limited to, rock crushing, sand and gravel mixing operations.

37. Metallurgical processing operations.

38. Mills; lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board,

grass/stubble pressboard, pelletizing, or any combination thereof.

39. Mills; grain, seed, feed and flour production and related operations

40. Mills; wood products manufacturing operations (including, but not limited to, cabinet works, casket works, furniture and wood by-products).

41. Mineralogical processing operations.

42. Natural gas transmission and distribution (SIC 4923/NAICS 486210 and 221210, respectively).

43. Ovens/furnaces, kilns and curing, burnout, (including, but not limited to, ovens/furnaces that heat clean automotive parts, paint hooks, electric motors, etc.) except those that would otherwise be exempt under item 27.

44. Paper manufacturing operations, except Kraft and sulfate pulp mills.

45. Petroleum refineries.

46. Pharmaceuticals production operations.

47. Plastics and fiberglass fabrication, including gelcoat, polyester resin, or vinyl ester coating operations using more than 55 gallons per year of all materials containing volatile organic compounds or toxic air pollutants.

48. Refuse systems (SIC 4953/NAICS 562213, 562212, 562211, & 562219, respectively), including municipal waste combustors; landfills with gas collection systems and/or flares; hazardous waste treatment, storage, and disposal facilities; and wastewater treatment plants other than private and publicly owned treatment works (POTWs).

49. Rendering operations.

50. Sewerage systems, private and publicly owned treatment works (POTWs) with a rated capacity of more than 1 million gallons per day (SIC 4952/NAICS 221320).

51. Semiconductor manufacturing operations

52. Internal combustion engines used for standby, back-up operations only, and rated at or above five hundred brake horsepower.

53. Stationary internal combustion engines, other than engines used for standby or back-up operations ((emergency generator sets)), that are rated at one hundred brake horsepower or more, ((including engines)) that are integral to powering a stationary source or stationary source category ((registered under this exhibit)), including but not limited to, rock crushing, stump and woodwaste grinding, and hay cubing operations.

54. Stump and woodwaste grinding established at a dedicated collection and processing site.

55. Storage tanks for organic liquids, within commercial or industrial facilities, with capacities greater than 20,000 gallons.

56. Surface coating, adhesive, and ink manufacturing operations.

57. Surface coating operations, including; automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper, and other substrates.

58. Synthetic fiber production operations.

59. Synthetic organic chemical manufacturing operations.

60. Tire recapping operations.

61. Wholesale meat/fish/poultry slaughter and packing plants.



62. Startup of a new air contaminant source at a site where:

- a. a previous air contaminant source was located; and
- b. the nature of the business or pollutants of the new air contaminant source is different from the previous air contaminant source.

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

## ARTICLE V

### AMENDATORY SECTION [TITLE] (Amending Board Adoption, 6/9/69)

#### **NEW, MODIFIED, AND TEMPORARY STATIONARY SOURCES AND REPLACEMENT OR ALTERATION OF EMISSIONS CONTROL EQUIPMENT**

ADOPTED: June 9, 1969

REVISED: ?

EFFECTIVE: ?

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

### AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

#### SECTION 5.01 DEFINITIONS (RESERVED)

~~((In addition to the definitions provided in Article I of this Regulation and unless a different meaning is clearly required by context, words and phrases used in this Article shall have the following meaning:))~~

~~((A. Stationary Air Contaminant Source means any building, structure, facility, or installation, including any emissions unit as defined in Section 1.04 of this Regulation, that emits or may emit any air contaminant.))~~

~~((B. Modification means any physical change, or change in the method of operation of, a stationary air contaminant source that increases the amount of any air contaminant emitted by such a stationary air contaminant source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in 42 USC 7411, and with the rules implementing that section.))~~

~~((C. New Stationary Air Contaminant Source means the construction or installation of a stationary air contaminant source and any other project that constitutes a new source under the Federal Clean Air Act. Replacement of existing emission unit(s) with new or used emission unit(s) qualifies as a new stationary air contaminant source, except as provided by the Control Officer in a Notice of Construction Approval.))~~

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

### AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

#### SECTION 5.02 NOTICE OF CONSTRUCTION (NOC) - WHEN REQUIRED

~~((A. No person shall establish a new stationary air contaminant source or modify an existing stationary air contaminant source, including but not limited, to the sources listed in Exhibit R of Article IV of this Regulation, except as provided for in 5.02.G and 5.02.H of this section, unless a "Notice of Construction and Application for Approval" has been filed by the owner, operator, or their agent, of the stationary air contaminant source (using Authority prepared and furnished application and information request forms) and approved by the Control Officer. Review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.))~~

~~((A. No person shall establish a new stationary air contaminant source or modify an existing stationary air contaminant source, including but not limited, to the sources listed in Exhibit R of Article IV of this Regulation, except as provided for in 5.02.G and 5.02.H of this section, unless a "Notice of Construction and Application for Approval" has been filed by the owner, operator, or their agent, of the stationary air contaminant source (using Authority prepared and furnished application and information request forms) and approved by the Control Officer. Review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.))~~

A. A Notice of Construction application must be filed by the owner or operator and an order of approval issued by the permitting agency prior to the establishment of any new source or source categories. For purposes of this section "establishment" shall mean to "begin actual construction", as that term is defined in Article I, Section 1.04, and "new source" shall include any modification to an existing stationary source or source category, as defined in Article I, Section 1.04. Stationary sources or source categories subject to this Section include, but are not limited to, the following:

1. Stationary sources or source categories listed in Exhibit "R" of Article IV of this Regulation, except for those that are below emission thresholds listed therein; or

2. Any modification to an existing stationary source or source category which results in an increase in actual emissions, except for stationary sources or source categories with actual emission increases below emission thresholds listed in Exhibit "R" of Article IV of this Regulation; or

3. Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the Authority prior to establishment of any of the stationary sources listed in Items 7 and 8 of Article IV, Exhibit "R"; or

4.a. Establishment of a new major stationary source or source category;

PROPOSED

b. Major modifications to an existing stationary source or source category;

c. Establishment of a new major temporary stationary source or source category;

d. Major modification of a temporary stationary source or source category that is located at an existing stationary source or source category; or

5. Any modifications that require an increase either in a facility-wide emission limitation or a unit specific emission limit; or

6. Replacement of existing emissions unit(s) with new or used emissions unit(s); or

7. Restart of a stationary source or source category after "closure or shutdown", as defined in Article I, Section 1.04;

8. Relocation of an existing stationary source or source category, except as provided for in Section 5.02.H and as specified in Section 5.02.I; or

9. Location for the first time of a portable, (or temporary, if applicable) stationary source or source category operates in Spokane County.

10. Determination by the Authority that a Notice of Construction application is necessary in order to reduce the potential impact from any stationary source or source category's air emissions on: the health, safety, and/or welfare of the public, or unreasonable interference with any other property owner's use and enjoyment of his property, or damage to other property owner's property or business.

B. Stationary sources or source categories not subject to Section 5.02.A ((this requirement)) include those stationary sources or source categories listed in Sections 5.02.H, 5.02.I, 5.02.M and 5.02.N.1 of this Article.

C. The owner, operator, or their agent shall use Authority prepared and furnished application and information request forms when applying for a Notice of Construction and Application for Approval.

D. New source review of a modification shall be limited to the emissions unit or units proposed to be added to an existing or modified stationary source or source category and the air contaminants whose actual emissions would increase as a result of the modification. NOTE: Modification, as defined in Article I, Section 1.04 of this Regulation, does not have the same meaning as a Major Modification, defined in WAC 173-400-112 and WAC 173-400-113.

E. ((B-)) New ((and modified)) stationary ((air contaminant)) sources' or source categories' emission calculations shall be based on a stationary ((air contaminant)) source or source categories' "potential-to-emit", as defined in Article I, Section 1.04 of this Regulation ((Chapter 173-400-030 WAC)). Modified stationary source or source category emission calculations shall be based on the increase in "actual emissions", as defined in Article I Section 1.04 of this Regulation.

((C. No person shall replace or substantially alter the emissions control equipment installed on an existing stationary air contaminant source, except as provided for in 5.02.F and 5.02.G of this Section, unless a Notice of Construction and Application for Approval has been filed by the owner or operator of the stationary air contaminant source using Authority prepared and furnished application and information request forms and approved by the Control Officer.))

F. The Authority implements and enforces the requirements of WAC 173-400-114 for replacement or substantial alteration of emission control technology at an existing stationary source.

G. ((D-)) A separate Notice of Construction and Application for Approval shall be filed for each new or modified stationary ((air contaminant)) source, source category, or emissions control system, unless identical units are to be constructed, installed, or established and operated in an identical manner at the same facility((—F)), except that the owner or operator has the option to file one application for an entire facility, with a detailed inventory of stationary ((contaminant)) sources or source categories and their emissions related to that facility.

((E. A Notice of Construction and Application for Approval shall not be required to commence an alteration, which would normally require a Notice of Construction and Application for Approval, pursuant to 5.02.G((D)) of this Section, in the event of a breakdown or if delaying the alteration may endanger life or have other serious consequences. The Authority shall be notified in writing of the alteration no later than the first working day after the alteration is commenced and a Notice of Construction and Application for Approval shall be filed within 14 days after the day that the alteration is commenced. For purposes of compliance with Section 5.02, the Control Officer shall determine whether an alteration, commenced before issuance of an order of approval, meets the requirements of this subsection.))

H. ((F-)) A Notice of Construction and Application for Approval is not required for c((E))onstruction, installation, establishment, modification, or alteration of stationary ((air contaminant)) sources or source categories, comprised of equipment utilized exclusively in connection with any structure, which is designed for, and used exclusively as, a residence with not more than four dwelling units((—shall not require a Notice of Construction and Application for Approval)).

I. ((G-)) A Notice of Construction and Application for Approval is required for ((Owners or operators of temporary)) portable, (or temporary, if applicable) stationary ((air contaminant)) sources or source categories, operating in accordance with Section 5.08 - ((Temporary Stationary Air Contaminant Sources)) the first time that it operates in Spokane County. Thereafter, each time that the portable or temporary stationary source or source category relocates and operates at a new site in Spokane County, it must apply for and obtain an approved Notice of Intent to Install and Operate a Temporary Stationary Source pursuant to Section 5.08..((—shall not be required to apply for a Notice of Construction and Application for Approval.))

J. ((H-)) A person seeking approval to construct((—install,)) or modify ((a stationary air contaminant source)) an air operating permit source ((at a Chapter 173-401 WAC source, as defined in WAC 173-401-200(6))), may elect to integrate review of the air operating permit application or amendment, required under RCW 70.94.161, and the Notice of Construction and Application for Approval required by this Article. A Notice of Construction and Application for Approval designated for integrated review shall be processed

in accordance with the provisions (~~operating permit program procedures and deadlines~~) in Chapter 173-401 WAC.

K. A Notice of Construction and Application for Approval for a major modification in a nonattainment area, or for a major stationary source in a nonattainment area, is subject to the public notice requirements of Section 5.05.

L. An applicant filing a Notice of Construction and Application for Approval for a project described in WAC 173-400-117(2) (Special protection requirements for Class I areas) must send a copy of the application to the responsible federal land manager.

M. De minimis emission levels (based on Potential-To-Emit), below which a new source or stationary source category, is not subject to a Notice of Construction and Application for Approval, are listed in Exhibit "R" of Article IV of this Regulation. De minimis emission levels (based on actual emissions increase), below which a modification of an existing stationary source or source category, is not subject to a Notice of Construction and Application for Approval, are listed in Exhibit "R" of Article IV of this Regulation. The owner or operator shall maintain sufficient documentation, as required by the Authority, to verify that the new or existing stationary source or source category is entitled to continued exemption under this section.

#### N. Transfer of Ownership

1. If an existing stationary source or stationary source category, with a valid Order of Approval, is transferred to new ownership per Article IV, Section 4.02.D and the stationary source category or stationary source category is unchanged by the transfer, then the existing Order of Approval is transferable to the new ownership, as written.

2. An existing Order of Approval is not transferable to a stationary source or stationary source category that is installed or established at a site where a stationary source category or stationary source category was previously located and the business nature of the new source is different from the previous stationary source.

3. In either of the above cases, if the stationary source or stationary source category did not have a valid Order of Approval under the prior ownership, then the owner or operator of the new source or stationary source category shall apply for, and receive approval of, a Notice of Construction prior to commencing operation.

O. Except where Ecology is the permitting agency pursuant to WAC 173-400-141 (PSD) or Ecology's Industrial Sector has retained specific air pollution stationary sources or source categories exclusively under their jurisdiction, pursuant to RCW 70.94.422, the Authority permits, implements and enforces WAC 173-400-112 (Requirements for new sources in nonattainment areas) and WAC 173-400-113 (Requirements for new sources in attainment areas), in Spokane County.

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

### AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

#### SECTION 5.03 NOC AND NOI FEES

A. The person filing (~~the~~) a Notice of Construction (~~and Application for Approval~~) or Notice of Intent to Install and Operate a Temporary Stationary Source application shall pay a filing fee and plan review and approval fee according to Article X, Section 10.7 (~~Fees and Charges~~) of this Regulation.

B. Fees shall be paid without regard to whether a Notice of Construction (~~Notice of Construction and Application for Approval~~) or Notice of Intent to Install and Operate a Temporary Stationary Source application is approved or denied, or a threshold determination is made.

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

### AMENDATORY SECTION (Amending Order Res. 02-01, filed 1/3/02)

#### SECTION 5.04 INFORMATION REQUIRED

A. Each Notice of Construction and Application for Approval or Notice of Intent to Install and Operate a Temporary Stationary Source shall be accompanied by appropriate documentation that provides a detailed description of the stationary (~~air-contaminant~~) source. Such information (~~may~~) shall include, but is not limited to:

1. The new or modified stationary (~~air-contaminant~~) source, equipment and emissions control equipment subject to the order of approval or permission to operate (~~Notice of Construction~~);

2. Any equipment connected to, serving, or served by the new or modified stationary (~~air-contaminant~~) source, equipment, and emissions control equipment subject to the order of approval or permission to operate (~~Notice of Construction~~);

3. A plot plan, including the distance to, length, width, and height of; buildings within 200 feet, or other distance specified by the (~~Control Officer~~) Authority, from the place where the new or modified stationary (~~air-contaminant~~) source is or will be installed;

4. The proposed means for the prevention or control of the emissions of air contaminants;

5. Estimated emissions resulting from the proposal and the basis for the estimates, or sufficient information for the Authority to (~~calculate~~) determine the expected emissions;

6. Any additional information required by the (~~Control Officer~~) Authority to show that the proposed new or modified stationary (~~air-contaminant~~) source will meet the applicable air quality requirements of Chapter 70.94 RCW (~~and~~) the rules and regulations adopted thereunder, and the Authority's regulation(s);

8. 7. Any additional information required under WAC 173-400-112 or WAC 173-400-113;

(~~7.~~) a. The owner or operator shall provide (~~proof~~) documentation that the requirements of Article XI of this Regulation (Spokane Environmental Ordinance) have been met.

b. If SCAPCA is the lead agency for review of an Environmental Checklist (SEPA) or Environmental Impact Statement (EIS) related to the Notice of Construction or Notice of Intent to Install and Operate a Temporary Stationary Source

application being submitted, then the person filing the SEPA shall pay a SEPA review fee according to ~~((Regulation I,))~~ Article X, Section 10.07.E. of this Regulation. This fee shall be paid without regard to whether a Determination of Non-significance, Mitigated Determination of Nonsignificance or Determination of Significance is issued. ~~((the Notice of Construction and Application for Approval is approved or denied.))~~

B. Each Notice of Construction ~~((and Application for Approval))~~ or Notice of Intent to Install and Operate a Temporary Stationary Source application shall be signed by the owner, ~~((or))~~ operator, or their agent of the new or modified stationary ~~((air contaminant))~~ source~~((, or their agent))~~.

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

## **AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)**

### **Section 5.05 -PUBLIC ((NOTICE REQUIREMENTS)) INVOLVEMENT**

#### **A. Public Notice.**

1. Notice shall be published on the Authority's Internet website announcing the receipt of Notice of Construction applications (including the first time that a portable stationary source (or temporary stationary source, if applicable) operates in Spokane County) and other proposed actions. Notice shall be published for a minimum of fifteen (15) consecutive days. Publication of a notice on the Authority's website at the time of application receipt is not required for any application or proposed action that automatically requires a public comment period pursuant to Subsection B. of this Section. In the event that publication on the Authority's Internet website does not occur for the prescribed time period, notice will be published for a minimum of one (1) day in a newspaper of general circulation in the area of the proposed action. Each notice shall, at a minimum, include the following information:

a. The name and address of the owner or operator and the affected facility;

b. A brief description of the proposed action;

c. Authority contact information;

d. A statement that a public comment period will be provided upon request pursuant to Section 5.05.C of this Article; and

e. The date by which a request for a public comment period is due.

2. Requests for a public comment period shall be submitted to the Authority in writing via letter, fax, or electronic mail. A public comment period shall be provided pursuant to Subsection C. of this Section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement.

#### **B. Mandatory public comment period.**

1. A public comment period shall be provided pursuant to Subsection C. of this Section before approving or denying any of the following:

a. Any Notice of Construction application (this includes the first time that a portable stationary source (or temporary stationary source, if applicable), operates in Spokane County) for a new or modified "stationary source" or emission unit that results in a "significant", as defined in Section 1.04 of this Regulation, net increase, in emissions (actual or potential-to-emit) of any air contaminant regulated by state or federal law;

b. Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51, as amended, as part of review under Section 5.08 and 5.02 of this Article, WAC 173-400-112, WAC 173-400-113, WAC 173-400-117, or WAC 173-400-141;

c. Any order to determine RACT;

d. Any order in which public notice is required by state (WAC 173-400-171) or federal (40 CFR 51.161), laws or regulations;

e. Any order for a proposed new or modified stationary ((air contaminant)) source that would cause an annual increase of ten (10) tons or more of any air contaminant or precursor, for which ambient air quality standards have been established, or of any toxic air pollutant, as defined in Article I, Section 1.04 of this Regulation;

f. Any order for which the applicant requests approval of a risk analysis pursuant to Chapter 173-460 WAC;

g. Any order to establish a compliance schedule or a variance. A variance shall be handled as provided in Article III of this Regulation;

h. Any order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;

i. Any order to authorize a bubble, pursuant to RCW 70.94.155 and WAC 173-400-120;

j. Any order used to establish a creditable emission reduction, pursuant to WAC 173-400-131;

k. Any order issued under WAC 173-400-091 which establishes limitations on a "stationary source's" potential-to-emit;

l. Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;

m. Any change in conditions of an existing Notice of Construction determination, except for Sections 5.10.E.1 and 5.10.E.5 of this Regulation;

n. Any Notice of Construction application (this includes the first time that a portable stationary source (or temporary stationary source, if applicable), operates in Spokane County) for which request for public comment opportunity is made pursuant to Subsection A. of this Section; or

o. Any Notice of Construction application or other proposed action for which the Authority determines there is a substantial public interest.

p. Any Notice of Construction application designated for integrated review that includes a PSD permit application, an application for a "major modification" in a nonattainment area, or an application for a "major stationary source" in a

nonattainment area must also comply with the public notice requirements of WAC 173-400-171 and this Section of this Regulation.

C. Public comment period.

1. A public comment period shall be provided only after all information required by the Authority has been submitted and after applicable preliminary determinations, if any, have been made.

2. Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, shall be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and Article II, Section 2.03 of this Regulation.

3. Publication of comment period notice. Notice shall be published in a newspaper of general circulation in the area of the proposed project for a minimum of one (1) day. For applications or actions subject to a public comment period pursuant to Subsections B.1.n. or B.1.o. of this Section, publication on the Authority's Internet homepage for a minimum of thirty (30) days may be substituted for newspaper publication. Notice for a public comment period shall include the following information:

4. The name and address of the owner or operator and the affected facility;

a. A brief description of the proposal;

b. The location of the documents made available for public inspection;

c. Identification of a thirty-day period for submitting written comment to the Authority;

d. A statement that a public hearing may be held if the Authority determines within a thirty-day period that significant public interest exists;

e. Any other information required under state or federal laws or regulations;

f. The length of the public comment period in the event of a public hearing; and

g. For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the comment period notice shall explain the Authority's decision.

5. The cost of publishing any public notice required by this Section shall be paid by the owner or applicant.

6. EPA Notification. A copy of the comment period notice shall be sent to the EPA Region 10 Regional Administrator.

7. Consideration of public comment. The Authority shall make no final decision on any application or other action for which a public comment period has been provided until the public comment period has ended and any comments received have been considered.

8. Public hearings. Any person may request a public hearing within the thirty-day public comment period. Each request shall indicate the interest of the party filing it and why a hearing is warranted. The Authority may hold a public hearing if it determines significant public interest exists. The Authority will determine the location, date, and time of the public hearing. If a public hearing is held, the public comment period shall extend through the hearing date and there-

after for such period, if any, as the notice of public hearing may specify.

D. Public involvement for integrated review with an operating permit. Any Notice of Construction application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).

E. Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this Section (e.g., SEPA). This Subsection does not apply to applications for a "major modification" or a "major stationary source."

F. Public information. All information is available for public inspection at the Authority, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and Article II, Section 2.03 of this Regulation. Such information includes copies of Notice of Construction applications, orders of approval, regulatory orders, and modifications thereof.

A. ((The Control Officer shall publish, or cause to be published, a notice to the public of the opportunity to submit written comments, on a preliminary determination for an application, during a thirty (30) day period under any of the following conditions:

1. If required by state or federal laws or regulations; or

2. If the proposed new or modified stationary air contaminant source would cause an annual increase of ten (10) tons or more of any air contaminant or precursor, for which ambient air quality standards have been established, or toxic air pollutant, as defined in Article X, Section 10.1 of this Regulation; or

3. If the applicant requests approval of a risk analysis pursuant to Chapter 173-460 WAC; or,

4. If the Control Officer determines that such opportunity for comment is in the public interest.

B. The cost of publishing any public notice required by this Section shall be paid by the owner or applicant.

C. Such public notice shall be published in a newspaper of general circulation in the area of the proposal and shall contain the following information:

1. Name and address of the source, and the owner or operator of the source, if different.

2. Brief description of proposed construction.

3. The location at which a copy of the preliminary determination and a summary of information, considered in making such preliminary determination, are available to the public.

4. Announcement of a thirty day period for submitting written comment to the Authority, stating the ending date of the comment period.

5. Announcement that a public hearing may be held if the Control Officer determines within a thirty day period that significant public interest exists.

6. Any other information required under state or federal laws or regulations.

D. A copy of the public notice shall be sent to the U.S. Environmental Protection Agency Regional Administrator.))

PROPOSED

**AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)****SECTION 5.06 APPLICATION COMPLETENESS DETERMINATION**

**A.** Within thirty (30) days of receipt of a Notice of Construction and Application for Approval or PSD permit application (PSD permits are Ecology's jurisdiction), the Authority shall notify the applicant in writing that the application is complete or notify the applicant in writing of any additional information necessary, based on review of information already supplied, to complete the application.

**1.** For a project subject to PSD review under WAC 173-400-141 by Ecology, an NOC application is not deemed complete by the Authority until the application provides all information required to conduct the PSD review and a final determination on the PSD permit, by Ecology has been issued. The Authority shall ensure that its Notice of Construction review of the project is coordinated with Ecology's PSD review.

**2.** For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

**B.** The owner or operator shall supply sufficient information to enable the Authority to determine that the project will comply ~~((Determination of completeness shall be evaluated on the basis that the application contains all information required to determine that the proposal shall be in accord))~~ with Chapter 70.94 RCW ~~((, the Federal Clean Air Act (42 USC 7401 et seq.))~~) ~~((and))~~ the rules and regulations adopted thereunder, and the Authority's regulation(s).

**C.** As a condition of completeness determination, the ~~((Control Officer))~~ Authority may require payment of applicable fees, or a portion thereof, pursuant to Article X of this Regulation.

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

**AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)****SECTION 5.07 ISSUANCE OF APPROVAL OR ORDER**

**A.** For new or modified stationary ~~((air-contaminant))~~ sources,

**1.** Within sixty (60) days of receipt of a complete Notice of Construction and Application for Approval ~~((application))~~, the ~~((Control Officer))~~ Authority shall either issue a final determination on the application or, for those proposals subject to public notice requirements, initiate public notice and comment procedures under Section 5.05. If state or federal regulations require public notice ~~((is required by state or federal regulations))~~, the public notice shall occur in a manner that complies with both Section 5.05 and those sections of the state or federal regulations that are applicable. The Authority shall issue a final determination ~~((A))~~ as promptly as possible

after the close of the comment period ~~((, a final determination shall be issued by the Control Officer))~~.

**2.** The final determination may include:

**a.** An order of denial, if it is found that the proposal is not in accord with Chapter 70.94 RCW, ~~((the Federal Clean Air Act (42 USC 7401 et seq.))~~) ~~((and))~~ the rules and regulations adopted thereunder, and the Authority's regulation(s); or

**b.** An order of approval which may provide reasonable conditions ~~((as are reasonably))~~ necessary to assure maintenance of compliance with Chapter 70.94 RCW ~~((, the Federal Clean Air Act (42 USC 7401 et seq.))~~) ~~((and))~~ the rules and regulations adopted thereunder, and the Authority's regulation(s).

**3.** ~~((Prior to issuance, the))~~ Every final determination on a Notice of Construction and Application for Approval shall be reviewed, prior to issuance, and signed by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Authority.

**4.** If the new ~~((air-contaminant))~~ source is a major stationary source ~~((as defined in Chapter 173-400 WAC))~~, or the change is a major modification, as defined in WAC 173-400-112, ~~((as defined in Chapter 173-400 WAC))~~ where the new source is located inside of a non-attainment area, the Authority shall: ~~((:))~~

**a.** Submit any ~~((The))~~ Lowest Achievable Emission Rate (LAER) control technology determination, for any non-attainment criteria pollutant of concern and/or its precursor, that is included in a final order of approval ~~((determination will be submitted))~~ to the RACT/BACT/LAER Clearinghouse maintained by the EPA ~~((United States Environmental Protection Agency))~~; and

**b.** Send a copy of the final order of approval, with the LAER control technology determination, to EPA.

**5.** The owner or operator of a stationary source shall not "commence" construction or "begin actual construction", as those terms are defined in Article I, Section 1.04 of this Regulation, until the Authority approves the Notice of Construction and Application for Approval. ~~((Construction shall not "commence", consistent with the WAC 173-400-030 definitions of "begin actual construction", and "commenced construction", until the Notice of Construction application is approved by the Control Officer.))~~

**6.** The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order under this section shall not relieve any person from the obligation to comply with applicable emission control requirements or with any other provision of law.

**B.** ~~R((F))~~ replacement or substantial alteration of emission control equipment

**1.** Any person proposing to replace or substantially alter the emission control technology installed on an existing "stationary source" or emission unit shall file an Notice of Construction application with the Authority. If the replacement or substantial alteration meets the definition of "new source" or "modification" then the "new source" emissions standards of Article V, Section 5.02 through 5.07.A., WACs 173-400-112 or 400-113 shall apply. If the replacement or substantial alteration does not meet the definition of "new source" or "modification", then the requirements in B.2. through B.9. of this Section shall apply.

2. For projects not otherwise reviewable under Article V, Sections 5.02 through 5.07.B.1; Subsections B.2. through B.9. of this Section shall apply.

3. Within thirty (30) days of receipt of a notice of construction application under this section the Authority shall either notify the applicant in writing that the application is complete or that additional information is necessary to complete the application.

4. ((1-)) Within thirty (30) days of receipt of a complete Notice of Construction application under this section the ((Control Officer)) Authority shall either issue an order of approval, an order of denial, or a proposed ((Reasonably Available Control Technology)) RACT determination for the proposed project, pursuant to ((Chapter)) WAC 173-400-114 ((WAC)).

5. ((2-)) The ((order of approval)) final determination may:

a. Require that the owner of operator employ RACT for the affected emissions unit, and

b. Prescribe reasonable operation and maintenance conditions for the control equipment, and

c. Prescribe other requirements as authorized by Chapter 70.94 RCW.

6. ((3-)) Prior to issuance, the ((order of approval)) Notice of Construction final determination shall be reviewed and signed by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Authority.

7. ((4-)) Replacement or substantial alteration shall not commence until the Authority approves the application ((is approved by the Control Officer)). However, any Notice of Construction and Application for Approval, filed under ((Subsection 5.02-D)) Section 5.08.B.2 through Section 5.08.B.9, shall be deemed to be approved without conditions, if the Authority takes no action within thirty days of receipt of a complete application ((Notice of Construction and Application for Approval)).

8. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

9. Replacement or substantial alteration of control technology shall not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, shall not interfere with scheduled attainment of national ambient quality standards.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Spokane County Air Pollution Control Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

## **AMENDATORY SECTION (Amending Order Res. 02-01, filed 1/3/02)**

### **SECTION 5.08 TEMPORARY AND PORTABLE STATIONARY ((AIR CONTAMINANT)) SOURCES**

A. 1. Except as otherwise ((allowed)) provided in 5.08.G ((F)) of this Article, for portable stationary ((air contaminant)) sources which locate temporarily at specific sites in Spokane County, the owner or operator, or their agent shall obtain a Notice of Construction and Application for Approval the first

time that the portable stationary source operates in Spokane County. This Notice of Construction shall be subject to the same requirements of a new source.

2. Thereafter, each time that the portable stationary source relocates and operates at a new site in Spokane County, the owner or operator of said portable stationary source must apply for and obtain an approved Notice of Intent to Install and Operate a Temporary Stationary Source. ((shall be allowed to operate at the temporary location without filing a Notice of Construction and Application for Approval, provided))

3. I((t))he owner or operator, or their agent shall file((s a)) the Notice of Construction or Notice of Intent to Install and Operate a Temporary Stationary Source (NOI) at least ((fifteen (15))) ten (10) calendar days prior to starting the operation,((using))

4. The owner or operator shall apply for the NOC or NOI on Authority prepared and furnished application and information request forms((s)) and obtain((s)) an order of approval or permission to operate, respectively from the ((Control Officer)) Authority prior to operating at the site. Sufficient information, equivalent to the information required in Section 5.04.A of this Article, shall be supplied by the owner or operator, or their agent to enable the ((Control Officer)) Authority to determine that the operation will be in accordance with Chapter 70.94 RCW((, the Federal Clean Air Act (42 USC 7401 et seq.)), ((and)) the rules and regulations adopted thereunder, and the Authority's regulation(s).

5. ((a- The owner or operator shall also provide proof that the requirements of Article XI of this Regulation (Spokane Environmental Ordinance) have been met.

b. If SCAPCA is the lead agency for review of an Environmental Checklist (SEPA) or Environmental Impact Statement (EIS) related to the NOC or NOI being submitted, then the person filing the SEPA shall pay a review fee according to Regulation I, Article X. This fee shall be paid without regard to whether the Notice of Construction and Application for Approval is approved or denied.))

5. Except for nonroad engines, based on the source type and emission quantity, temporary stationary sources, not covered under Section 5.08.A.1, may be subject to new source review at the discretion of the Authority.

B. Permission to operate may be granted, subject to reasonable conditions ((as are reasonably)) necessary to assure compliance with Chapter 70.94 RCW((, the Federal Clean Air Act (42 USC 7401 et seq.)), ((and)) the rules and regulations adopted thereunder, and the Authority's regulation(s). If any conditions listed in Subsection 5.05.B((A)). are applicable to the proposal, a public comment period shall be held pursuant to Section 5.05.C.

Permission to operate may be granted for a limited time, but in no case ((longer than 180 consecutive days)) shall a temporary or portable stationary source remain at a location for more than twelve consecutive months, without first obtaining an approved Notice of Construction and Application for Approval.

((D. The person filing a Notice of Intent to Install and Operate a Temporary Source shall pay filing, plan review, and approval fees according to Article X, Fees and Charges,

of this Regulation. Fees shall be paid without regard to whether permission is granted or denied.)

(E. The Control Officer may revoke, or suspend permission to operate if the Control Officer determines that the stationary air contaminant source is not constructed, or operated as described in the Notice of Intent to Install and Operate a Temporary Source, including plan, specification, or other information submitted therewith.)

D. ((F.)) Permission to operate shall be invalid if:

1. Construction, installation, or operation does not begin within ((180)) 90 days of receipt of permission; or

((2. Construction, installation, or operation is discontinued for a period of 180 days or more; or))

((3. Construction, installation, or operation is not completed within a reasonable time, as determined by the Control Officer; or))

2. ((4.)) The operation is removed from the site ((for 30 consecutive days or longer)).

((G. Permission to operate, conditions of permission to operate, or denial of installation and operation of a temporary stationary air contaminant source may be appealed to the Pollution Control Hearings Board of Washington, as provided in Chapter 43.21B RCW.))

E. ((H.)) Installation or operation of a temporary or portable stationary ((air contaminant)) source shall not commence until the Authority approves the Notice of Construction or Notice of Intent to Install and Operate ((Establish)) a Temporary Stationary Source application, whichever applies ((is approved by the Control Officer)).

F. A temporary or portable stationary source, that is required to go through new source review, shall comply with the emission standards for a new source (including BACT or LAER, whichever is applicable under Sections 5.09.C & D) (except nonroad engines) and shall not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, shall not interfere with scheduled attainment of national ambient quality standards.

G. ((I.)) The following operations are exempt from ((Article V)) this Section.

1. Abrasive blasting units that operate at a site for less than 30 days in any 12-month period and as excepted in Exhibit R.2. A((H-other-a))brasive blasting units anticipated to operate more than 30 days in any 12-month period, but less than 1 year are subject to the requirements of this Section ((Article.)), except where the owner, operator, of an abrasive blasting unit, either establishes a permanent facility or operates an abrasive blasting unit at a site for more than 365 consecutive days, in which case, a Notice of Construction and Application for Approval must be approved by the Authority's, prior to establishment of said unit or facility.

2. Rock drilling operations.

3. Blasting operations.

4. Woodwaste chipping and grinding operations that operate at a site for less than 30 days in any 12-month period, except for operations that establish a permanent collection, storage and/or processing facility at a site or sites for purpose of future processing. All other woodwaste chipping and grinding operations are subject to the requirements of ((this Article)) new source review and the owner or operator must

obtain the Authority's approval of a Notice of Construction, prior to establishment of the stationary source.

5. Soil and groundwater remediation projects that ((the Control Officer determines)) have insignificant air pollution impacts, as defined in Exhibit "R" of Article IV of this Regulation.

6. All nonroad compression ignition engines.

H. Except for nonroad engines, a temporary or portable stationary source that is considered a major stationary source or major modification within the meaning of WAC 173-400-113, must also comply with the requirements in WAC 173-400-141.

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

## AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

### SECTION 5.09 OPERATING REQUIREMENTS

A. All equipment, machines, devices, and other contrivances, constituting parts of, or called for by plans, specifications or other information submitted pursuant to Section 5.02, 5.04, and 5.08 shall be maintained in good working order and operated at all times that air contaminant emissions may occur, unless otherwise specified by the ((Control Officer)) Authority.

B. All conditions of approval, established pursuant to Sections 5.07 and 5.08, shall be complied with.

C. All new and modified stationary ((air contaminant)) sources shall employ Best Available Control Technology (BACT), ((as defined in Chapter 173-400 WAC,)) and if applicable, Toxic Best Available Control Technology (TBACT), ((as defined in Chapter 173-460 WAC, except that, if the)) A new ((source is a)) major stationary source or ((the proposed modification is a)) major modification, shall employ the lowest achievable emission rate (LAER) ((shall be achieved)) for the contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

D. In no event shall the application of RACT, BACT, ((or) TBACT, or LAER permit a new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable ((F))federal or ((Washington S))state standard or regulation.

## AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

### SECTION 5.10 CHANGES TO AN ORDER OF APPROVAL OR PERMISSION TO OPERATE

A. The ((Control Officer)) Authority may revoke, revise, or suspend ((the)) an order of approval, ((or)) permission to operate a temporary stationary source, an order of approval for substantial replacement or alteration of emissions control equipment installed on an existing stationary source, or changes thereto, if the ((Control Officer)) Authority determines that the ((new or modified)) stationary ((air contaminant)) source is not constructed, installed or operated as



described in the *Notice of Construction and Application for Approval, or Notice of Intent to Install and Operate a Temporary Stationary Source, or changes thereto*, including the plans, specifications, or other information submitted therewith. Such proceedings shall follow the same process that apply to the initial issuance of the order of approval or permission to operate.

B. In addition to revocation, revision or suspension of an order of approval or permit to operate of a stationary source, the Authority may issue a Notice of Violation (NOV) in accordance with RCW 70.94.211.

~~(B. The Control Officer may revoke, revise or suspend the permission to operate a temporary source if the Control Officer determines that the source is not installed or operated as described in the Notice of Intent to Install and Operate a Temporary Source including the plans, specifications, or other information submitted therewith.)~~

~~C. The ((applicant)) owner or operator may request, at any time, a change in conditions of an order of approval or permission to operate a temporary stationary source and the ((Control Officer)) Authority may approve such a request provided the ((Control Officer)) Authority finds that:~~

~~1. The change in conditions will not cause the stationary ((air contaminant)) source to exceed an emissions standard; ((and))~~

~~2. No national ambient air quality standard shall be violated ((will be exceeded)) or if in a nonattainment area, shall not interfere with scheduled attainment of national ambient quality standards as a result of the change; ((and))~~

~~3. The change will not adversely impact the ability of the ((Control Officer)) Authority to determine compliance with an emissions standard; ((and))~~

~~4. The revised order of approval or permission to operate will continue to require BACT, as defined at the time of the original order of approval or permission to operate, for each new source approved by the order of approval or permission to operate, except where the Federal Clean Air Act requires LAER; and~~

~~5. The revision meets the requirements of Article V of this Regulation, WAC 173-400-112, WAC 173-400-113 and WAC 173-400-141, as applicable.~~

~~D. A fee, as established in Section 10.07 of this Regulation, shall be assessed to, and paid by, the applicant for requests pursuant to Subsection 5.10.C.~~

~~E. "Order of approval" and "permission ((t)) to operate" revisions may be initiated by the ((Control Officer)) Authority, without fees charged to the owner or operator, as long as the stationary ((air contaminant)) source continues to comply with all applicable requirements of Chapter 70.94 RCW ((and the Federal Clean Air Act (42 USC 7401 et seq.)) ((and)) the rules and regulations adopted thereunder, and the Authority's regulation(s), and the ((Control Officer)) Authority determines that the order of approval or permit to operate:~~

~~1. has typographical errors, or~~

~~2. has conditions listed therein that are ineffective or unreasonable, or~~

~~3. has conditions that no longer apply because the affected stationary ((air contaminant)) source or associated process or process materials have been significantly altered, or~~

~~4. has conditions that no longer apply due to revisions to ((F))federal, ((S))state, or ((L))local laws or regulations, or~~

~~5. does not accurately show current ownership, name, address, phone number, or there are other minor administrative inaccuracies.~~

~~F. The ((Control Officer)) Authority may not modify, delete, or add conditions to an existing order of approval or permit to operate under Section 5.10.E, unless the owner or operator is notified in writing at least 30 days in advance of the effective date of the change. Modified, deleted or added conditions may be appealed in accordance with ((RCW)) Chapter 43.21B RCW ((-340)).~~

G. Changes to conditions in an order of approval for a new source, for modifications to an existing stationary source, and replacement or substantial alteration of emission control equipment of an existing stationary source are subject to the public involvement provisions of Section 5.05 of this Regulation.

H. This Article does not prescribe the exact form that change of condition requests must take. However, if the request is filed on an order of approval, that application must be acted upon consistent with the timelines in Sections 5.06 and 5.07 or if a permit to operate, consistent with Section 5.08 of this Article.

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

#### AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

##### SECTION 5.11 NOTICE OF ((COMPLETION)) START-UP OF A STATIONARY SOURCE

The owner or operator of the new, ((or)) modified, or temporary stationary ((air contaminant)) source, or replacement or substantial alteration of emission control equipment at an existing stationary source shall notify the Authority at least seven (7) days prior to the ((new or modified)) stationary ((air contaminant)) source's expected start-up date, or a shorter time, if approved by the ((Control Officer)) Authority.

#### AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

##### SECTION 5.12 WORK DONE WITHOUT AN APPROVAL

A. Except as provided for in Subsection 5.02.H and 5.02.M, when:

1. A stationary source is constructed, installed, modified, or operated prior to receiving approval of a Notice of Construction application from the Authority; or

2. Emission control equipment is replaced, installed, or substantially altered on an existing stationary source prior to receiving approval of a Notice of Construction application from the Authority; or

3. A temporary or portable stationary source is installed or operated at a site prior to receiving approval of either a Notice of Construction or Notice of Intent to Establish a Tem-

PROPOSED

porary Stationary Source application from the Authority, whichever is appropriate;

the Authority may assess a compliance investigation fee to the owner or operator, in addition to the fees required in Sections 5.03 and 5.08 of this Regulation as a part of the Notice of Construction or Notice of intent to Establish a Temporary Stationary Source review. The compliance investigation fee is established in Section 10.07 of this Regulation. Payment of the compliance investigation fee does not relieve any person from the requirement to comply with applicable regulations, nor from any penalties for failure to comply.

~~(Where construction, installation, modification, or operation of an stationary air contaminant source is commenced or performed prior to receiving an order of approval or permission to operate from the Control Officer, except as provided for in Subsection 5.02.F and 5.02.G, the Control Officer may conduct, or cause to be conducted, a compliance investigation as part of the Notice of Construction or Notice of Intent to Establish a Temporary Source review. In such case, a compliance investigation fee, as established in Section 10.07 of this Regulation, shall be assessed to, and paid by, the owner or operator, in addition to the fees required in Sections 5.03 and 5.08 of this Regulation. Payment of the compliance investigation fee does not relieve any person from the requirement to comply with applicable regulations, nor from any penalties for failure to comply.)~~

#### AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

##### SECTION 5.13 ORDER OF APPROVAL CONSTRUCTION TIME LIMITS

A. An order of approval, issued pursuant to Section 5.07 or 5.08.A.1 shall become invalid if:

1. Construction is not commenced within eighteen months after the receipt of the approval, or
2. Construction is discontinued for a period of eighteen months or more, or
3. Construction is not completed within eighteen months of commencement ~~((a reasonable time, as determined by the Control Officer)).~~

B. The ~~((Control Officer))~~ Authority may extend ~~((the))~~ an ((18)) eighteen-month period, as provided for in Section 5.13.A, upon a satisfactory showing that an extension is justified. The ~~((Control Officer))~~ Authority may approve such a request provided that:

1. No new requirements, such as New Source Performance Standards ~~((Title)) 40 CFR((Code of Federal Regulations))~~ Part 60), National Emissions Standards for Hazardous Air Pollutants ~~((Title)) 40 CFR((Code of Federal Regulations))~~ Parts 61 and 63), or state and local regulations, have been adopted pursuant to Chapter 70.94 RCW or the Federal Clean Air Act (42 USC 7401 et seq.) which would change the order of approval, had it been issued at the time of the extension; and

2. If there is a control technology requirement, pursuant to sections WAC 173-400-112, WAC 173-400-113, or WAC 173-400-114 ~~((of Chapter 173-400 WAC))~~; or ~~((Article V))~~ Section 5.09.C of this Article ((Regulation)); that no technologies have been subsequently identified which would change

the order of approval, had it been issued at the time of the extension; and

3. The information presented in the *Notice of Construction and Application for Approval* and associated documents and the ~~((assumptions))~~ determinations that were made by the ~~((Control Officer))~~ Authority during review of the application continue to accurately represent the design, configuration, equipment, and emissions of the proposed stationary ~~((air contaminant))~~ source; and

4. The applicant certifies that the stationary ~~((air contaminant))~~ source will comply with all applicable requirements of Chapter 70.94 RCW ~~((and the Federal Clean Air Act (42 USC 7401 et seq.))~~, ~~((and))~~ the rules and regulations adopted thereunder, and the Authority's regulation(s).

C. Subsection 5.13.A. does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within ~~((18))~~ eighteen months of the projected and approved commencement date.

#### AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)

##### SECTION 5.14 APPEALS

A. An order of approval, permission to operate, conditions and change thereto, revocation, revision, or suspension thereof, or order of denial of an application for installation and operation of a stationary source may be appealed to the Pollution Control Hearings Board of Washington within 30 calendar days of receipt, as provided in Chapter 43.21B RCW.

~~((A. The following may be appealed to the Pollution Control Hearings Board of Washington within 30 calendar days of receipt, as provided in Chapter 43.21B RCW:~~

1. ~~Notice of Construction and Application for Approval~~
  - a. ~~An order of approval,~~
  - b. ~~Conditions of an order of approval, or~~
  - e. ~~An order of denial of a Notice of Construction and Application for Approval.~~

2. ~~Notice of Intent to Install and Operate a Temporary Source~~

- a. ~~a permission to operate,~~
- b. ~~Any Conditions of an contained in a permission to operate, or~~
- e. ~~an order of denial of a Notice of Intent to Install and Operate a Temporary Source.)~~

B. The Authority shall promptly mail a copy ~~((ies))~~ of each order, approving, ~~((or))~~ denying, revoking, revising, or suspending an Order of Approval ((Notice of Construction or Notice of Intent)) or Permit to Operate, to the applicant and to any other party ~~((in the case of a petition, the person or organization submitting the petition))~~ who submitted timely comments on the action ((application)). The approval, ~~((or))~~ denial, revocation, revision, or suspension order shall include a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board and, where applicable, to the U.S. EPA Environmental Appeals Board.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane County Air Pollution Control

Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

**SECTION 5.15 OBLIGATION TO COMPLY**

A. The absence of an ordinance, resolution, rule or regulation, or the failure to issue an order pursuant to this Article shall not relieve any person from the obligation to comply with this Regulation or with any other provision of law.

**ARTICLE VI**

**EMISSIONS PROHIBITED**

**ADOPTED: June 9, 1969**

**REVISED: ?**

**EFFECTIVE: ?**

**AMENDATORY SECTION (Amending Order Res. 01-15 filed 12/6/01)**

**ARTICLE VI SECTION 6.01 OUTDOOR BURNING...**

C. Definitions. Unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning:

1. Agricultural Burning means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural burning practices and research task force established in ~~((Chapter))~~ RCW 70.94.650 or other authoritative source on agricultural practices...

15. Outdoor Burning or Open Burning-See definition in Article I, Section 1.04 of this Regulation ~~((means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion in a manner approved by the Authority. Outdoor burning means all types of outdoor burning except agricultural burning and silvicultural burning.))~~...

E. General Conditions. Considering population density and local conditions affecting air quality, the Authority or permitting authority shall establish conditions for all permits to minimize air pollution as much as practical. Such conditions may be general (applying to all permits) or specific (applying to individual permits). Conditions may address permissible hours of burning, maximum size or volume of material to be burned, requirements for good combustion practice, burning under specified weather conditions, pre-burn and post-burn reporting, and other criteria, determined by the permitting authority, as necessary to minimize air pollution. Unless exempt per Section 6.01.G, any person who practices or permits the practice of outdoor burning shall, in addition to any specific permit conditions established imposed, comply with the following general conditions:...

13. If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrestor constructed of iron, heavy wire mesh, or other non-combustible material with openings not larger than one-half inch...

G. Exceptions. Exceptions to Sections 6.01.D and E. shall be made as follows:

1. Exceptions that do not Require an Outdoor Burning Permit. The prohibitions in Section 6.01.D and the general conditions in Section 6.01.E are waived as indicated for the following types of fires:

a. Indian ceremonial fires are exempt from the prohibitions in Section 6.01.D and Section 6.01.E.4, 6, 7 and 11...

8. Permit timelines. For fires in Section 6.01.G.2.a, b and f-1((k)), all applicants shall submit an application in accordance with Section 6.01.H.8.a. For fires in Section 6.01.G.2.c-e, all applicants shall submit an application in accordance with Section 6.01.H.8.a and/or b.

a. 30-day permit (for fires in Section 6.01.G.2)...

**AMENDATORY SECTION (Amending Order Res. 88-09, filed 12/1/88)**

**ARTICLE VI SECTION 6.02 ((VISUAL)) VISIBLE EMISSIONS**

A. It shall be unlawful for any person to cause or allow the emission of air contaminant from any emission point which equals or exceeds twenty percent opacity for an aggregate of more than three (3) minutes in any one-hour period except:

1. When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not equal or exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. As such, this practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the ~~((a))~~ Authority shall be advised of the schedule.

2. When the presence of uncombined water is the only reason for the failure of an emission to meet the requirements of this section. The burden of proof to establish the quantity of uncombined water in the emission shall lie with the owner or operator who is seeking to bring the emission from his equipment or process within the requirements of Section 6.02A.

3. When otherwise specifically permitted by Article VIII, Section 8.05 of this ~~((r))~~ Regulation (i.e. solid fuel burning devices). ~~((and;))~~

4. ~~((When, pursuant to R.C.W. 70.94.331, the Authority has approved an alternate opacity limitation based upon an appropriate technical demonstration of the relationship between the opacity and the particulate concentration of an emission source.))~~

B. The opacity of an air contaminant shall be measured at the point of its emission, except when the point of emission cannot be readily observed, it may be measured at an observable point on the plume nearest the point of emission.

PROPOSED

C. Visible emissions shall be determined by using Ecology Test Method 9A. (~~(a certified observer or equivalent methods.)~~)

D. The emission limits of this section shall apply to each emission point regardless of the number of emissions units connected to a common stack...

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

#### AMENDATORY SECTION (Amending Board Adoption, filed 6/9/69)

#### ARTICLE VI SECTION 6.03 INCINERATOR BURNING AND INCINERATION HOURS

A. The Authority, implements and enforces WAC 173-400-050, in Spokane County in addition to Parts B through E of this Section. The more stringent requirement in WAC 173-400-050 or Section 6.03 supersedes the lesser.

B. ~~((A))~~ It shall be unlawful for any person to burn any combustible refuse in any incinerator within the jurisdiction of this Authority except in an approved multiple-chambered incinerator or in equipment found by the Control Officer in advance of such use to be equally effective for the purpose of air pollution control. The Control Officer may require the installation of additional control apparatus on an incinerator of approved design, if he finds that it is not effectively controlling air pollution emissions or is the cause of legitimate complaints.

C. ~~((B))~~ It shall be unlawful for any person to cause or allow the operation of an incinerator at any time other than daylight hours, except with the approval of the Control Officer.

D. ~~((C))~~ Approval of the Control Officer for the operation of an incinerator at other than daylight hours may be granted upon the submission of a written request stating:

1. Full name and address of the applicant.
2. Location of the incinerator.
3. A description of the incinerator and its control equipment.
4. Good cause for issuance of such approval.
5. The hours, other than daylight hours, during which the applicant seeks to operate the equipment.
6. The length of time for which the exception is sought.

E. No one shall install or operate an "Air Curtain Incinerator" or "Wigwam Burner" within the Authority's jurisdiction.

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

#### AMENDATORY SECTION (Amending Order Res. 87-02, filed 4/2/87)

#### ARTICLE VI SECTION 6.04 ODORS AND NUISANCES

A. Effective control apparatus and measures shall be installed and operated to reduce odor-bearing gases and particulate matter emitted into the atmosphere to a reasonable minimum.

B. The Board or Control Officer may establish reasonable requirements that the building or equipment be closed and ventilated in such a way that all the air, gas, and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the atmosphere.

C. Odors caused by agricultural activities consistent with good agricultural practices exempt from this section:

1. Odors caused by agricultural activities consistent with good agricultural practices on agricultural land are exempt from the requirements of this section unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the ~~((a))~~ Authority shall consult with a recognized third-party expert in activity prior to issuing any notice of violation.

2. Any notice of violation issued under this section pertaining to odors cause by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors have substantial adverse effect on public health.

3. In any appeal to the Pollution Control Hearings Board or any judicial appeal of final order pertaining to odors caused by agricultural activity, the ~~((a))~~ Authority shall prove the activity is inconsistent with good agricultural practices or that the odors have a substantial adverse impact on public health.

4. If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

5. As used in this section:

a. "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.

b. "Good agricultural practices" mean economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

b. "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.

6. The Authority, implements and enforces WAC 173-400-040(4), in Spokane County in addition to Parts A through C.6 of this Section. The more stringent requirement in WAC 173-400-040(4) or Section 6.03 supersedes the lesser...

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

**AMENDATORY SECTION (Amending Order Res. 89-07, filed 5/4/89)****ARTICLE VI SECTION 6.05 PARTICULATE MATTER AND PREVENTING PARTICULATE MATTER FROM BECOMING AIRBORNE**

A. It shall be unlawful for any person to cause or allow the discharge of particulates in sufficient numbers to unreasonably cause annoyance to any other person when deposited upon the real property of others. ~~((-except as follows:~~

~~1. Temporarily due to breakdown of equipment provided the breakdown is reported on as soon as possible but no later than the next regular working day and repairs are promptly made.~~

~~2. The time period allowed by the Control Officer for the owner or operator to meet the compliance order.))~~

B. It shall be unlawful for any person to cause or permit particulate matter to be handled, transported or stored without taking reasonable precautions to prevent the particulate matter from becoming airborne.

C. It shall be unlawful for any person to cause or permit a building or its appurtenances or a road to be constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Reasonable precautions to prevent particulate matter from becoming airborne must also be used on roads used as detour routes around roads, or section of road that are being constructed, altered, repaired, demolished, or closed for any purpose.

D. It shall be unlawful for any person, including the owner or person in control of real property to cause or allow particulate matter to be deposited upon a paved roadway open to the public without taking every reasonable precaution to minimize deposition. Reasonable precautions shall include, but are not limited to, the removal of particulate matter from equipment prior to movement on paved streets and the prompt removal of any particulate matter deposited on paved streets.

E. It shall be unlawful for any person to cause or allow visible emissions of fugitive dust unless reasonable precautions are employed to minimize the emissions. Reasonable precautions may include, but are not limited to, one or more of the following:

1. The use of control equipment, enclosures, and wet (or chemical) suppression techniques, and curtailment during high winds;

2. Surfacing roadways and parking areas with asphalt, concrete, or gravel;

3. Treating temporary, low traffic areas (e.g., construction sites) with water or chemical stabilizers, reducing vehicle speeds, constructing pavement or rip rap exit aprons, and cleaning vehicle undercarriages and tires before they exit to prevent the track-out of mud or dirt onto paved public roadways; or

4. Covering or wetting truck loads or allowing adequate freeboard to prevent the escape of dust-bearing materials...

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

**AMENDATORY SECTION (Amending Board Adoption, filed 6/9/69)****ARTICLE VI SECTION 6.06 EMISSION OF AIR CONTAMINANTS OR WATER VAPOR, DETRIMENT TO PERSONS OR PROPERTY (SEE WAC 173-400-040(5))**

A. The Authority, implements and enforces WAC 173-400-040(5). ~~((It shall be unlawful for any person to cause or permit the emission of an air contaminant or water vapor, including an air contaminant whose emission is not otherwise prohibited by this Regulation, if the air contaminant or water vapor causes detriment to the health, safety, or welfare of any person or causes damage to property or business.~~

~~B. Nothing in this Regulation shall be construed to impair any cause of action or legal remedy thereof or any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner of concentration as to constitute air pollution or a common law nuisance.))~~

**AMENDATORY SECTION (Amending Board Adoption, filed 6/9/69)****ARTICLE VI SECTION 6.07 EMISSION OF AIR CONTAMINANT CONCEALMENT AND MASKING RESTRICTED (SEE WAC 173-400-040(7))**

A. The Authority, implements and enforces WAC 173-400-040(7).

~~((A. It shall be unlawful for any person to willfully cause or permit the installation or use of any device or use of any means which, without resulting in a reduction in the total amount of air contaminant emitted, conceals an emission of air contaminant which would otherwise violate Section 6.04, 6.05, and 6.06, or this Article.~~

~~B. It shall be unlawful for any person to cause or permit the installation or use of any device or use of any means designated to mask the emission of an air contaminant which causes detriment to health, safety or welfare of any person.))~~

**AMENDATORY SECTION (Amending Board Adoption, filed 6/9/69)****ARTICLE VI SECTION 6.08 REPORT OF BREAKDOWN**

A. The owner or operator of a source which emits pollutant(s) exceeding any ~~((of the))~~ limit(s) established by Ecology or the Authority in any order(s), rule(s) or regulation(s) that apply to the facility ~~((this Regulation))~~ as a direct result of unavoidable upset conditions or unavoidable and unforeseeable breakdown of equipment or control apparatus may be exempt from penalties if:

1. The upset or breakdown is reported to the Authority on the next regular working day.

2. The owner or operator shall, upon request of the Control Officer, submit a report giving:

a. The causes.

b. The steps to be taken to repair the breakdown, and

c. A time schedule for the completion of the repairs.

PROPOSED

3. The owner or operator can prove to the Control Officer that the excess emissions due to breakdown were unavoidable by adequately demonstrating that:

a. The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

b. The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

c. The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emissions unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

B. The Control Officer on receipt of a report (Subsection A.2.) from the owner or operator describing a breakdown may:

1. Allow continued exempt operation, but only for a limited time period, after which the owner or operator will be required to comply with this Regulation, or the applicable permit condition, or be subject to the penalties in Section 2.11. An exemption granted under this Section 6.08, may be withdrawn if the exempt operation becomes a cause of complaints.

2. Require that the ~~((plant))~~ facility curtail or cease operations of the equipment, which emits pollutants exceeding any of the limits established by this Regulation or in any permit condition, until repairs are completed, if the Control Officer determines that the quantity of pollutants, or the nature of the pollutants, could endanger human health and safety, cause injury to plant and/or animal life, or cause damage to property.

#### AMENDATORY SECTION (Amending Order Res. 94-28, filed 11/3/94)

#### ARTICLE VI SECTION 6.09 (RESERVED) ((EXCEPTIONS TO THIS ARTICLE

~~The following equipment is exempt from Section 6.02 of this Article:~~

~~Grain elevators engaged exclusively in receiving, transferring, and storing of cereal grains or legumes.))...~~

#### AMENDATORY SECTION (Amending Order Res. 01-04, filed 2/2/01)

#### ARTICLE VI SECTION 6.11 AGRICULTURAL BURNING

In addition to this Section of the Regulation, the Authority, implements and enforces Chapter 173-430 WAC. The more stringent requirement in Chapter 173-430 or Section 6.11 supersedes the lesser...

#### AMENDATORY SECTION (Amending No Order)

#### ARTICLE VI SECTION 6.12 ((INTENTIONALLY BLANK)) RESERVED

#### AMENDATORY SECTION (Amending Order Res. 98-07, filed 5/7/98)

#### ARTICLE VI SECTION 6.13 GENERAL SURFACE COATING...

C. Definitions. Unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning:

1. Airless Spray means a spraying system that uses hydraulic atomization instead of air atomization. The coating is supplied to the gun under high fluid pressure between 1000 and 3000 psig and the coating is forced through a small orifice.

2. Air-Assisted Airless Spray means a spraying system that combines air and airless features. An airless type fluid tip atomizes the paint and shapes the fan pattern at fluid pressures between 300 and 1000 psig. Lower pressure air from 10 to 30 psig combines at the spray cap to adjust the fan shape to eliminate heavy edges (tails).

3. Automated means the technique, method, or system of operating or controlling a process by mechanical, electrical, hydraulic, or electronic means independent of human intervention.

4. Brush Coat Application means manual application of coatings by use of a paint brush.

5. Coating means a material or formulation of materials that is applied to or impregnated into a surface in order to beautify, protect, enhance the function, or otherwise cover the surface.

6. Container means the individual receptacle that holds a coating or coating component for storage and distribution.

7. ~~((6:))~~ Dip Coat Application means application of coatings in which the surface to be coated is immersed in a solution (or dispersion) containing the coating material and withdrawn.

8. ~~((7:))~~ Electrostatic Application means application of coatings where an electrostatic potential is created between the part to be coated and the paint particles.

9. ~~((8:))~~ Exempt Solvent means a solvent, or solvent component, which is not a volatile organic compound (VOC).

10. ~~((9:))~~ Flow Coat Application means application of coatings by flowing the coating over the surface to be coated and draining the excess coating to a collection system.

11. ~~((10:))~~ High Volume, Low Pressure (HVLP) or Low Volume, Low Pressure (LVLP) coating system means equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the nozzle and that exhibits a minimum transfer efficiency of 65%, as applied).

12. ~~((11:))~~ Light Duty Vehicle means a passenger car, truck, van, or other motor vehicle which has a gross vehicle weight of 8500 pounds or less, or components thereof.

PROPOSED

~~((12. Metallic/Iridescent Topcoat means any coating that contains more than 5 grams per liter (0.042 lb/gal) of metal or iridescent particles, as applied to the surface, where such particles are visible in dried film.))~~

13. Multi-Coat System means a coating system where more than one product or coat is sequentially applied to the same surface and generally consists of a pigmented base coat, one or more semi-transparent mid-coats, and a transparent clear coat. The VOC content for a multi-coat system shall be calculated as follows:

$$VOC_{TM} = \frac{VOC_{BC} + VOC_{X1} + VOC_{X2} + \dots + VOC_{Xn} + 2VOC_{CC}}{n+3}$$

where:

VOC<sub>TM</sub> is the average sum of the VOC content, as applied to the surface, in a multi-coat system; and

VOC<sub>BC</sub> is the VOC content, as applied to the surface, of the base coat; and

VOC<sub>X</sub> is the VOC content, as applied to the surface, of each sequentially applied mid-coat; and

VOC<sub>CC</sub> is the VOC content, as applied to the surface, of the clear coat (Two coats are applied); and

n is the total number of coats applied to the primer coat(s) surface.

~~((14. Precoat means any coating that is applied to bare metal, primarily to deactivate the metal surface for corrosion resistance to a subsequently applied water based primer.))~~

14. ~~((15.))~~ Pre-packaged Aerosol Can Application means application of coatings from cans which are sold by the coating supplier as non-reusable, hand-held pressurized containers. The coating is expelled as a finely divided spray when a valve on the container is depressed.

~~((16. Pretreatment Wash Primer means any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal to etch the metal surface to enhance corrosion resistance and adhesion of subsequently applied coatings.))~~

15. ~~((17.))~~ Primer means any coating that is applied to a surface to enhance corrosion resistance, protection from the environment, functional fluid resistance, and adhesion of subsequently applied coatings.

~~((18. Primer Sealer means any coating that is applied prior to the application of a topcoat to enhance corrosion resistance, adhesion of the topcoat, color uniformity, and the ability of an undercoat to resist penetration by the topcoat.))~~

~~((19. Primer Surfacer means any coating that is applied prior to the application of a topcoat to enhance corrosion resistance, adhesion of the topcoat, and a uniform surface by filling in surface imperfections.))~~

16. ~~((20.))~~ Reducer means any solvent added to a coating which has the effect of reducing the viscosity of the coating or shortening the drying time.

17. ~~((21.))~~ Refinishing means reapplying coating to a surface to repair, restore, or alter the finish.

18. ~~((22.))~~ Roll Coat Application means manual application of coatings by the use of a paint roller.

19. ~~((23.))~~ Solvent Consumption means the volume of solvent purchased or otherwise procured, less the volume recycled or disposed. In the absence of records which docu-

ment the transfer of solvent to an authorized recycler or waste hauler, solvent consumption means the volume of solvent purchased or otherwise procured.

~~((24. Specialty Coating means any coating that is necessary due to unusual job performance requirements, including but not limited to uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, gloss flatteners, and anti-glare/safety coatings.))~~

20. ~~((25.))~~ Standard engineering practices means that accepted, peer reviewed sets of criteria are used in designing equipment (i.e. Uniform Building, Electrical, and Fire Codes, recommendations of the American Conference of Governmental Industrial Hygienists, guidelines of the Department of Labor and Industry, etc.).

21. ~~((26.))~~ Surface Coating means the application of coating to a surface.

~~((27. Topcoat means any coating that is applied over a primer or directly to a surface, primarily to enhance appearance. For the purposes of this rule, either a base coat/clear coat shall be considered jointly and individually as a topcoat.))~~

~~((28. Volatile Organic Compound (VOC) means any compound of carbon which participates in atmospheric photochemical reactions as defined in 40 CFR part 51, § 51.100(s), other than those organic compounds that the Administrator has excluded in 40 CFR part 51, § 51.100 from this definition.))~~

22. ~~((29.))~~ VOC Content means pounds of VOC per gallon of coating (Lb/Gal) or grams of VOC per liter of coating (G/L), minus water and exempt solvents. The VOC content is calculated as follows:

$$VOC_{CT} = \frac{W_v}{V_M - V_w - V_{ES}}$$

where:

VOC<sub>CT</sub> is the VOC content of the coating, as applied to the surface; and

W<sub>v</sub> is the weight of VOC per unit volume of coating, as applied to the surface; and

V<sub>M</sub> is the unit volume of coating, as applied to the surface; and

V<sub>w</sub> is the volume of water per unit volume of coating, as applied to the surface; and

V<sub>ES</sub> is the volume of exempt solvents per unit volume of coating, as applied to the surface.

23. ~~((30.))~~ Wash Solvent means any solution, solvent, suspension, compound, or other material, excluding water, that is used to clean spray equipment, spray equipment lines, containers, and any other equipment associated with the application of coatings.

24. ~~((31.))~~ Wipe-Down Agent means any solution, solvent, suspension, compound, or other material that is applied to a surface exclusively for cleaning the surface or preparing the surface for coating.

D. Prohibitions on emissions

PROPOSED

1. No person shall cause or allow the application of any coating which contains greater than 0.1% by weight of one or more compounds of lead or hexavalent chromium.

2. Light duty vehicle refinishing - prohibitions on VOC content. Except as provided in Section 6.13.F., no person shall cause or allow the application of any coating or other agent to any light duty vehicle or light duty vehicle component, with a VOC content in excess of the ~~((following))~~ limits listed in 40 CFR 59, Subpart B, Table 1 - EPA National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. ~~((~~

Type of Coating or Agent	VOC Content	
	Lb/Gal	G/L
Metallic/Iridescent Topcoat	5.0	600
Multi-Coat System Topcoats	5.2	620
Plastic Parts Cleaner	7.0	840
Precoat	5.5	660
Pretreatment Wash Primer	6.5	780
Primer	4.8	575
Primer Sealer	6.0	720
Primer Surfacer	4.8	575
Specialty Coating	7.0	840
Topcoats (General)	5.0	600
Single/two-stage Topcoats	5.0	600
Wipe-Down Agent	1.4	170

~~((VOC Content is consistent with EPA National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings)))~~

E. Requirements. All persons subject to the requirements of Section 6.13 shall comply with all of the following, unless exempted under Section 6.13.F.

1. Enclosure and Controls - Spray application shall be conducted in a booth or area which is vented to an operating particulate control system. The particulate control system, including filtration, ducting, and fan shall be installed and sized according to standard engineering practices. Acceptable filtration methods may include:

- a. Filter banks supplied with filter media designed for spray booth applications.
- b. Water baths where the inlet air flow to the water bath is submerged.
- c. Water wall systems that form a continuous water curtain through which the particulate flow stream must pass.
- d. Other filtration methods that have received the prior written approval of the Control Officer.

The control system shall be equipped with a fan which is capable of capturing all visible overspray. Emissions from the booth/area shall be vented to the atmosphere through a vertical stack. The top of the exhaust stack/vent shall be at least 6 feet above the penetration point of the roof, or if the exhaust stack/vent exits horizontally out the side of the building, then the exhaust stack/vent shall vent vertically at least 6 feet above the eave of the roof. A higher stack/vent may be required if the ~~((a))~~Authority determines that it is necessary for compliance with Section 6.04 or 6.06 of this ~~((r))~~Regulation. There shall be no flow obstructions (elbows, tees, or

stack caps) inside of, or at the top of, the stack that will impede upward vertical flow of the exhausted air.

It shall be the owner/operator's responsibility to comply with other applicable federal, state, and local regulations for the stack/vent.

2. Visible Emissions - Visible emissions from the stack shall not exceed 10% opacity averaged over any six minute period, as determined by EPA Method 9.

3. Application methods - Except as provided in Section 6.13.F., no person shall cause or allow the application of any coating or other agent containing VOC unless the coating or agent is applied by one of the following methods:

- a. High Volume, Low Pressure coating system;
- b. Low Volume, Low Pressure coating system;
- c. Wet or Dry electrostatic application;
- d. Flow coat application;
- e. Dip coat application;
- f. Brush coat application;
- g. Pre-packaged aerosol can application;
- h. Roll coat application;
- i. A spraying technique that when tested, using the methodology presented in ASTM Standard D 5327-92, or when test documentation, provided to and approved by the ~~((a))~~Authority, exhibits that the spraying technique has a transfer efficiency of at least 65%;

j. Alternate application methods that have received the written approval of the Control Officer. Such alternate methods may be used, provided that the owner or operator makes a written request to use an alternate method and the ~~((e))~~Control ~~((o))~~Officer grants approval. These methods include but are not limited to the following application methods and circumstances:

1) Airless and Air-Assisted Airless Spray systems may be used under any of the following circumstances:

- (a) when the volatile organic compound (VOC) emissions are determined by the Control Officer to be no more than VOC emissions that would be generated by a spray application with a transfer efficiency of 65%;
- (b) when the spraying operation is automated;
- (c) when spray painting structural steel members where the coating, as formulated by the coating manufacturer, does not require addition of reducers to spray, and is delivered under high pressure (> 1,000 psig for airless, or > 300 psig for air-assisted airless) to the application system; or
- (d) where the Control Officer has determined that the coating cannot be feasibly applied with a method that has a minimum transfer efficiency of 65%...

F. Exceptions. Exceptions to Section 6.13 shall be made as follows:

1. Noncommercial exemption. Nothing in Section 6.13 shall apply to surface coating operations conducted solely for personal, noncommercial purposes if, on a facility-wide basis, less than 5 gallons of surface coatings are applied per year.

2. Coating process exemptions. Nothing in Section 6.13 shall apply to the following coating processes:

- a. The application of architectural coatings to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs;
- b. Fiberglass resin application operations;



- c. Gel coating operations;
- d. The application of asphaltic or plastic liners. This includes undercoating, sound deadening coating, and spray on bed lining for trucks; ((or))
- e. Spray plasma plating operations; or
- f. Application of coatings to farming equipment...

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

**AMENDATORY SECTION (Amending Board Adoption, 6/9/69)**

**ARTICLE VII RESERVED**

**REPEALER**

((  

<b>COMPLIANCE SCHEDULES</b>
-----------------------------

**ADOPTED: June 9, 1969**

**REVISED:))**

**REPEALER**

((A. All existing sources, which are under the jurisdiction of this Agency shall achieve full compliance with the emission limitations as specified in Regulation I and II of the Spokane County Air Pollution Control Authority by July 2, 1975.

1. Each source to which these regulations apply, shall, at the request of the agency, submit a statement advising whether the source at time of submission is in compliance with the emission limitations of this regulation. With respect to any such emission limitation not being met by January 1, 1974, the source shall achieve compliance in accordance with the following schedule:

a. By July 1, 1974, submit to the agency a specific plan of correction or improvement to meet the emission limitation within one year. Such plans must provide for complying with (b) below:

b. By January 1, 1975, order equipment for control or modification required to meet the plan of correction or improvement. A report verifying this action shall be submitted to the agency by January 15, 1975.

In relation to plans submitted pursuant to (A)(1) above, the agency receiving same may require additional information or changes to assure full compliance by July 2, 1975 (see Article V, Regulation I:))

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

**REPEALER**

((B. On notification from the agency the owner or operator of a source shall submit a proposed compliance schedule within a reasonable period of time. The proposed compliance schedule shall contain interim compliance dates for such steps as engineering and design, acquisition and installation of equipment. The schedule shall give the final compliance

date with Spokane County Air Pollution Control Authority Regulations and be signed by the owner or operator of the source or his designee.

The proposed compliance schedule shall be submitted to the Board who may act to accept, modify, amend, or disapprove the proposal. After the Board has voted to accept the proposed compliance schedule in its final form, a regulatory order shall be issued establishing a compliance schedule which contains the progress reporting elements required in this subsection for the source.

Opportunity for a public hearing on each proposed compliance schedule shall be provided by prominent advertisement of a notice identifying the proposal and announcing its availability for public inspection at the Agency office. No public hearing on a proposed compliance schedule shall be held before 30 days after the publication of the above notice. A source shall be considered to be in compliance with this chapter if all the provisions of its individual compliance schedule included within a regulatory order issued hereunder are being met.))

**AMENDATORY SECTION (Amending Order Res. 01-19, filed 11/1/01)**

**ARTICLE X**

<b>FEES AND CHARGES</b>
-------------------------

**ADOPTED: September 12, 1991**

**REVISION: ?**

**EFFECTIVE: ?**

**AMENDATORY SECTION (Amending Order Res. 97-05, filed 4/3/97)**

**SECTION 10.01 DEFINITIONS**

Unless a different meaning is clearly required by context, words and phrases used in this article shall have the following meaning:

((When used in Regulation I of the Spokane County Air Pollution Control Authority:))

A. Air Operating Permit Source means any facility required to have an operating permit pursuant to Chapter 173-401 WAC.

B. ((Burn Out Oven means any oven used to clean or remove dirt, grease, grime, paint, varnish, or any other unwanted substance or contaminant, from any object by using controlled incineration.

C. Criteria Pollutant means any one of the following: fine particulate matter (PM10), volatile organic compounds (VOC), nitrogen oxides, sulfur oxides, ozone, lead, or carbon monoxide.))

B. Emission Fee means the component of a registration fee or operating permit fee, which is based on total actual annual emissions of criteria and toxic air pollutants. In the case of a new or modified source or a source being registered initially, the emission fee is based on projected emissions as

PROPOSED

presented in an approved Notice of Construction or registration form.

~~E. ((Emission Reduction Credit means a credit granted to a source for a voluntary reduction in actual emissions per 173-400-131 WAC.))~~

~~C. F. Registration Period means the ((twelve-month period)) calendar year for which an annual fee has been assessed pursuant to Section 10.06.B.1. ((1)) or 10.06.B.2 ((2)).~~

~~G. ((Source means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous properties, and are under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.))~~

~~D. H. Significant Emissions, for the purposes of this Article, means the same, as defined in Article I, Section 1.04, of this Regulation. ((, in reference to a net emissions increase or the potential of a source to emit, any of the following pollutants, at a rate of emissions equal to or greater than any one of the following rates:~~

- ~~-increased emissions of 10 tons per year of any one toxic air pollutant; or,~~
- ~~-increased emissions of 25 tons per year of two or more toxic air pollutants; or,~~

Pollutant	Tons/Year
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate Matter (PM)	25
Fine particulate matter (PM10)	15
Volatile organic compounds	40
Lead	0.6
Fluorides	3
Sulfuric Acid Mist	7
Hydrogen sulfide (H2S)	10
Total reduced sulfur (including H2S)	10
Reduced sulfur compounds (including H2S)	10
Municipal waste combustor organics (measured as total tetra through octa chlorinated dibenzo p dioxins and dibenzofurans)	0.0000035
Municipal waste combustor metals (measured as PM)	15
Municipal waste combustor acid gases (measured as SO2 and hydrogen chloride)	40

~~I. Stage I Vapor Recovery means the capture of gasoline vapors at gasoline dispensing facilities during the transfer of gasoline from a transport tank into a stationary storage tank.~~

~~J. Stage II Vapor Recovery means the capture of gasoline vapors at gasoline dispensing facilities during the transfer of gasoline from a stationary storage tank into a motor vehicle fuel tank.~~

~~K. Total Actual Annual Emissions means the total of all criteria and toxic air pollutant emissions for the most recent complete year that is available to SCAPCA.~~

~~L. Toxic Air Pollutant means any toxic air pollutant (TAP) listed in WAC 173-460-150 or 173-460-160. Toxic air pollutant does not include particulate matter or volatile organic compounds as generic classes of substances.))~~

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

**SECTION 10.02 FEES AND CHARGES REQUIRED**

~~A. Any fee assessed pursuant to Article X shall be paid within 30 days of assessment. Any person who is more than 90 days late with such payment shall pay a penalty equal to three times the amount of the original fee owed.~~

~~B. Revenues collected pursuant to RCW 70.94.161 shall be deposited in the operating permit program dedicated account and shall be used exclusively for the program.~~

**AMENDATORY SECTION (Amending Order Res. 95-12, filed 7/6/95)**

**SECTION 10.03 FEES OTHERWISE PROVIDED**

A. All fees and charges provided for in this Article X are in addition to fees otherwise provided for or required to be paid by Regulation I, PROVIDED the Control Officer shall waive payment of any fee or service charge hereby required if the Control Officer determines that such fee is duplicative of a fee charged or required to be paid by another Article of this ((#)) Regulation.

**AMENDATORY SECTION (Amending Order Res. 97-05, filed 4/3/97)**

**SECTION 10.04 FEE WAIVER**

A. Except for air operating permit sources, the Control Officer may waive payment of all, or a portion, of any fee or service charge required by this Article upon a showing deemed sufficient by the Control Officer that payment of the fee would cause financial hardship upon the applicant.

B. The Control Officer may identify categories of sources, or groups of sources within a category, in Section 10.04.C. with similar emissions units and processes where the Control Officer determines that any of the following conditions exist:

- 1. Facility-wide emission rates are less than 1 ton per year of air contaminants; or
- 2. There are no specific regulations on the control of air contaminants; or

PROPOSED

PROPOSED

3. Compliance with control requirements is readily accomplished through nontechnical self-inspection techniques; or

4. The primary purpose for registration, pursuant to Article IV, is to inventory air contaminant emissions.

As categories are so identified, the Control Officer may waive one-half of the annual registration fee for owners or operators of individual facilities who provide emission inventory data, and other required information relative to compliance with applicable regulations, within 30 days of the request by the Authority, in a format acceptable to the Authority. In so doing, the owner or operator shall certify to the best of his/her knowledge, on forms provided by the Authority, that the emission inventory data is accurate and the facility is in compliance with applicable regulations. Owners or operators who fail to return the information within 30 days of the request will not qualify for a fee waiver under this Section. Notwithstanding the provision of required data by the owner or operator, the Authority reserves the right to conduct inspections of the facility.

C. The following categories of sources are eligible for the fee waiver specified in Section 10.04.B. However, individual sources are not eligible if one or more Notices of Violation have been issued by the Authority, pursuant to Section 2.04 of this Regulation ((f)), to the facility in the previous 36-((-))month period:

<u>Source Category</u>	<u>Rating</u>
Surface Coating Operations	<1 ton/yr VOC emitted
Gasoline Dispensing Facilities	Exempt from stage II vapor recovery requirements
Boilers & Other Fuel Burning Equipment, With Air Contaminant Emissions Exclusively From Natural Gas Combustion	<10 <sup>7</sup> BTU/hr heat input
Boilers & Other Fuel Burning Equipment, With Air Contaminant Emissions Exclusively From Other Fossil Fuel Combustion	<10 <sup>6</sup> BTU/hr heat input
Dry Cleaning Plants	<140 gal/yr solvent consumption
Waste Oil Burners	<500,000 BTU/hr heat input
Tire Recapping Facilities	All units in the category
Grain Elevators	All units with no on-site processing capability

**AMENDATORY SECTION (Amending Order Res. 99-18, filed 9/2/99)**

**SECTION 10.05 GENERAL ADMINISTRATIVE FEES**

A. A fee of \$0.15 per page for photocopies shall be charged.

B. The actual cost of postage shall be charged for all material requested to be mailed.

C. For other administrative services requested and performed by Authority staff, which are not provided to the public generally, the Control Officer shall determine such charge as reasonably reimburses the Authority for time and materials expended in providing the service.

**AMENDATORY SECTION (Amending Order Res. 01-19, filed 11/1/01)**

**SECTION 10.06 REGISTRATION AND OPERATING PERMIT FEES FOR AIR CONTAMINANT SOURCES**

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

B. The annual fee for each source shall be determined as follows:

1. For sources that are not subject to Section 10.06.B.3, 4, or 5. ((3), (4), or (5)) of this ((f))Regulation and which emit less than 5 tons per year of criteria and toxic air pollutants:

- a. a flat fee of \$160; and
- b. a \$30 fee for each stack and other emission point, not to exceed \$600; and
- c. an emission fee of \$20 per ton of each criteria and toxic air pollutant; and
- d. an additional fee of \$150 for each source which operated at least one incinerator or burn out oven during the registration period; and
- e. an additional fee of \$100 if the source is required by the Authority to submit an annual emissions inventory to the Washington Emission Data System (WEDS).

2. For sources that are not subject to Section 10.06.B.3, 4, or 5. ((3), (4), or (5)) of this ((f))Regulation and which emit 5 tons or more per year of criteria and toxic air pollutants, but less than 100 tons per year of any one criteria pollutant:

- a. a flat fee of \$215; and
- b. a \$30 fee for each stack and other emission point, not to exceed \$600; and
- c. an emission fee of \$20 per ton of each criteria and toxic air pollutant; and
- d. an additional fee of \$150 for each source which operated at least one incinerator or burn out oven during the registration period; and
- e. an additional fee of \$100 if the source is required by the Authority to submit an annual emissions inventory to the Washington Emission Data System (WEDS).

3. For air operating permit sources, a share of the assessment by ((the Department of)) Ecology, pursuant to RCW 70.94.162(3), determined according to Section 10.06.D of this ((f))Regulation, plus:

- a. for bulk gasoline loading terminals, Standard Industrial Classification 5171, a fee of \$11,500;

PROPOSED

- b. for secondary aluminum facilities, Standard Industrial Classification 3341, a fee of \$21,100;
- c. for municipal solid waste incineration facilities, Standard Industrial Classification 4953, a fee of \$20,400;
- d. for military bases, Standard Industrial Classification 9711, a fee of \$17,850; or
- e. for sources not listed in a., b., c., or d. above
  - 1) which have total annual actual emissions of less than 50 tons, a fee of \$3000;
  - 2) which have total annual actual emissions of greater than or equal to 50 tons but less than 100 tons, a fee of \$4000; or
  - 3) which have total actual annual emissions of 100 tons or greater, a fee of \$5000.
- 4. For affected units under Section 404 of the Federal Clean Air Act (42 USC 7401 et seq):
  - a. a fee of \$50 per hour of time expended in carrying out the fee eligible activities specified in RCW 70.94.; and
  - b. a share of the assessment by ~~((the Department of))~~ Ecology, pursuant to RCW 70.94.162(3), determined pursuant to Section 10.06.D of this ~~((§))~~ Regulation.
  - 5. For ~~((gasoline dispensing))~~ facilities, where the dispensing of gasoline is the only registered emission point, and which are not subject to Section 10.06.B.3 ~~((§))~~ of this ~~((§))~~ Regulation, a flat fee of \$165.

C. The Board ~~((of Directors))~~ shall annually review the fee schedule for air operating permit sources and projected costs to implement the requirements of RCW 70.94.161 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to recover program costs. Such review shall include opportunity for public review and comment on the projected costs and any changes to the operating permit fee schedule. Accordingly, the Authority shall account for program costs, including employee costs and overhead. If the Board ~~((of Directors))~~ determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board ~~((of Directors))~~ shall amend the fee schedule to more accurately recover program costs.

D. Individual shares of the assessment pursuant to RCW 70.94.162(3) shall be determined by the following formula:

$$I = \frac{F_i}{F_T} \times A_E$$

Where,

I is the individual share of the assessment, and

$F_i$  is the individual fee assessed pursuant to Section 10.06.B.3, or 4, ~~((§), or (4))~~ of this ~~((§))~~ Regulation, and

$A_E$  is the total assessment pursuant to RCW 70.94.162(3), and

$F_T$  is the sum of all the individual fees assessed pursuant to Sections 10.06.B.3, or 4, ~~((§), or (4))~~ of this ~~((§))~~ Regulation.

**AMENDATORY SECTION (Amending Order Res. 00-04, filed 5/4/00)**

**SECTION 10.07 APPLICATION AND PERMIT FEES FOR NOTICE OF CONSTRUCTION AND APPLICATION FOR APPROVAL AND FOR NOTICE OF**

**INTENT TO INSTALL AND OPERATE A TEMPORARY STATIONARY SOURCE**

A. **Filing Fee** - For each project required by Article V to file a Notice of Construction and Application for Approval (NOC) or a Notice of Intent to Install and Operate a Temporary Stationary Source, the applicant shall pay a filing fee of \$150 at the time of filing the application.

B. **Project Review Fee** - IN ADDITION to the filing fee provided in Section 10.07.A, the applicant shall pay a fee, according to the following:

1. **Equipment fee**. Sources for which an application is made for one or more ~~((than one))~~ emission points under one Notice of Construction or Notice of Intent to Install and Operate a Temporary Stationary Source application, as allowed in Section 5.02.G ~~((D))~~, the equipment fee, for each emissions unit and/or air pollution control system being installed or modified, shall be as follows:

a. Fuel Burning Equipment With or Without Air Pollution Control Equipment:

<u>Design Input Size (MMBtu/hr)</u>	<u>Fee</u>
.4 < 5	\$200
5 < 10	\$250
10 < 20	\$300
20 < 50	\$350
50 < 100	\$400
100 < 250	\$500
250 < 500	\$650
500 < UP	\$850

b. Refuse Burning Equipment Including Air Pollution Control Equipment:

<u>Capacity (ton/day)</u>	<u>Fee</u>
0 < 12	\$1,000
12 < 250	\$1,500
250 < UP	\$2,500

c. Process Equipment and/or Air Pollution Control Equipment or Uncontrolled Process Equipment:

<u>Actual ft<sup>3</sup>/min</u>	<u>Fee</u>
0 < 5,000	\$150
5,000 < 20,000	\$250
20,000 < 50,000	\$350
50,000 < 100,000	\$450
100,000 < 250,000	\$550
250,000 < 500,000	\$650
500,000 < UP	\$800

d. Gasoline dispensing facilities:

<u>Equipment Being Installed</u>	<u>Fee</u>
Annual facility gasoline throughput of less than 1.5 million gallons	\$150
Annual facility gasoline throughput of 1.5 million gallons or greater	\$250

e. For sources not included in the above categories, an hourly fee of \$50.00 per hour of time expended in ~~((plan))~~ project review.

2. **Significant emissions review fee** - In addition, except for projects subject to an equipment fee, pursuant to Section 10.07.B.1.e. ~~((+)(e))~~ above, for any new or modified source of air pollution to be constructed and anticipated to produce significant emissions, as defined in Article I, Section 1.04. of this Regulation, a significant emissions review fee of \$250.

3. **Toxic air pollutant review fee** - In addition, except for projects subject to an equipment fee, pursuant to Section 1~~(-)~~0.7.B.1.e. ~~((+)(e))~~ above, for any new or modified source of air pollution which requires review pursuant to Chapter 173-460 WAC, a toxic air pollutant review fee. For sources with one or more ~~((than one))~~ emission points under one Notice of Construction application, as allowed in Section 5.02.G ~~((D))~~, a separate toxic air pollutant review fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units. The toxic air pollutant review fee shall be as follows:

a. For a new or modified source using WAC 173-460-080 (2)(e), Small Quantity Emission Rates, to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070 & WAC 173-460, an additional charge of \$100;

b. For a new or modified source using dispersion screening models (e.g., EPA SCREEN or TSCREEN) under WAC 173-460-080 (2)(c) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, an additional charge of \$150;

c. For a new or modified source using more refined dispersion models (e.g., EPA ISC3) under WAC 173-460-080 (2)(c) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, an additional charge of \$400; or

d. For a new or modified source using a second tier analysis under WAC 173-460-090 or a risk management decision under WAC 173-460-100 to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, an additional charge of \$1000.

4. **NSPS Review Fee** - In addition, except for projects subject to an equipment fee, pursuant to Section 10.07.B.1.e. ~~((+)(e))~~ above, for any new or modified source of air pollution, subject to a standard under WAC 173-400-115 (NSPS), an additional charge as follows:

a. If subject to 40 CFR Part 60, Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, with only natural gas as a fuel, an additional charge of \$50;

b. If subject to 40 CFR Part 60, Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, using fuels other than solely natural gas, an additional charge of \$100;

c. If subject to 40 CFR Part 60, Subpart I, Standards of Performance for Hot Mix Asphalt Facilities, an additional charge of \$100;

d. If a volatile organic liquid storage tank subject to 40 CFR § 60.110b (b) or (c), no additional charge;

e. If subject to 40 CFR Part 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, no additional charge; and

f. If subject to a subpart of 40 CFR Part 60, other than those covered in ~~((+))a<sub>2</sub>((+))~~ through ~~((+))d<sub>2</sub>((+))~~ above, an additional charge of \$250.

5. **NESHAP Review Fee** - In addition, except for projects subject to an equipment fee, pursuant to Section 10.07.B.1.e. ~~((+)(e))~~ above, for any new or modified source of air pollution, subject to a standard under WAC 173-400-075 (NESHAP), an additional charge as follows:

a. If subject to 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, and/or WAC 173-400-075(6), Emission Standards for Perchloroethylene Dry Cleaners, no additional charge;

b. If subject to 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, an additional charge of \$100;

c. If subject to 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning, an additional charge of \$150; and

d. If subject to a subpart of 40 CFR Part 63, other than those covered in ~~((+))a<sub>2</sub>((+))~~ through ~~((+))c<sub>2</sub>((+))~~ above, an additional charge of \$250.

6. **Integrated Review Fee** - In addition, for integrated review of a Notice of Construction and Application for Approval, as allowed under Section 5.02.J ~~((H))~~ of this ~~((+))~~Regulation, an additional charge of \$250.

C. **Change in Condition Fee** - Sources for which application is made for a change in conditions pursuant to Section 5.10.C of this ~~((+))~~Regulation, the fee shall be one half the current fee for a Notice of Construction and Application for Approval or a Notice of Intent to Install and Operate a Temporary Stationary Source for that type of source, including the filing fee, according to Section 10.07.A, and the applicable fees, according to Section 10.07.B, or \$350, whichever is less.

D. **Compliance Investigation Fee** - Where a compliance investigation is conducted pursuant to Section 5.12 of this ~~((+))~~Regulation, the compliance investigation fee shall be \$300 per emissions unit, or group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

E. **SEPA Review Fee** - Where review of an Environmental Impact Statement (EIS), Environmental Checklist, or an Addendum to, or adoption of, an existing environmental document pursuant to the State Environmental Policy Act (SEPA) Chapter 197-11 WAC is required, in association with a Notice of Construction and Application for Approval or a Notice of Intent to Establish a Temporary Stationary Source, the applicant shall pay a SEPA or EIS review fee of \$50 per hour or \$125, whichever is greater. The applicant shall pay a partial SEPA review fee of \$125, at the time of submittal of the EIS or SEPA. The Authority will bill the owner, operator, or applicant for the remainder of the SEPA or EIS review fee

after a threshold determination has been made and/or a preliminary determination of the Notice of Construction has been issued.

**F. Complex Project Review Fee -**

1. The Control Officer may notify the applicant in writing that, due to the complexity of the application, the permit processing fees will be based on the actual hours spent by the Authority staff in evaluating and verifying the proposed project's compliance with applicable federal, state, and local rules and regulations. The complexity fee applies to Notice of Construction and Application for Approval orders and Notice of Intent to Establish a Temporary Stationary Source permissions to operate.

2. The complexity fee assessed shall be \$50 per hour and shall not exceed the actual cost of processing and reviewing the proposed project. This complexity fee may include, but is not limited to, costs associated with planning meetings and/or design evaluations, that are related to the proposed project, prior to actual submission of a complete application.

3. The complexity of a permit shall be determined by dividing the usual fee in Section 10.07.B.1.a - d. by \$50 per hour. If this number is less than the actual hours spent in review, the Authority may elect to assess a Complex Project Review Fee instead of assessing the fee according to the schedule in Section 10.07.B.1.a. - d. The actual review time shall not include the time associated with review of an environmental checklist or environmental impact statement. These fees are assessed separately under Section 10.07.E.

4. The applicant may avoid being subject to a Complex Project Review Fee by providing additional information with the application that reduces the cost to the Authority in reviewing the application to a level consistent with the fee schedule in Section 10.07.B.1.a - d.

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

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

**AMENDATORY SECTION (Amending Order Res. 02-01, filed 1/3/02)**

**SECTION 10.08 MISCELLANEOUS FEES**

A fee of \$50 per hour of time expended in review shall be paid by the applicant for each of the following:

A. Emission reduction credit request pursuant to Chapter 173-400-131 WAC.

B. Alternate opacity limit request pursuant to RCW 70.94.331 (2)(c).

C. Reasonably Available Control Technology (RACT) determination pursuant to Chapter 173-400-040 WAC and/or RCW 70.94.161.

D. Variance request pursuant to (~~SCAPCA Regulation~~ ~~§~~); Article III of this Regulation or RCW 70.94.181. In addition, the applicant shall pay a filing fee of \$125.

E. Voluntary limits on emissions request pursuant to Chapter 173-400-091 WAC.

F. Requests pursuant to the following sections of this (~~§~~) Regulation.

1. Section 6.13.E.3.j (use of alternate spray application method);

2. Section 6.13.F.4 (large object enclosure exemption);

3. Section 6.13.F.6 (stack exemption);

4. Section 6.13.F.9 (use of lead or hexavalent chrome containing coatings);

5. Section 6.13.F.10 (enclosure and/or particulate control exemption); (~~and~~)

6. Section 6.13.F.11 (inside exhaust exemption)(~~(-)~~); and

7. Registration exemption requests.

G. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

**AMENDATORY SECTION (Amending Order Res. 01-15, filed 12/6/01)**

**SECTION 10.09 ASBESTOS FEES**

Written notification, as required in Article IX, Section 9.04, shall be accompanied by the appropriate nonrefundable fee according to Section 10.09.A (~~(a)~~).

A. (~~(a)~~) Notification Period and Fees

Project	Size or Type	Notification Period	Fee
Owner-Occupied, Single-Family Residence Asbestos Project (excluding demolition)	Notification Not Required	None	None
Owner-Occupied, Single-Family Residence Demolition	All	Prior Notice	\$25
All Other Demolitions with no asbestos project	All	10 Days	\$150
Asbestos Project includes demolition fee*	10-259 linear ft 48-159 square ft	3 Days	\$150
Asbestos Project includes demolition fee	260-999 linear ft 160-4,999 square ft	10 Days	\$300
Asbestos Project includes demolition fee	1,000-9,999 linear ft 5,000-49,999 square ft	10 Days	\$750
Asbestos Project includes demolition fee	> 10,000 linear ft > 50,000 square ft	10 Days	\$1,500
Emergency	9.04.C	Prior Notice**	Additional fee equal to project fee
Amendment***	9.04.B	Prior Notice	\$50

Project	Size or Type	Notification Period	Fee
Alternate Means of Compliance (demolitions or friable asbestos-containing material)	9.07.A or C	10 Days	Additional fee equal to project fee
Alternate Means of Compliance (non-friable asbestos-containing material)	9.07.B	10 Days	Additional fee equal to project fee
Annual	9.04.A.8	Prior Notice	\$1,000

\* Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.

\*\* Except in the case where advance notice is not required pursuant to Section 9.04.C.2.

\*\*\* For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted in addition to the \$50 amendment fee.

B. ((b-)) The Control Officer may waive the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.

C. ((e-)) Where a compliance investigation is conducted pursuant to Section 9.04 of this ((#))Regulation, the compliance investigation fee shall be equal to \$50 per hour of compliance investigation.

D. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

**AMENDATORY SECTION (Amending Order Res. 93-18, filed 9/2/93)**

**SECTION 10.10 SOLID FUEL BURNING DEVICE EXEMPTIONS**

A. An initial nonrefundable fee of \$25 shall be paid for review of any exemption request to use solid fuel combustion device during periods of impaired air quality. An annual nonrefundable renewal fee of \$10 will be required each year thereafter. ((Payment of the fee shall not guarantee the applicant that the request will be approved.)) These fees may be waived per Section 10.04 or for emergency situations.

B. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

**SECTION 10.11 OXYGENATED GASOLINE**

A. Pursuant to Chapter 173-492 WAC, the following annual fees shall be paid by blenders of oxygenated gasoline for sale in the Spokane Control Area.

Small Volume	(<100,000 Gallons/Month)	\$170
Medium Volume	(100,000 to <1,000,000 Gallons/Month)	\$335
Large Volume	(1,000,000 to <15,000,000 Gallons/Month)	\$2,070
Very Large Volume	(>15,000,000 Gallons/Month)	\$5,170

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

**AMENDATORY SECTION (Amending Order Res. 97-05, filed 4/3/97)**

**SECTION 10.12 AGRICULTURAL BURNING FEES**

A. For agricultural burning permits issued by the Authority pursuant to Section 6.11 of this ((#))Regulation, a nonrefundable fee shall be paid by the applicant according to the following:

1. Portion for local administration: a fee of \$1.25 per acre; and

2. The state administration and research portions, pursuant to 70.94.650 RCW and WAC 173-430-040 (3)(b).

B. Refunds of fees collected by the Authority may be provided at the discretion of the Authority for portions of acreage, of equivalent, unburned, provided that the total adjusted fee is no less than \$25.

C. Acreage equivalency shall be in accordance with the determination of the agricultural burning practices and research task force pursuant to WAC 173-430-040 (3)(d).

D. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

**SECTION 10.13 OUTDOOR BURNING PERMIT FEES**

**AMENDATORY SECTION (Amending Order Res. 01-15, filed 12/6/01)**

For outdoor burning permit applications, submitted to the Authority pursuant to Section 6.01 of this ((#))Regulation, a nonrefundable fee shall accompany the application. The fee is as follows:

A. A \$10 fee shall be submitted with each 30-day permit application.

B. A \$25 fee shall be submitted with each annual permit application.

C. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

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

PROPOSED

AMENDATORY SECTION (Amending Order Res. 02-01, filed 1/3/02)

**SECTION 10.14 PAVING WAIVER FEES**

A. A minimum nonrefundable filing and review fee of \$50 shall accompany all paving waiver requests submitted to the Authority ((SCAPCA)). After the first hour of filing and review, an additional fee of \$50 per hour shall be paid by the applicant for each hour of time expended by the Authority ((SCAPCA)) in carrying out the review.

B. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

**REPEALER**

~~((REGULATION H~~

~~SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY))~~

**REPEALER**

~~((ARTICLE I~~

~~POLICY AND SHORT TITLE~~

~~ADOPTED: September 7, 1971~~

~~REVISED: January 6, 1975))~~

**REPEALER**

~~((SECTION 1.01 POLICY~~

~~The Spokane County Air Pollution Control Authority, co-extensive with the boundaries of Spokane County, having been activated by the Washington Clean Air Act, RCW 70.94 as amended, adopts the following Regulations to control the emission of air contaminants from all sources within the jurisdiction of the Authority; to provide for the uniform administration and enforcement of this Regulation; and to carry out the requirements and purposes of the Washington Clean Air Act.~~

~~It is hereby declared to be the public policy of the Spokane County Air Pollution Control Authority to secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, promote the economic and industrial development of the County and enhance the recreational potential within the County.))~~

**REPEALER**

~~((SECTION 1.02 NAME OF AUTHORITY~~

~~The name of the County Air Pollution Control Authority, co-extensive with the boundaries of Spokane County, shall be known as the "Spokane County Air Pollution Control Authority.")~~

**REPEALER**

~~((SECTION 1.03 SHORT TITLE~~

~~This regulation shall be known and cited as "Regulation H of the Spokane County Air Pollution Control Authority.")~~

**REPEALER**

~~((ARTICLE H~~

~~GENERAL PROVISIONS SEVERABILITY AND PENALTY~~

~~ADOPTED: September 7, 1971~~

~~REVISED:))~~

**REPEALER**

~~((SECTION 2.01 GENERAL PROVISIONS~~

~~The general provisions cited in Section 2.01, 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 2.10, 2.11, 2.12 of Regulation I shall apply to Regulation H.))~~

**REPEALER**

~~((ARTICLE III~~

~~VARIANCES, WHEN PERMITTED~~

~~ADOPTED: September 7, 1971~~

~~REVISED:))~~

**REPEALER**

~~((A. Any person who owns or is in control of any plant, building, structure, establishment, process or equipment, including a group of persons who owns or controls like processes or like equipment, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration, or extent or discharges of air contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, but only after public hearing or due notice, if it finds that:~~

PROPOSED



- 1. The emissions occurring or proposed to occur do not endanger public health or safety; and
- 2. Compliance with the rules or regulations from which variances is sought would produce serious hardship without equal or greater benefits to the public.))

**REPEALER**

((B. No variance shall be granted pursuant to this section until the Board had considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.))

**REPEALER**

((C. Any variance or renewal thereof shall be granted within the requirements of sub-section A for a time period and under conditions consistent with the reasons therefore, and within the following limitations:

1. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the 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 alternate measure that the Board may prescribe.

2. If the variance is granted on the ground that compliance with the particular requirements or requirement from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable times as, in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

3. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Item 1 and 2, it shall be for not more than one (1) year.))

**REPEALER**

((D. Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of the Board.))

**REPEALER**

((E. A variance or renewal shall not be a right of the applicant or holder thereof but shall be at the discretion of the

Board. Any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof only under the provisions of Chapter 34.04 RCW as now or hereafter amended.))

**REPEALER**

((F. Nothing in this section and no variance or renewal granted pursuant hereto shall be constructed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.415 of the Washington Clean Air Act to any person or his property. (RCW 70.94.181))

**REPEALER**

((ARTICLE IV

**EMISSION PROHIBITED**

**ADOPTED: September 7, 1971**

**REVISED: May 1, 1979))**

**REPEALER**

((SECTION 4.01 PARTICULATE EMISSIONS—GRAIN LOADING RESTRICTIONS

It shall be unlawful for any person to cause or allow the emission of particulate matter into the atmosphere from any single source:

A. Which is in excess of 0.1 grains per cubic foot of gas at standard conditions for non-combustion sources.

B. Which is in excess of 0.1 grains per cubic foot of gas calculated to 12% of carbon dioxide (CO<sub>2</sub>) at standard conditions for combustion sources.

C. In the non-attainment area any source which has an actual annual emission of 25 tons or greater shall use reasonably available control technology for that specific industrial source category, or the source may choose to achieve an emission level of 0.05 grains/DSCF; whichever is the more stringent.

If the source does not operate year-round, then a calculated annual emission rate will be given. This calculated rate will be the product of the actual hourly or daily emission rate for the period of operation increased by a direct ratio to represent twelve (12) months of operation.

The effective date of this regulation shall be January 1, 1979 and all sources subject to this regulation shall be in compliance no later than January 1, 1982.))

**PROPOSED**

**REPEALER**

~~((SECTION 4.02 CONCEALMENT OR MASKING RESTRICTIONS~~

~~It shall be unlawful for any person to willfully cause or permit the installation or use of any device or use of any means which, without resulting in a reduction in the total amount of particulate matter discharged, conceals or dilutes the emissions which would otherwise violate Section 4.01 of this regulation.))~~

**REPEALER**

~~((SECTION 4.03 ANALYSIS AND TESTING REQUIREMENTS~~

~~A. The requirements of Section 4.02 shall be measured in a manner which conforms with good engineering practice and is approved by the Control Officer or in accordance with modified procedures mutually agreed upon by the equipment owner or operator and the Authority. A copy of current approved test procedures shall be kept on file in the office of the Authority.~~

~~B. The Control Officer or his authorized agent may obtain from the owner or lessee of an emission source such information or analysis as will disclose the nature, extent, or quantity of degree of air contaminants which are or may be discharged by such a source, and type of nature of control equipment in use, when such information or analysis is available or reasonably capable of being assembled.~~

~~C. The Control Officer or his authorized agent may require that safe access and adequate sampling facilities be provided the Authority by the owner or lessee of an emission source to be tested. The Authority must give notice of at least fifteen (15) days to the owner of the source to be tested.))~~

**REPEALER**

~~((SECTION 4.04 MAXIMUM EMISSION RATE~~

~~It shall be unlawful for any person to cause or allow the discharge of particulate matter into the atmosphere from any single source which exceeds the rate of 40 pounds per hour.))~~

**REPEALER**

~~((ARTICLE V~~

**BREAKDOWNS AND EXCEPTIONS**

~~ADOPTED: September 7, 1971~~

~~REVISED: January 6, 1975))~~

**REPEALER**

~~((SECTION 5.01 REPORT OF BREAKDOWN~~

~~A. The owner or operator of a source which emits pollutants exceeding any of the limits established by this Regulation as a direct result of unavoidable upset conditions or unavoidable and unforeseeable breakdown of equipment or control apparatus may be exempt from penalties if:~~

~~1. The upset or breakdown is reported to the Authority on the next regular working day.~~

~~2. The owner or operator shall, upon request of the Control Officer, submit a report giving:~~

~~a. The causes;~~

~~b. The steps to be taken to repair the breakdown; and~~

~~c. A time schedule for the completion of the repairs.~~

~~B. The Control Officer on a receipt of a report (Subsection A.2.) from the owner or operator describing a breakdown may:~~

~~1. Allow continued exempt operation but only for a limited time period, after which the owner or operator will be required to comply with this Regulation or be subject to the penalties in Section 2.11 of Regulation I. An exemption granted under this Section 5.01 may be withdrawn if the exempt operation becomes a cause of complaints.~~

~~2. Require that the plant curtail or cease operations until repairs are completed if the quantity of pollutants or the nature of the pollutants could cause damage.))~~

**REPEALER**

~~((SECTION 5.02 EXCEPTION TO THIS ARTICLE~~

~~The following equipment is exempt from this Article:~~

~~1. Fuel burning equipment used exclusively in a dwelling serving less than five (5) families.~~

~~2. Grain elevators engaged exclusively in receiving, transferring and storing of cereal grains or legumes and not located in whole or part within a sensitive area are exempt from Section 4.01 only.~~

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

**WSR 04-03-010F**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

**(Economic Services Administration)**

[Filed January 9, 2004, 4:30 p.m.]

Continuance of WSR 03-24-056.

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

Title of Rule: Amending WAC 388-454-0010 Do I have to be related to a child in order to get TANF or SFA for the child?

Purpose: Correcting the reference listed in subsection (2)(a) - RCW 26.26.040 to chapter 26.26 RCW.

PROPOSED

Other Identifying Information: Due to severe snow conditions, the scheduled January 6, 2004, public hearing on this proposed rule is continued to 10:00 a.m., January 27, 2004. The written comment deadline is continued to 5:00 p.m., January 27, 2004. See below for the hearing location and written comment information.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patti Clark, 1009 College S.E., Lacey, WA 98504, (360) 413-3084.

Hearing Location: Lacey Government Center, Room 104-B, 1009 College Street, Lacey, WA 98503, (public parking behind Sakura Japanese Cuisine Restaurant), on January 27, 2004, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by January 23, 2004, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov [fernaax@dshs.wa.gov].

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, mail to P.O. Box 45850, Olympia, WA 98504-5850, deliver to 4500 10th Avenue S.E., Lacey, WA, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., January 27, 2004.

Date of Intended Adoption: Not earlier than January 28, 2004.

January 6, 2004

Susan Bush

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

#### WSR 04-03-035

#### PROPOSED RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 15, 2004, 8:19 a.m.]

Supplemental Notice to WSR 04-01-164.

Preproposal statement of inquiry was filed as WSR 03-16-083.

Title of Rule: Amending WAC 296-19A-210(2) What are the qualifications to provide vocational rehabilitation services to industrially injured or ill workers? VRC supervisor of interns (supervisor); WAC 296-19A-480 When must providers comply with these rules?

Purpose: This supplemental notice is to correct an error in the original proposed rule [that] was filed on December 22, 2003, WSR 04-01-164. In that document, the date of intended adoption was mistakenly listed as July 1, 2004. The correct date of intended adoption is March 31, 2004, with an effective date of July 1, 2004.

Statutory Authority for Adoption: RCW 51.32.095, 51.04.030, 51.36.085, 51.36.100, 51.36.110.

Statute Being Implemented: Not applicable.

Reasons Supporting Proposal: See Purpose above.

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

RCW 34.05.328 does not apply to this rule adoption. The subject and scope of this rule making does not qualify as a significant rule making.

Date of Intended Adoption: March 31, 2004.

January 15, 2004

Paul Trause

Director

#### WSR 04-03-037

#### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed January 15, 2004, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-21-016.

Title of Rule: Will amend WAC 308-124C-030.

Purpose: Will amend rule to allow for newer technology to store records and to allow for real estate brokers to maintain records at a distant location from their business license address.

Statutory Authority for Adoption: RCW 18.85.040(1).

Statute Being Implemented: RCW 18.85.310(1), 18.85-230(17).

Summary: To allow for new technology in the storage of real estate broker records, such as permanent storage media like optical discs. These records then could be stored at a distant location from the broker's business address so long as these are readily retrievable.

Reasons Supporting Proposal: To allow for newer technology in record-keeping mediums within the real estate brokerage record-keeping requirements.

Name of Agency Personnel Responsible for Drafting: Jana L. Jones, Department of Licensing, Black Lake Complex, P.O. Box 2445, Olympia, WA, (360) 664-6524; Implementation and Enforcement: DOL Real Estate Program, Department of Licensing, Black Lake Complex, P.O. Box 2445, Olympia, WA, (360) 664-6524.

Name of Proponent: Washington State Real Estate Commission and Department of Licensing Real Estate Program, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule describes methods for retaining real estate broker transaction records at remote/distant locations from the broker's licensed business address. These methods of record retention allow for newer technology such as optical discs. The records must [be] readily retrievable by the broker for department inspection, as required by statute. This rule change keeps pace with changing technology and business practice, while preserving the same level of consumer protection.

Proposal Changes the Following Existing Rules: It amends the existing rule to allow for newer technology in records retention and retrieval.

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

PROPOSED

RCW 34.05.328 does not apply to this rule adoption. Department of Licensing is exempt from this law.

Hearing Location: Department of Licensing, Black Lake Building #3, 2000 4th Street, Real Estate Conference Room, 2nd Floor, Olympia, WA, on February 24, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jana Jones, TDD (360) 753-1966 or (360) 664-6524.

Submit Written Comments to: Jana L. Jones, Assistant Administrator, Real Estate Program, P.O. Box 2445, Olympia, WA 98507-2445, fax (360) 586-0998, by February 23, 2004.

Date of Intended Adoption: March 23, 2004.

January 9, 2004

Mykel D. Gable

Assistant Director

Business and Professions Division

**AMENDATORY SECTION** (Amending WSR 98-01-107, filed 12/17/97, effective 1/17/98)

**WAC 308-124C-030 Accuracy and accessibility of records.** (1) **Accuracy.** All required real estate records shall be accurate, posted and kept up to date.

(2) **Location.** All required real estate records shall be kept at an address where the real estate broker is licensed to maintain a real estate office ~~(--Such--)~~, except physical records of transactions may be stored at one remote facility within the state of Washington. Only transactions that have been closed for at least one year can be maintained at the remote facility. Transactions stored at a different location must be available upon demand of the department and maintained in a manner to be readily retrievable. A listing of all transactions must be maintained at the broker's licensed office for all the transactions stored at the remote facility. All records shall be retained and available for inspection by the director or the director's authorized representative for a minimum of three years. (While RCW 18.85.230(20) requires the retention of records for three years, licensees should be aware that the applicable statute of limitations may vary from this three-year retention period--)

(3) **Alternative storage.** Records may be stored on permanent storage media, such as optical disk or microfilm, provided the retrieval process does not permit modification of the documents. Retrieval must be possible at the broker's licensed location and allow for viewing and printing the document in its original form. The permanent media storage shall be nonerasable and prevent changes to the stored documents or records. The broker must maintain equipment at their licensed location in good repair to allow viewing and printing upon demand by the department. The storage media must be indexed to allow for immediate retrieval of all documents.

(4) **Responsibility for records.** In the case of a corporate, limited liability company, limited liability partnership or partnership brokerage firm, the responsibility imposed by this section shall apply to both the corporation, limited liability company, limited liability partnership or partnership and the natural person designated and licensed to act as broker for the corporation, limited liability company, limited liability partnership or partnership. Prior to issuing a new license indi-

cating a change of designated broker for a corporate, limited liability company, limited liability partnership or partnership licensee, the licensee must submit evidence that the requirements have been satisfied.

(5) **Change of broker.** A statement signed by both the outgoing designated broker and the incoming designated broker, listing all outstanding client trust liabilities, copies of trust account bank statements and the latest trust account reconciliations and certifying that funds in hand in the trust account maintained by the licensee are adequate to meet these client trust liabilities will satisfy this requirement. The incoming designated broker shall not be deemed responsible for any discrepancy identified in the statement, unless the incoming designated broker contracted to accept such responsibility.

**WSR 04-03-038**

**PROPOSED RULES**

**DEPARTMENT OF LICENSING**

[Filed January 15, 2004, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-21-017.

Title of Rule: Will amend WAC 308-124D-030.

Purpose: To correct reference within the WAC to RCW 18.85.230(26), which has been renumbered effective January 1, 2004, to RCW 18.85.230(23).

Statutory Authority for Adoption: RCW 18.85.040(1).

Statute Being Implemented: RCW 18.85.230(23).

Summary: Will correct reference within WAC 308-124D-030 to RCW 18.85.230(26) which has been renumbered to RCW 18.85.230(23), effective January 1, 2004.

Reasons Supporting Proposal: Correct and clarify legal reference in the WAC.

Name of Agency Personnel Responsible for Drafting: Jana L. Jones, Department of Licensing, Black Lake Complex, P.O. Box 2445, Olympia, WA, (360) 664-6524; Implementation and Enforcement: DOL Real Estate Program, Department of Licensing, Black Lake Complex, P.O. Box 2445, Olympia, WA, (360) 664-6524.

Name of Proponent: Washington State Real Estate Commission and Department of Licensing Real Estate Program, governmental.

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

Proposal Changes the Following Existing Rules: Corrects RCW reference in WAC 308-124D-030 from RCW 18.85.230(26) to RCW 18.85.230(23).

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no business impact. This is a clarification on a reference to a renumbered RCW.

RCW 34.05.328 does not apply to this rule adoption. Department of Licensing is exempt from this law.

Hearing Location: Department of Licensing, Black Lake Building #3, 2000 4th Street, Real Estate Conference Room, 2nd Floor, Olympia, WA, on February 24, at 1:30 p.m.

PROPOSED

Assistance for Persons with Disabilities: Contact Jana Jones, TDD (360) 753-1966 or (360) 664-6524.

Submit Written Comments to: Jana L. Jones, Assistant Administrator, Real Estate Program, P.O. Box 2445, Olympia, WA 98507-2445, fax (360) 586-0998, by February 23, 2004.

Date of Intended Adoption: March 23, 2004.

January 9, 2004  
Mykel D. Gable  
Assistant Director

**AMENDATORY SECTION** (Amending Order RE 114, filed 7/27/75)

**WAC 308-124D-030 Expeditious performance.** A real estate licensee shall perform all acts required of the licensee by a real estate agreement as expeditiously as possible. Intentional or negligent delays in such performance shall be considered detrimental to the public interest in violation of RCW 18.85.230(((26)))(23).

#### WSR 04-03-039

#### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed January 15, 2004, 10:21 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 03-21-018.

Title of Rule: Will amend WAC 308-124A-110(3), 308-124A-025 (1), (2), (3), (4), and 308-124A-440.

Purpose: To allow for e-commerce in the payment of the examination fee, to allow for payment with credit card, debit card, e-checks, and vouchers. Also amends the rule to allow payment at the time of registration for the examination.

Other Identifying Information: The proposed rule amendments are only to amend those rules which list the method and timing of the payment for a real estate examination.

Statutory Authority for Adoption: RCW 18.85.040(1).

Statute Being Implemented: RCW 18.85.120.

Summary: The above rule amendments will allow for e-commerce in the payment of the real estate license examination fee, to allow for payment with credit card, cashier's check, certified check, money order, debit card, e-checks, or money vouchers to the testing center.

Name of Agency Personnel Responsible for Drafting: Jana L. Jones, Department of Licensing, Black Lake Complex, P.O. Box 2445, Olympia, WA, (360) 664-6524; Implementation and Enforcement: DOL Real Estate Program, Department of Licensing, Black Lake Complex, P.O. Box 2445, Olympia, WA, (360) 664-6524.

Name of Proponent: Washington State Real Estate Commission and Department of Licensing Real Estate Program, governmental.

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

Proposal Changes the Following Existing Rules: The rule amendments will allow for e-commerce in the payment of the examination fee, to allow for payment with credit card, debit card, money orders, money vouchers, e-checks, cashier's checks, and certified checks.

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

RCW 34.05.328 does not apply to this rule adoption. Department of Licensing is exempt from this law.

Hearing Location: Department of Licensing, Black Lake Building #3, 2000 4th Street, Real Estate Conference Room, 2nd Floor, Olympia, WA, on February 24, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jana Jones, TDD (360) 753-1966 or (360) 664-6524.

Submit Written Comments to: Jana L. Jones, Assistant Administrator, Real Estate Program, P.O. Box 24[4]5, Olympia, WA 98507-2445, fax (360) 586-0998, by February 23, 2004.

Date of Intended Adoption: March 23, 2004.

January 9, 2004  
Mykel D. Gable  
Assistant Director  
Business and Professions Division

**AMENDATORY SECTION** (Amending WSR 02-07-060, filed 3/15/02, effective 4/15/02)

**WAC 308-124A-110 Application for real estate examination, licensed in another jurisdiction.** (1) Any person applying for a real estate broker or real estate salesperson examination who is actively licensed in the same or greater capacity in another jurisdiction and has maintained his or her license in good standing or who was actively licensed in the same or greater capacity in good standing within the preceding six months is eligible to take the Washington law portion of the examination.

(2) Any person applying to take the examination under this section shall submit an examination application approved by the department and shall submit evidence of licensure in another jurisdiction by a license verification form completed by an administrative officer of the licensure authority in such jurisdiction.

(3) After the qualifications for the examination have been verified by the department the candidate shall telephone the testing service up to three days prior to the desired test date to schedule and pay for an examination by cashier's check, certified check, money order, credit card, debit card, e-checks, or money voucher to the testing service approved by the department. Candidates requesting a morning or afternoon test session shall be scheduled immediately for an examination and will be provided with a registration number confirming their reservation. On the day of the examination, the candidate shall submit at the test site the verified examination application and ~~((examination fee by cashier's check, certified check or money order to the testing service approved by the department. Cash or personal checks will not be accepted from candidates))~~ any supporting documents required by the department.

(4) The director, upon advice of the Washington state real estate commission, may consider entering into written

PROPOSED

recognition agreements with other jurisdictions which license real estate brokers and salespersons similarly to Washington state. The recognition agreement(s) shall require the other jurisdiction to grant the same licensing process to licensees of Washington state as is offered by Washington state to licensee applicants from other jurisdictions.

**AMENDATORY SECTION** (Amending WSR 95-03-012, filed 1/5/95, effective 7/1/95)

**WAC 308-124A-025 Application process to take examination not licensed in another jurisdiction.** This section does not apply to applicants for a real estate salesperson or broker license who are actively licensed in another jurisdiction or were so licensed in the preceding six months.

(1) Any person desiring to take an examination for a real estate salesperson license, except applicants who have received clock hours in another jurisdiction, which have not been approved by the department or applicants who are requesting substitution of clock hours per WAC 308-124A-425, shall telephone the testing service up to three days prior to the desired test date to schedule and pay for an examination by cashier's check, certified check, money order, credit card, debit card, e-checks, or money voucher to the testing service approved by the department. On the day of the examination, the candidate shall submit a completed examination application together with ~~((the examination fee and))~~ any supporting documents, including evidence satisfactory to the department of having successfully completed an approved sixty clock hour fundamentals course, to the testing service approved by the department.

(2) Any person desiring to take an examination for a real estate salesperson license who received clock hours in another jurisdiction which have not been approved by the department or salesperson applicants who are requesting substitution of clock hours per WAC 308-124A-425, must submit a completed examination application with supporting documents, including evidence satisfactory to the department of having successfully completed any and all approved clock hour courses for licensure, to the real estate program of the department of licensing. After the qualifications for the examination have been verified by the department, the candidate shall telephone the testing service up to three days prior to the desired test date to schedule and pay for an examination by cashier's check, certified check, money order, credit card, debit card, e-checks, or money voucher to the testing service approved by the department. On the day of the examination, the candidate shall submit the verified examination application and examination fee to the testing service approved by the department.

(3) Any person desiring to take an examination for a real estate broker license, including applicants who have received clock hours in another jurisdiction which have not been approved by the departments or broker applicants who are requesting substitution of clock hours per WAC 308-124A-425, must submit a completed examination application with supporting documents, including evidence satisfactory to the department of having successfully completed any and all approved clock hour courses for licensure, to the real estate program of the department of licensing. After the qualifica-

tions for the examination have been verified by the department, the candidate shall telephone the testing service up to three days prior to the desired test date to schedule and pay for an examination by cashier's check, certified check, money order, credit card, debit card, e-checks, or money voucher to the testing service approved by the department. On the day of the examination, the candidate shall submit the verified examination application and ~~((examination fee))~~ any supporting documents to the testing service approved by the department.

(4) The candidate will be able to schedule an examination date up to three days prior to their desired test date. Candidates requesting a morning or afternoon test session will be scheduled immediately for an examination and will be provided with a registration number confirming their reservation. On the day of the examination, the candidate shall submit the verified examination application and ~~((examination fee by cashier's check, certified check, or money order to the testing service approved by the department. Cash, or personal check, will not be accepted from candidates))~~ any supporting documents to the testing service approved by the department.

(5) A candidate shall be assessed the full examination fee for any examination in which the candidate fails to provide four days notice to the testing service for changing their examination date or for failing to arrive and take a scheduled examination at the time the examination is scheduled or rescheduled.

**AMENDATORY SECTION** (Amending WSR 93-24-096, filed 11/30/93, effective 1/1/94)

**WAC 308-124A-440 Reexamination.** An applicant who has failed the examination or failed to appear for a scheduled examination may apply for reexamination, provided the required reexamination fee is submitted.

An applicant who has failed the examination or failed to appear for a scheduled examination may apply for reexamination by telephoning the testing service to schedule and pay for an examination by cashier's check, certified check, money order, credit card, debit card, e-checks, or money voucher to the testing service approved by the department. Broker exam applicants who applied for a waiver and failed the examination must comply with the provisions of WAC 308-124A-040.

WSR 04-03-073

PROPOSED RULES

WESTERN WASHINGTON UNIVERSITY

[Filed January 16, 2004, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-14-041.

Title of Rule: Chapter 516-60 WAC, Admission and registration procedures.

Purpose: To add a new section to the chapter that establishes rules for waivers of tuition and fees.

Other Identifying Information: General housekeeping measures.

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

Summary: The new section addresses Western's policy on waivers of tuition and fees.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: J. St. Hilaire, Registrar, WWU, Old Main 230, (360) 650-3430.

Name of Proponent: Western Washington University, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Rule changes are: (1) Housekeeping measure to define the university catalog; and (2) adds a new section to the chapter that will establish rules on waivers of tuition and fees. New section will provide greater information on the university's policy on waivers of tuition and fees.

Proposal Changes the Following Existing Rules: The proposal adds a new section on waivers of tuition and fees. Other changes are housekeeping measures.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No monetary implications. No costs have been imposed on small business through the adoption of these changes.

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

Hearing Location: Western Washington University, Board Room, Old Main 340, 516 High Street, Bellingham, WA, on March 2, 2004, 9:00 a.m.

Assistance for Persons with Disabilities: Contact Suzanne Baker by February 24, 2004, TDD (360) 650-3117.

Submit Written Comments to: Suzanne Baker, Rules Coordinator, 516 High Street, Bellingham, WA 98225-9015, fax (360) 650-6197, by March 2, 2004.

Date of Intended Adoption: April 9, 2004.

January 15, 2004  
Suzanne M. Baker  
Rules Coordinator

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

**WAC 516-60-001 Catalog.** All dates and procedures established by the board of trustees or president relating to admissions and registration shall be published annually in the appropriate university catalog and shall be considered contractual between the student and the university. The catalog is defined as *Western Washington University Bulletin*.

**NEW SECTION**

**WAC 516-60-010 Waivers of tuition and fees.** (1) The board of trustees is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. Each of these laws, with the exception of RCW 28B.15.543 and 28B.15.545, authorizes, but does not require, the board of trustees to grant waivers for different categories of students and provides for waivers of different fees. The board of trustees or its delegate must affirmatively act to implement the legislature's grant of authority. A list of waiv-

ers that the board has implemented can be found in the *Bulletin, Timetable of Classes*, university website, or any subsequently adopted publication.

(2) Even when it has decided to implement a waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to any or all students who may be eligible under the terms of the laws, or it may decide to grant partial waivers. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection (5) of this section. All waivers are subject to subsection (5) of this section.

(3) The board of trustees also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waiver programs adopted under RCW 28B.15.915 are described in the sources identified in subsection (1) of this section. Waivers granted under RCW 28B.15.915 are subject to subsection (5) of this section.

(4) Waivers will not be awarded to students participating in self-sustaining courses or programs.

(5) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.-910 and may limit the total funding available under RCW 28B.15.915.

**WSR 04-03-082**

**PROPOSED RULES**

**DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed January 20, 2004, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-23-023.

Title of Rule: Evidence-based prescription drug program, WAC 296-20-01002, 296-20-02704, 296-20-02705, 296-20-03011, and 296-20-03012.

Purpose: These rules govern the evidence-based prescription drug program at labor and industries and are necessary to implement SB 6088 (chapter 29, Laws of 2003). Pursuant to RCW 70.14.050 the agencies shall adopt rules governing practitioner endorsement and use of any list developed as part of the program authorized by this section.

Statutory Authority for Adoption: RCW 51.04.020, 70.14.050.

Statute Being Implemented: RCW 70.14.050.

Summary: These rules manage the evidence-based prescription drug program and therapeutic interchange of preferred drugs for nonpreferred drugs.

Reasons Supporting Proposal: These rules are necessary to implement the prescription drug programs established by the 2003 legislature.

Name of Agency Personnel Responsible for Drafting: Jami Lifka, 7273 Linderson Way S.W., Tumwater, (360) 902-4941; Implementation: Gary Franklin, MD, MPH, Office of the Medical Director, (360) 902-5020; and Enforcement: Robert Malooly, Assistant Director for Insurance Services, (360) 902-4209.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 296-20-01002 defines new terms used in the evidence-based prescription drug program. It defines "appointing authority," "endorsing practitioner," "preferred drug list," "refill," "therapeutic alternative," and "therapeutic interchange."

WAC 296-20-02704 and 296-20-02705 list the Washington state pharmacy and therapeutics committee as a formal labor and industries advisory committee.

WAC 296-20-03011 repeats language from SB 6088 in that a pharmacist filling a prescription shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated that the nonpreferred drug be dispensed as written, or the prescription is a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug. In addition, this rule states that a nonendorsing provider must receive prior authorization from the department for the nonpreferred drug to be filled.

WAC 296-20-03012 provides examples of the types of drugs routinely allowed, requiring prior authorization, or normally denied for treating industrial injuries.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes have no impact on small businesses; therefore, no economic analysis is required.

RCW 34.05.328 applies to this rule adoption. This rule is a significant rule as described in RCW 34.05.328.

Hearing Location: Department of Labor and Industries, Auditorium, 7272 Linderson Way, Tumwater, WA, on March 1, 2004, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Jami Lifka by February 20, 2004, TDD (800) 833-6388 or (360) 902-4941.

Submit Written Comments to: Jami Lifka, Department of Labor and Industries, P.O. Box 44321, Olympia, WA 98504-4321, e-mail lifk235@lni.wa.gov, fax (360) 902-6315, by March 1, 2004, 5:00 PST.

Date of Intended Adoption: March 29, 2004.

January 20, 2004

Paul Trause  
Director

AMENDATORY SECTION (Amending WSR 03-21-069, filed 10/14/03, effective 12/1/03)

**WAC 296-20-01002 Definitions. Acceptance, accepted condition:** Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).

**Appointing authority:** For the evidence-based prescription drug program of the participating agencies in the state purchased health care programs, appointing authority shall mean the following persons acting jointly: The administrator of the health care authority, the secretary of the department of social and health services, and the director of the department of labor and industries.

**Attendant care:** Those proper and necessary personal care services provided to maintain the worker in his or her residence. Refer to WAC 296-20-303 for more information.

**Attending doctor report:** This type of report may also be referred to as a "60 day" or "special" report. The following information must be included in this type of report. Also, additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including ICD-9-CM codes and the objective and subjective findings.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending doctor should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker has not returned to work, a doctor's estimate of physical capacities should be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

**Authorization:** Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.



**Average wholesale price (AWP):** A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

**Baseline price (BLP):** Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

**Bundled codes:** When a bundled code is covered, payment for them is subsumed by the payment for the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

**By report: BR** (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

- (1) Diagnosis;
- (2) Size, location and number of lesion(s) or procedure(s) where appropriate;
- (3) Surgical procedure(s) and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;
- (5) Estimated follow-up;
- (6) Operative time;
- (7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

**Chart notes:** This type of documentation may also be referred to as "office" or "progress" notes. Providers must maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include, but are not limited to:

- (1) Date(s) of service;
- (2) Patient's name and date of birth;
- (3) Claim number;
- (4) Name and title of the person performing the service;
- (5) Chief complaint or reason for each visit;
- (6) Pertinent medical history;

- (7) Pertinent findings on examination;
- (8) Medications and/or equipment/supplies prescribed or provided;
- (9) Description of treatment (when applicable);
- (10) Recommendations for additional treatments, procedures, or consultations;
- (11) X rays, tests, and results; and
- (12) Plan of treatment/care/outcome.

**Consultation examination report:** The following information must be included in this type of report. Additional information may be requested by the department as needed.

- (1) A detailed history to establish:
  - (a) The type and severity of the industrial injury or occupational disease.
  - (b) The patient's previous physical and mental health.
  - (c) Any social and emotional factors which may effect recovery.
- (2) A comparison history between history provided by attending doctor and injured worker, must be provided with exam.
- (3) A detailed physical examination concerning all systems affected by the industrial accident.
- (4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.
- (5) A complete diagnosis of all pathological conditions including ICD-9-CM codes found to be listed:
  - (a) Due solely to injury.
  - (b) Preexisting condition aggravated by the injury and the extent of aggravation.
  - (c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.
  - (d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).
  - (6) Conclusions must include:
    - (a) Type of treatment recommended for each pathological condition and the probable duration of treatment.
    - (b) Expected degree of recovery from the industrial condition.
    - (c) Probability, if any, of permanent disability resulting from the industrial condition.
    - (d) Probability of returning to work.
  - (7) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm the diagnosis when indicated.

**Doctor:** For these rules, means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry.

Only those persons so licensed may sign report of accident forms and certify time loss compensation except as provided in chapter 296-20 WAC.

**Emergent hospital admission:** Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the workers health or treatment outcome.

**Endorsing practitioner:** A practitioner who has reviewed the preferred drug list and has notified the health

care authority that he or she has agreed to allow therapeutic interchange of a preferred drug for any nonpreferred drug in a given therapeutic class.

**Fatal:** When the attending doctor has reason to believe a worker has died as a result of an industrial injury or exposure, the doctor should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

**Fee schedules or maximum fee schedule(s):** The fee schedules consist of, but are not limited to, the following:

(a) Health Care Common Procedure Coding System Level I and II Codes, descriptions and modifiers that describe medical and other services, supplies and materials.

(b) Codes, descriptions and modifiers developed by the department.

(c) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POAC), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.

(d) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.

(e) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

**Health services provider or provider:** For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

**Home nursing:** Those nursing services that are proper and necessary to maintain the worker in his or her residence. These services must be provided through an agency licensed, certified or registered to provide home care, home health or hospice services. Refer to WAC 296-20-091 for more information.

**Independent or separate procedure:** Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

**Medical aid rules:** The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

**Modified work status:** The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the

doctor and the worker with a statement describing the available work in terms that will enable the doctor to relate the physical activities of the job to the worker's physical limitations and capabilities. The doctor shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the doctor as to the worker's ability to perform such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time loss compensation will be resumed upon certification by the attending doctor.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be conducted to determine whether the worker will require assistance in returning to work.

**Nonemergent (elective) hospital admission:** Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

**Physician:** For these rules, means any person licensed to perform one or more of the following professions: Medicine and surgery; or osteopathic medicine and surgery.

**Practitioner:** For these rules, means any person defined as a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; physician or osteopathic assistant; and massage therapy.

**Preferred drug list:** The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

**Proper and necessary:**

(1) The department or self-insurer pays for proper and necessary health care services that are related to the diagnosis and treatment of an accepted condition.

(2) Under the Industrial Insurance Act, "proper and necessary" refers to those health care services which are:

(a) Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

(b) Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes;

(c) Not delivered primarily for the convenience of the claimant, the claimant's attending doctor, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

(3) The department or self-insurer stops payment for health care services once a worker reaches a state of maximum medical improvement. Maximum medical improve-

ment occurs when no fundamental or marked change in an accepted condition can be expected, with or without treatment. Maximum medical improvement may be present though there may be fluctuations in levels of pain and function. A worker's condition may have reached maximum medical improvement though it might be expected to improve or deteriorate with the passage of time. Once a worker's condition has reached maximum medical improvement, treatment that results only in temporary or transient changes is not proper and necessary. "Maximum medical improvement" is equivalent to "fixed and stable."

(4) In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

**Refill:** The continuation of therapy with the same drug (including the renewal of a previous prescription or adjustments in dosage) when a prescription is for an antipsychotic, antidepressant, chemotherapy, antiretroviral or immunosuppressive drug.

**Regular work status:** The injured worker is physically capable of returning to his/her regular work. It is the duty of the attending doctor to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending doctor if the condition is not stationary and such treatment is needed and otherwise in order.

**Temporary partial disability:** Partial time loss compensation may be paid when the worker can return to work on a limited basis or return to a lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of more than five percent before consideration of partial time loss can be made. No partial time loss compensation can be paid after the worker's condition is stationary. **All time loss compensation must be certified by the attending doctor based on objective findings.**

**Termination of treatment:** When treatment is no longer required and/or the industrial condition is stabilized, a report indicating the date of stabilization should be submitted to the department or self-insurer. This is necessary to initiate closure of the industrial claim. The patient may require continued treatment for conditions not related to the industrial condition; however, financial responsibility for such care must be the patient's.

**Therapeutic alternative:** Drug products of different chemical structure within the same pharmacologic or therapeutic class and that are expected to have similar therapeutic effects and safety profiles when administered in therapeutically equivalent doses.

**Therapeutic interchange:** To dispense with the endorsing practitioner's authorization, a therapeutic alternative to the prescribed drug.

**Total permanent disability:** Loss of both legs or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from

performing any work at any gainful employment. When the attending doctor feels a worker may be totally and permanently disabled, the attending doctor should communicate this information immediately to the department or self-insurer. A vocational evaluation and an independent rating of disability may be arranged by the department prior to a determination as to total permanent disability. Coverage for treatment does not usually continue after the date an injured worker is placed on pension.

**Total temporary disability:** Full-time loss compensation will be paid when the worker is unable to return to any type of reasonably continuous gainful employment as a direct result of an accepted industrial injury or exposure.

**Unusual or unlisted procedure:** Value of unlisted services or procedures should be substantiated "by report" (BR).

**Utilization review:** The assessment of a claimant's medical care to assure that it is proper and necessary and of good quality. This assessment typically considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the accepted condition being treated.

**AMENDATORY SECTION** (Amending WSR 00-01-037, filed 12/7/99, effective 1/8/00)

**WAC 296-20-02704 What criteria does the director or director's designee use to make medical coverage decisions?** (1) In making medical coverage decisions, the director or the director's designee considers information from a variety of sources. These sources include, but are not limited to:

- Scientific evidence;
- National and community-based opinions;
- Informal syntheses of provider opinion;
- Experience of the department and other entities;
- Regulatory status.

Because of the unique nature of each health care service, the type, quantity and quality of the information available for review may vary. The director or director's designee weighs the quality of the available evidence in making medical coverage decisions.

(2) Scientific evidence.

(a) "Scientific evidence" includes reports and studies published in peer-reviewed scientific and clinical literature. The director or the director's designee will consider the nature and quality of the study, its methodology and rigorosity of design, as well as the quality of the journal in which the study was published.

- For treatment services, studies addressing safety, efficacy, and effectiveness of the treatment or procedure for its intended use will be considered.

- For diagnostic devices or procedures, studies addressing safety, technical capacity, accuracy or utility of the device or procedure for its intended use will be considered.

(b) The greatest weight will be given to the most rigorously designed studies and on those well-designed studies that are reproducible. The strength of the design will depend on such scientifically accepted methodological principles as randomization, blinding, appropriateness of outcomes, spectrum of cases and controls, appropriate power to detect differences, magnitude and significance of effect. Additional con-

sideration will be given to those studies that focus on sustained health and functional outcomes of workers with occupational conditions rather than unsustained clinical improvements.

(3) National and community-based opinion.

(a) "National opinion" includes, but is not limited to, syntheses of clinical issues that may take the form of published reports in the scientific literature, national consensus documents, formalized documents addressing standards of practice, practice parameters from professional societies or commissions, and technology assessments produced by independent evidence-based practice centers.

The director or the director's designee will consider the nature and quality of the process used to reach consensus or produce the synthesis of expert opinion. This consideration will include, but may not be limited to, the qualifications of participants, potential biases of sponsoring organizations, the inclusion of graded scientific information in the deliberations, the explicit nature of the document, and the processes used for broader review.

(b) "Community-based opinion" refers to advice and recommendations of formal committees made up of clinical providers within the state of Washington. As appropriate to the subject matter, this may include recommendations from the department's formal advisory committees:

- The industrial insurance and rehabilitation committee of the Washington State Medical Association, which includes a representative from the Washington Osteopathic Medical Association;

- The chiropractic advisory committee.

- The Washington state pharmacy and therapeutics committee.

(4) "Informal syntheses of provider opinion" includes, but is not limited to, professional opinion surveys.

(5) Experience of the department and other entities.

The director or director's designee may consider data from a variety of sources including the department, other state agencies, federal agencies and other insurers regarding studies, experience and practice with past coverage. Examples of these include, but are not limited to, formal outcome studies, cost-benefit analyses, and adverse event, morbidity or mortality data.

(6) Regulatory status.

The director or director's designee will consider related licensing and approval processes of other state and federal regulatory agencies. This includes, but is not limited to:

- The federal food and drug administration's (FDA) regulation of drugs and medical devices (21 U.S.C. 301 et seq. and 21 CFR Chapter 1, Subchapters C, D, & H consistent with the purposes of this chapter, and as now or hereafter amended); and

- The Washington state department of health's regulation of scope of practice and standards of practice for licensed health care professionals regulated under Title 18 RCW.

**AMENDATORY SECTION** (Amending WSR 00-01-037, filed 12/7/99, effective 1/8/00)

**WAC 296-20-02705 What are treatment and diagnostic guidelines and how are they related to medical cov-**

**erage decisions?** (1) Treatment and diagnostic guidelines are recommendations for the diagnosis or treatment of accepted conditions. These guidelines are intended to guide providers through the range of the many treatment or diagnostic options available for a particular medical condition. Treatment and diagnostic guidelines are a combination of the best available scientific evidence and a consensus of expert opinion.

(2) The department may develop treatment or diagnostic guidelines to improve outcomes for workers receiving covered health services. As appropriate to the subject matter, the department may develop these guidelines in collaboration with the department's formal advisory committees:

- The industrial insurance and rehabilitation committee of the Washington State Medical Association, which includes a representative from the Washington Osteopathic Medical Association;

- The chiropractic advisory committee.

- The Washington state pharmacy and therapeutics committee.

(3) In the process of implementing these guidelines, the department may find it necessary to make a formal medical coverage decision on one or more of the treatment or diagnostic options. The department, not the advisory committees, is responsible for implementing treatment guidelines and for making coverage decisions that result from such implementation.

**AMENDATORY SECTION** (Amending WSR 00-01-040, filed 12/7/99, effective 1/20/00)

**WAC 296-20-03011 What general limitations are in place for medications?** (1) **Amount dispensed.** The department or self-insurer will pay for no more than a thirty-day supply of a medication dispensed at any one time.

(2) **Over-the-counter drugs.** Prescriptions for over-the-counter items may be paid. Special compounding fees for over-the-counter items are not payable.

(3) **Generic drugs.** Prescriptions are to be written for generic drugs unless the attending physician specifically indicates that substitution is not permitted. For example: The patient cannot tolerate substitution. Pharmacists are instructed to fill with generic drugs unless the attending physician specifically indicates substitution is not permitted.

(4) **Evidence-based prescription drug program.** In accordance with RCW 70.14.050, the department in cooperation with other state agencies may develop a preferred drug list. Any pharmacist filling a prescription under state purchased health care programs as defined in RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug (see RCW 69.41.190) or the nonendorsing practitioner has received prior authorization from the department to fill the prescription as written, in which case the pharmacist shall dispense the prescribed nonpreferred drug.

(5) **Prescriptions for unrelated medical conditions.** The department or self-insurer may consider temporary cov-

erage of prescriptions for conditions not related to the industrial injury when such conditions are retarding recovery. Any treatment for such conditions must have prior authorization per WAC 296-20-055. This would apply to any prescription for such conditions even when the endorsing practitioner indicates "dispense as written."

~~((5))~~ (6) **Pension cases.** Once the worker is placed on a pension, the department or self-insurer may pay for only those drugs and medications authorized for continued medical treatment for conditions previously accepted by the department. Authorization for continued medical and surgical treatment is at the sole discretion of the supervisor of industrial insurance and must be authorized before the treatment is rendered. In such pension cases, the department or self-insurer cannot pay for scheduled drugs used to treat continuing pain resulting from an industrial injury or occupational disease.

**AMENDATORY SECTION** (Amending WSR 00-01-040, filed 12/7/99, effective 1/20/00)

**WAC 296-20-03012 Where can I find the department's outpatient drug and medication coverage decisions?** The department's outpatient drug and medication coverage decisions are contained in the department's formulary, as developed by the department in collaboration with the Washington state pharmacy and therapeutics committee and the Washington State Medical Association's Industrial Insurance and Rehabilitation Committee.

In the formulary, drugs are listed in the following categories:

• **Allowed**

Drugs used routinely for treating accepted industrial injuries and occupational illnesses, including those on the preferred drug list.

Example: Nonscheduled drugs and other medications during the acute phase of treatment for the industrial injury or condition.

• **Prior authorization required**

Drugs used routinely to treat conditions not normally accepted as work related injuries, drugs which are used to treat unrelated conditions retarding recovery from the accepted condition on the claim, and drugs for which less expensive alternatives exist. In addition, nonendorsing practitioners must obtain prior authorization for a nonpreferred drug when the category of drugs has a preferred drug. Example: All drugs to treat hypertension because hypertension is not normally an accepted industrial condition. Also, oxycotin, as a nonpreferred drug, would require prior authorization when prescribed by nonendorsing practitioners.

• **Denied**

Drugs not normally used for treating industrial injuries or not normally dispensed by outpatient pharmacies.

Example: Most hormones, most nutritional supplements.

**WSR 04-03-085**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed January 20, 2004, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-07-102.

Title of Rule: Machine safety.

Purpose: This rule making is part of our four-year plan to rewrite for clarity all of our general occupational safety and health rules. Machine guarding requirements located in chapters 296-24, 296-78, and 296-302 WAC were reviewed to identify unnecessary design requirements, outdated terminology, incorporate necessary policies and requirements, rewriting and reorganizing for clarity and consolidate into one rule, chapter 296-806 WAC.

**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 04-05 issue of the Register.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Summary: This rule making is part of our four-year plan to rewrite for clarity all of our general occupational safety and health rules. Machine guarding requirements located in chapters 296-24, 296-78, and 296-302 WAC were reviewed to identify unnecessary design requirements, outdated terminology, incorporate necessary policies and requirements, rewriting and reorganizing for clarity and consolidate into one rule, chapter 296-806 WAC. See also Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Michael A. Silverstein, Tumwater, (360) 902-5495.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The machine safety rules will assist in protecting workers from moving parts that create the possibility for workplace injuries. Providing safeguards is essential for eliminating or controlling the hazards. There are no anticipated effects due to the rule making.

Proposal Changes the Following Existing Rules: This proposed rule in chapter 296-806 WAC would require all employers in Washington using hog mills, chippers and other stationary machinery to comply with certain requirements to reduce the risk of injury to machine operators and nearby personnel. Chippers and hog mills would require protective safeguarding outlined in the rule summary section of this document. Work areas around stationary machinery would be required to allow for the unimpeded flow of materials and movement of operators, which is also outlined in the rule summary section.

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

## Small Business Economic Impact Statement

**Executive Summary:** The Department of Labor and Industries (L&I) has rewritten the machine safety requirements in chapter 296-24 WAC, General safety and health standards; chapter 296-78 WAC, Safety standards for sawmills and woodworking operations; and chapter 296-302 WAC, Safety standards for bakery equipment, for clarity and ease of use for employers and employees. This rewrite is part of L&I's plain language initiative. The requirements from chapters 296-24, 296-78 and 296-302 WAC will be moved into chapter 296-806 WAC, Machine safety. This small business economic impact statement (SBEIS) addresses the economic impacts on businesses affected by these four sections of the rule as required by the Regulatory Fairness Act (RFA). The requirements of the RFA are outlined later in this document. The sections of this rule making requiring economic analysis are:

**Chippers and Hog Mills:** WAC 296-806-48050 Follow these requirements for chipper mills, 296-806-48052 Follow these requirements for hog mills, 296-806-48054 Protect employees from falling into chipper and hog mills.

**Work Area:** WAC 296-806-20006 Arrange work areas to avoid creating hazards.

This proposed rule in chapter 296-806 WAC would require all nonagricultural employers in Washington using hog mills, chippers and other stationary machinery to comply with certain requirements to reduce the risk of injury to machine operators and nearby personnel. Chippers and hog mills would require protective safeguarding outlined in the rule summary section of this document. Work areas around stationary machinery would be required to allow for the unimpeded flow of materials and movement of operators, which is also outlined in the rule summary section.

These proposed rule requirements for chippers, hog mills and stationary machine work area are currently only in force for very specific industries in Washington. The proposed rule would expand their coverage to all nonagricultural industries that use these machines. This rule-making process is necessary to provide equal worker protection across all nonagricultural industries.

Mail surveys were conducted to estimate the compliance costs for the proposed rule. The hog mill survey revealed full compliance with the rule, therefore no disproportionate impact for small business can be said to exist as a result of this component of the rule.

The chipper survey showed that some affected firms would incur costs. The estimated cost per employee of the two small firms was four dollars and seventy-six cents and thirteen dollars respectively. The estimated cost per employee of the one large firm reporting is twenty-one dollars and ninety-six cents. Since large firms reported an expected cost per employee significantly higher than that of small firms, no disproportionate cost impact can be said to result from the rule.

With respect to the work area requirement, one firm did report expected and expected one-time compliance cost of one hundred thousand dollars. However, this firm reported that they had one hundred employees which makes it a large firm as defined under the statute. Therefore the costs that the

firm reported can not be said to have a disproportionate impact on small business.

**Economic Requirements of the Regulatory Fairness Act:**

Proposed rules and rule amendments must meet the requirements of the RFA, chapter 19.85 RCW before adoption. The RFA is intended to ensure, if legal and feasible, that rules do not impose disproportionate economic burdens on small businesses compared to larger businesses. The RFA requires that an SBEIS be prepared for proposed rules that impose more than minor costs on businesses in an industry. Although the (de minimis) value of a minor cost is not specified in statute, it has been widely interpreted in practice to mean \$50 or less<sup>1</sup> per business in real or constant 1990 dollars.

According to the RFA, the SBEIS must contain the following:

1) A brief description of the reporting, record keeping and other compliance requirement of the proposed rule along with the kinds of professional services that a small business is likely to need for compliance.

2) An analysis of all the business compliance costs of the proposed rule.

3) Consider whether compliance with the rule will cause businesses to lose sales or revenues.

4) The compliance cost of proposed regulations on small businesses<sup>2</sup> is estimated and compared to the compliance cost estimates for the largest 10% of businesses<sup>3</sup> in an industry. These cost comparisons can be estimated as per employee business costs.

5) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as require by RCW 19.85.030(2), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(2).

6) A description of how the agency will involve small businesses in the development of the rule.

7) A list of industries that will be required to comply with the rule. However, this shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.

The economic analysis in this SBEIS is based on new requirements that are not incorporated in national consensus codes.

**Summary of the Proposed Rule:** All analysis and conclusions contained in this SBEIS are based on the following requirements of the proposed rule (note that these requirements are for firms in all industries using the specified equipment).

1) Chippers and hog mill workplaces shall be operated in conformity with the following:

- Feed systems are arranged such that the operator does not stand in a direct line with the chipper blades or spout (hopper).
- The operator shall be protected from chips or chunks being thrown out from the blades while feeding the machine.
- The chipper's spout shall be enclosed to a height or distance of at least forty inches from the floor or operators station whichever is higher.
- A mirror or other viewing device shall be provided to permit monitoring of material when the operator other-

wise could not readily observe the material being fed into the chipper.

- A safety belt (or harness) and a lifeline short enough to prevent employees working near the entrance from falling in the hog mill or chipper shall be provided.

2) This would require that work areas around fixed processing machinery provide enough free space that:

- Each operator can clean and handle material with the least interference from other workers or machines.
- Each operator does NOT have to stand in the way of passing traffic.
- Employees can bring in and remove materials safely.

Labor and industries has determined that no reporting, record-keeping or other compliance costs would arise from the proposed rule other than modifying or adding safety equipment or expanding work areas.

**Survey Data:** Department staff designed two separate survey instruments to assist in this analysis. Industries chosen for the first survey were considered likely to have chippers and/or hog mills as they are used for similar procedures; therefore, the survey questions for chippers and hog mills were combined on the same page and sent to a randomly-selected number of firms in those SICs. The second survey went to industries that were considered likely to be subject to the work area requirements of the rule. Note that these requirements apply to all nonagricultural firms that have the specified machinery, and not just the standard industrial classifications (SIC) listed. The industries targeted in the survey and their SICs are as follows:

**Chippers and Hog Mills**

Number in Population: 2,041  
 Number of Firms Surveyed: 1,000

**Industries Surveyed:**

- 2431 Millwork
- 2434 Wood Kitchen Cabinets
- 2439 Structural Wood Members, Not Elsewhere Classified
- 2441 Nailed and Lock Corner Wood Boxes and Shook
- 2448 Wood Pallets and Skids
- 2449 Wood Containers Not Elsewhere Classified
- 2493 Reconstituted Wood Products
- 2499 Wood Products, Not Elsewhere Classified
- 3084 Plastics Pipe
- 3085 Plastics Bottles
- 3086 Plastics Foam Products
- 3087 Custom Compounding of Purchased Plastics Resins
- 3088 Plastics Plumbing Fixtures
- 3089 Plastics Products, Not Elsewhere Classified
- 3931 Musical Instruments
- 3995 Burial Caskets
- 5712 Furniture Stores

**Work Area Requirements**

Number in Population: 670  
 Number of Firms Surveyed: 670

**Industries Surveyed:**

- 2261 Finishers of Broadwoven Fabrics of Cotton
- 2653 Corrugated and Solid Fiber Boxes
- 2679 Converted Paper and Paperboard Products, Not Elsewhere Classified
- 3221 Glass Containers
- 3531 Construction Machinery and Equipment Manufacturing
- 3553 Woodworking Machinery Manufacturing
- 3599 Industrial and Commercial Machinery and Equipment Manufacturing, Not Elsewhere Classified (Largely consisting of machine shops in Washington)
- 3949 Sporting and Athletic Goods Manufacturing, Not Elsewhere Classified

**Response Statistics for Chipper and Hog Mill Survey:** Of the one thousand surveys sent to the industries identified as likely to utilize chippers and/or hog mills, two hundred forty-eight (248 or 24.8%) were returned. Of the respondents, six reported using chippers or hog mills. Of the six, two were covered under the sawmill standard and, therefore will not have their regulatory status altered by the rule in question. Of the four not covered by the sawmill standard, one was in compliance. The three remaining firms, two small firms and one large firm reported expected cost as follows<sup>4</sup>:

Firm Size	Total Number of Employees	Expected Cost of Compliance	Cost/Employee
Small	42	\$200	\$4.76
Small	4	\$50	\$13.00
Large	140	\$3,075	\$21.96

The costs of compliance of two hundred dollars for the first small firm and fifty dollars for the second small firm stem from the need [to] install a mirror or mirrors as required by the rule. The expected cost of compliance of three thousand seventy-five dollars for the only large firm in the sample is a result of both the need to enclose their chipper spouts and install a mirror or mirrors as required by the rule. Three thousand dollars of the reported cost is for the enclosure of the chipper spouts and seventy-five dollars is for the installation of a mirror or mirrors.

**Response Statistics for Work Area Survey:** Of the six hundred and seventy surveys sent to industries identified as likely to have equipment that would make them subject to the work area requirements of the rule seventy-eight responded. Of the respondents, three reported that at least a portion of their operations would fall under the rule; however, all but one was in compliance. That single firm reported an expected one time cost of one hundred thousand dollars. This

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single firm reported that it employed one hundred individuals and therefore falls into the large business category.

**Economic Impact Assessment:** This section explains how the survey data was used to determine whether there is a disproportionate impact on small business pursuant to the RFA.

**Costs:** All costs reported are nonrecurring costs that occur only in the first year of the rule. Any long-term costs of the rule are likely to be maintenance costs (e.g. the cost to replace broken mirrors or safety belts/lifelines) and are likely to be quite small. Because these costs are expected to be minor, they are not estimated. Any capacity expansion for firms using chippers or hog mills are not likely to result in increased cost because all new machinery should come from the manufacturer with "industry standard" safety features in place.

**Hog Mills and Chippers:** Of the two hundred and forty-eight firms reporting, seven reported that they operated hog mills and all reported that they were currently in compliance. Since the survey results are seen as being representative of the population of hog mill-using firms, it is possible to infer that there are no cost impacts of the rule as it pertains to hog mills.

Of the survey respondents not covered by previously existing regulations, four reported that they operated chippers. One of these firms was already in compliance. Of the three remaining firms, one was large and two were small. The large firm reported an expected cost per affected employee of just about twenty-two dollars (exactly \$21.96) while the two smaller firms reported an expected cost per employee of just about five dollars (exactly \$4.76) and thirteen dollars. Given the data, it can be inferred that a large firm in an affected industry can expect to pay approximately two to three times more than a small firm in order to comply with the rule. Since the survey results are seen as being representative of the population of chipper-using firms, it is possible to infer that no disproportionate cost impact on small firms will result from the adoption of this rule as it pertains to chippers.

**Work Area Requirements:** As stated earlier, one firm did report expected costs of one hundred thousand dollars to bring their firm into compliance with the work area requirement. However, since this firm was a large firm and this data is seen as being representative of the population of affected firms, it is possible to infer that no disproportionate cost impact in small firms will result from the adoption of the rule as it pertains to the work area requirement.

**Conclusion:** Using the survey data and basic statistical inference, the evidence strongly supports the assertion that there will not be any disproportionate impacts on small business as a result of the proposed rule as it pertains to any of the industries surveyed.

<sup>1</sup> This amount has been calculated down to the four-digit Standard Industrial Code (SIC) level of detail for a large number of Washington state industries. These amounts were calculated by estimating 0.1 percent of profits for an average business with fifty employees in each four-digit SIC (*Guide for Facilitating Regulatory Fairness*, of 1993). These *de minimus* amounts can be adjusted for inflation to be valued current nominal values. Note that the minor amounts start at \$50 for some SICs with generally higher profits.

<sup>2</sup> The RFA defines "small business" as any business entity, including a sole proprietorship, corporation, partnership or other legal entity, that is owned

and operated independently from all other businesses, and that has fifty or fewer employees. In this analysis, the number of "employees" is calculated by using full-time equivalents, of 2,000 worker hours annually as the best indicator of the number of employees.

<sup>3</sup> Note that the measure of the "largest 10% of businesses in an industry" is not defined in the RFA. While this size measure could be calculated by revenue, profits or some other measure, L&I believes that using the number of employees or FTE provides the most meaningful comparison of businesses with fifty or fewer employees. In each sector, however, the largest 10% of businesses may include at least some small businesses; in such cases, the businesses that could have been counted in both groups were included by L&I in the largest 10% and excluded from the small business calculations.

<sup>4</sup> All costs reported were costs associated with bringing chippers into compliance; hog mill users reported that they were already in compliance.

A copy of the statement may be obtained by writing to Carmen Moore, Rules Coordinator, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504, phone (360) 902-4206, fax (360) 902-4202.

RCW 34.05.328 applies to this rule adoption. Significant rule-making criteria does apply to these rule changes due to the increase in requirements to hog mills, chippers, and stationary machine work areas.

**Hearing Location:** Department of Labor and Industries, Rooms S117 and S118, 7273 Linderson Way S.W., Tumwater, WA, on March 24, 2004, at 1:30 p.m.; and Red Lion Hotel Yakima Center, 607 East Yakima Avenue, Yakima, WA, on March 31, 2004, at 1:30 p.m.

**Assistance for Persons with Disabilities:** Contact Sally Elliott by March 8, 2004, TDD (360) 902-5484 or [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov).

**Submit Written Comments to:** Cindy Ireland, Administrative Regulations Analyst, WISHA Services Division, P.O. Box 44620, Olympia, WA 98507-4620, fax (360) 902-5529, by April 7, 2004.

Date of Intended Adoption: June 1, 2004.

January 20, 2004

Paul Trause

Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 04-05 issue of the Register.

**WSR 04-03-093**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed January 20, 2004, 3:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-21-150.

Title of Rule: WAC 388-472-0010 What are necessary supplemental accommodation services?

Purpose: This change is necessary to correct a reference to a repealed WAC by removing the reference in subsection (8).

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

Statute Being Implemented: RCW 74.04.050, 74.04-055, 74.04.057.



**Summary:** The current WAC has a typographical error. This change will fix the error.

**Reasons Supporting Proposal:** This change will clarify rule for workers, the public, and clients.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Patti Clark, 1009 College S.E., Lacey, WA 98504, (360) 413-3084.

**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:** See Title of Rule, Purpose, Summary, and Reasons Supporting Proposal above.

**Proposal Changes the Following Existing Rules:** See Purpose, Summary, and Reasons Supporting Proposal above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients.

RCW 34.05.328 applies to this rule adoption. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(iv) which states in-part, "[t]his section does not apply to...rules that only correct typographical errors, make name or address changes, or clarify language of a rule without changing its effect."

**Hearing Location:** Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on February 24, 2004, at 10:00 a.m.

**Assistance for Persons with Disabilities:** Contact Andy Fernando, DSHS Rules Coordinator, by February 1, 2004, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov [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 24, 2004.

**Date of Intended Adoption:** Not sooner than February 25, 2004.

January 15, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 01-10-104, filed 5/1/01, effective 6/1/01)

**WAC 388-472-0010 What are necessary supplemental accommodation services?** Necessary supplemental accommodation (NSA) services are services provided to you if you have a mental, neurological, physical or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

NSA services include but are not limited to:

- (1) Arranging for or providing help to complete and submit forms to us;
- (2) Helping you give or get the information we need to decide or continue eligibility;
- (3) Helping you request continuing benefits;

(4) If you miss an appointment or deadline, contacting you about the reason before we reduce or end your benefits;

(5) Explaining to you the reduction in or ending of your benefits (see WAC 388-418-0020);

(6) If we know you have a person who helps you with your applications, notifying them when we need information or when we are about to reduce or end your benefits;

(7) Assisting you with requests for fair hearings;

(8) Providing protective payments if needed ((~~according to WAC 388-265-1250~~)); and

(9) On request, reviewing our decision to terminate, suspend or reduce your benefits.

**WSR 04-03-094**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed January 20, 2004, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-20-022.

**Title of Rule:** WAC 388-446-0005 Disqualification period for cash assistance.

**Purpose:** This change is necessary to correct a typographical error by changing the reference listed in subsection (4) from WAC 388-418-0030 to 388-458-0030.

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

**Statute Being Implemented:** RCW 74.04.050, 74.04.-055, 74.04.057.

**Summary:** The current WAC has a typographical error. This change will fix the error.

**Reasons Supporting Proposal:** This change will clarify WAC for workers, the public, and clients.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Patti Clark, 1009 College S.E., Lacey, WA 98504, (360) 413-3084.

**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:** See Title of Rule, Purpose, Summary, and Reasons Supporting Proposal above.

**Proposal Changes the Following Existing Rules:** See Purpose, Summary, and Reasons Supporting Proposal above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(iv) which states in-part, "[t]his section does not apply to ... rules that only correct typographical errors, make name or address changes, or clarify language of a rule without changing its effect."

PROPOSED

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on February 24, 2004, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by February 17, 2004, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov [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 24, 2004.

Date of Intended Adoption: Not sooner than February 25, 2004.

January 15, 2004

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 388-446-0005 Disqualification period for cash assistance.** (1) An applicant or recipient who has been convicted of unlawful practices in obtaining cash assistance is disqualified from receiving further cash benefits if:

(a) For TANF/SFA, the conviction was based on actions which occurred on or after May 1, 1997; or

(b) For general assistance, the conviction was based on actions which occurred on or after July 23, 1995.

(2) The disqualification period must be determined by the court and will be:

(a) For a first conviction, no less than six months; and

(b) For a second or subsequent conviction, no less than twelve months.

(3) The disqualification applies only to the person convicted and begins on the date of conviction.

(4) A recipient's cash benefits are terminated following advance or adequate notice requirements as specified in WAC ((388-418-0030)) 388-458-0030.

**WSR 04-03-095**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed January 20, 2004, 3:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-17-063 on August 18, 2003.

Title of Rule: WAC 388-310-1600 WorkFirst—Sanction and 388-310-1650 WorkFirst—Child SafetyNet Payments.

Purpose: The proposed amendments will simplify the Sanction and Child SafetyNet process by eliminating multiple levels of sanction and strengthen the Child SafetyNet process.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, and 74.08A.340.

Statute Being Implemented: RCW 74.08.090, 74.04-050, and 74.08A.340.

Summary: The change will reduce the number of steps in sanction and require a case staffing before the sanction is imposed. The Child SafetyNet change removes the additional time in sanction after complying and increases the time a client would be in Child SafetyNet while complying before removing the Child SafetyNet.

Reasons Supporting Proposal: The process was to complicated with too many steps. The new changes will simplify the process.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ian Horlor, 1009 College S.E., Lacey, WA 98504, (360) 413-3247.

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: See Title of Rule, Purpose, Summary, and Reasons Supporting Proposal above.

Proposal Changes the Following Existing Rules: See Purpose, Summary, and Reasons Supporting Proposal above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients.

RCW 34.05.328 does not apply to this rule adoption. 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."

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on February 24, 2004, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by February 20, 2004, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov [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 24, 2004.

Date of Intended Adoption: Not earlier than February 25, 2004.

January 16, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

**WAC 388-310-1600 WorkFirst—Sanctions. (1) What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

**(2) What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do.

(b) You will have ten days to contact us so we can talk with you about the situation. You can contact us in writing, by phone, by going to the appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and, if needed, change the requirements in your individual responsibility plan. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

(e) Before you are placed in sanction, we will have a case staffing to ensure you were offered the opportunity to participate and that you were able to do so. You will be notified when this will be so you can attend.

**(3) What is considered a good reason for not being able to do what WorkFirst requires?**

You have a good reason if it was not possible to do what WorkFirst requires due to a significant problem or event outside your control. Some examples of good reasons include:

(a) You had an emergent physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your co-payment would under the working connections child care program in chapter 388-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

**(4) What if we decide that you did not have a good reason for failing to meet WorkFirst requirements?**

If we decide that you did not have a good reason for failing to meet WorkFirst requirements, we will send you a letter that tells you:

(a) What you failed to do;

(b) That you are in sanction status;

(c) Penalties that will be applied to your grant;

(d) When the penalties will be applied;

(e) How to request a fair hearing if you disagree with this decision; and

(f) How to end the penalties and get out of sanction status.

**(5) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't comply and you can't prove that you had a good reason, you do not qualify for your full grant. This is called being in WorkFirst sanction status.

**(6) Are there penalties when you or someone in my household goes into sanction status?**

(a) When someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements.

(b) ~~((There are three penalty levels:~~

~~(i) Level one: We calculate your family's grant and then remove the noncompliant person(s) share of the grant;~~

~~(ii) Level two: Your reduced grant (removing the non-compliant person's share) will be sent to a protective payee every month until you get out of sanction status. (WAC 388-460-0001 describes the protective payee rules.)~~

~~(iii) Level three: Your grant is reduced by the person(s) share or forty percent, whichever is more and your reduced grant will be sent to a protective payee until you get out of sanction status.~~

~~(e) The penalties change depending on how long you have been in sanction status and how many time you have been in sanction status:~~

~~(i) The first time you go into sanction your penalties will start at level one. If you are still in sanction after three months, you will go to level two. If you are still in sanction after another three months, you will go to level three.~~

~~(ii) The second time you are in sanction, your penalties start at level two and changes to level three after three months.~~

~~(iii) After three or more times in sanction, you start at level three.~~

~~(d) If you are in sanction status on August 1, 2002, your penalties will start at level one, two, or three depending on how long you have been in sanction status. This will be con-~~

~~sidered your first sanction))~~ Your grant is reduced by the person(s) share or forty percent, whichever is more.

(c) Your reduced grant will be sent to a protective payee until you get out of sanction status. (WAC 388-460-0001 describes the protective payee rules.)

**(7) How do I end the penalties and get out of sanction status?**

To stop the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities(~~as follows:~~

~~(i) For two weeks in a row if you are in level one of sanction;~~

~~(ii) For four weeks in a row if you are in level two or three of sanction))~~ for four weeks in a row.

(c) When you leave sanction status, your grant will be restored ~~((beginning with the day you began doing your required activities))~~ to the level for which you are eligible beginning the first of the month following your four weeks of participation.

**(8) What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

(a) If your case closes while you are in sanction status and is reopened in six months or less, you will start out in sanction ~~((where you were when the case was closed)).~~

(b) If your case has been closed for more than six months, you will not be in sanction status if your case is reopened.

AMENDATORY SECTION (Amending WSR 02-14-084, filed 6/28/02, effective 7/29/02)

**WAC 388-310-1650 WorkFirst—Child SafetyNet Payments. (1) What is a Child SafetyNet Payment?**

A Child SafetyNet Payment (CSNP) is a TANF/SFA time limit extension to maintain housing and basic utilities and other verified needs of the children in your household. (See WAC 388-484-0006.) Your family will get a Child SafetyNet Payment extension instead of a regular TANF/SFA time limit extension if:

(a) You or another adult in your household has been getting TANF/SFA for more than sixty months; and

(b) Someone in your household is in sanction status because they are not exempt or in a time limited hardship extension (see WAC 388-310-0300, 388-484-0006 and 388-310-0350) and have refused to do WorkFirst requirements without a good reason as provided in WAC 388-310-1600. We will not place you into CSNP status unless we first offered you the opportunity to talk about the proposed sanction as required by WAC 388-310-1600(2) and gave you notice that we did not think you had a good reason for failing to meet WorkFirst requirements as required by WAC 388-310-1600(4).

**(2) How will I know if my family will be getting a Child SafetyNet Payment?**

We will send you a letter that tells:

(a) What caused your household to go into sanction status;

(b) When your Child SafetyNet Payments will start;

(c) How to request a fair hearing if you disagree with the decision; and

(d) How to become qualified for regular TANF/SFA time limit extension benefits.

**(3) Are there penalties when my household gets a Child SafetyNet Payment?**

(a) When your household gets a Child SafetyNet Payment:

(i) We reduce your grant by forty percent or the noncompliant person's share, whichever is more; and

(ii) Send your family's CSNP to a protective payee.

(b) The protective payee can only pay your verified rent and utility costs with your CSNP and will spend anything left over to pay your children's expenses (like clothing, diapers, toiletries, school supplies or other school-related costs).

(c) The Child SafetyNet Payment is cash assistance and if you get more than you are eligible to get, then we can recover the amount we overpaid you under chapter 388-410 WAC.

**(4) How do I end the penalties and get out of CSNP status?**

To stop the penalties and get out of CSNP status, you must:

(a) Prove that you have been doing your WorkFirst requirements for ~~((one full month))~~ twelve weeks in a row; or

(b) Prove that you had a good reason not to do your required activities (see WAC 388-310-1600(3)); or

(c) Become exempt from WorkFirst requirements (see WAC 388-310-0350).

**(5) What happens when I leave CSNP status?**

Once you leave CSNP status(=

~~(a) All your penalties will end if you proved that you had a good reason not to do your WorkFirst requirements or you became exempt; or~~

~~(b) You will go into level three of sanction status described in WAC 388-310-1600(6). Your grant will be sent to a protective payee and reduced by forty percent or the non-compliant person's share, whichever is more.~~

~~(c) The level three sanction penalties will end after you do all your WorkFirst requirements for four weeks in a row))~~ your grant will be restored to the level for which you are eligible the first of the month following your twelve weeks of participation.

**(6) What if I reapply for TANF or SFA and my family was in CSNP status a when my case closed?**

If your case closes while you are in CSNP status, you will go back into CSNP status when your grant is reopened.

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 04-03-096

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 20, 2004, 3:54 p.m.]

Supplemental Notice to WSR 03-21-124.

PROPOSED

Preproposal statement of inquiry was filed as WSR 03-18-101 on September 2, 2003.

Title of Rule: WAC 388-478-0055 How much do I get from my supplemental security income (SSI) and state supplemental payments (SSP).

Purpose: To amend the rule adding the additional categories of SSI recipients who get a SSP along with their respective payment rates. This change updates SSP payment amounts and includes payment amount information for calendar year 2004.

Other Identifying Information: This is a supplemental filing notice. The original hearing was held on November 25, 2003.

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: This rule notifies of a change in the state SSP payment amounts for all categories if SSP recipients to include the new two additional categories of SSI recipients who will begin getting an SSP in November 2003. The new rule references SSP payment amounts for calendar year 2004. The changes to the rule include removing references to SSI payment amounts. SSI is a federal program. Federal payment amounts for SSI can be accessed through the Social Security Administration. SSP is a state program with payment amounts that reflect federal requirements for states to expend maintenance of effort funds on SSI recipients and as such these amounts are controlled and adjusted as needed by the state. SSP recipients rely on WAC for SSP payment information.

Reasons Supporting Proposal: The state is federal mandated to expend \$28.9 million every year as a supplemental payment to SSI recipient or those who are SSI eligible except for income. SSP must remain within a payment range that will assure that federal SSP spending requirements are met annually. Failure to fully expend the \$28.9 million could result in federal sanctions to state Medicaid funding amounting to about \$3 billion annually. To keep the payments within the federal expenditure requirements, the amount of the monthly SSP payment must be amended periodically. WAC 388-478-0057 Year-end adjustments to the SSI state supplemental, provides DSHS the authority to amend SSP payment amounts to be in compliance with the total federal spending mandate.

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 necessary because of federal law, 20 CFR sections 416.2095-.2099.

Explanation of Rule, its Purpose, and Anticipated Effects: See Title of Rule, Purpose, Summary, and Reasons Supporting Proposal above.

Proposal Changes the Following Existing Rules: See Purpose, Summary, and Reasons Supporting Proposal above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does

not have an economic impact on small businesses, it only affects DSHS clients.

RCW 34.05.328 does not apply to this rule adoption. 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 federal rules mandated by Title 20 of the Code of Federal Regulations Parts 416.2095 through 416.2099 regarding how much the state is required to expend every year to SSI recipients or those who are SSI-eligible except for income. These rules stipulate that SSP must remain within a payment range to ensure that federal SSP spending requirements are met annually. Failure to fully expend the \$28.9 million could result in federal sanctions to state Medicaid funding amounting to about \$3 billion annually.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on February 24, 2004, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by February 17, 2004, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov [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 24, 2004.

Date of Intended Adoption: No earlier than February 25, 2004.

January 15, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-03-114, filed 1/21/03, effective 2/23/03)

**WAC 388-478-0055 How much do I get from my ~~((Supplemental Security Income (SSI) and))~~ state supplemental payments (SSP)?** (1) ~~((SSI is a federal cash assistance program for needy individuals and couples who meet federal disability guidelines as aged, blind or disabled.))~~ The 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 to the federal SSI program from state assistance ~~((to the federal SSI program in January 1974))~~ in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, 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 fed-

eral 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 payment level for an eligible individual and couple are:~~

~~(a) If you are living alone.))~~ monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

PROPOSED

<del>((LIVING ALONE—In own household or alternate care, except nursing homes or medical institutions))</del> <u>SSP eligible persons</u>	<del>((Federal Payment Level))</del>	<del>((State Supplement Payment Level))</del> <u>Monthly SSP Rate</u>	<del>((Combined Federal/ State Payment Level))</del>
Individual <u>(aged 65 and older)</u> <u>- Calendar Year 2004</u>	<del>(((\$552.00))</del>	<del>\$(0.00)</del> <u>46.00</u>	<del>(((\$552.00))</del>
Individual <del>((with:</del> <del>—One essential person))</del> <u>(blind as determined by SSA)</u> - Calendar Year 2004	<del>(((\$29.00))</del>	<del>((0.00))</del> <u>\$46.00</u>	<del>(((\$29.00))</del>
Individual with an ineligible spouse <u>- Calendar Year 2004</u>	<del>(((\$552.00))</del>	<del>\$(100.00)</del> <u>46.00</u>	<del>(((\$652.00))</del>
<del>((Couple))</del> <u>Grandfathered (MIL)</u>	<del>(((\$829.00))</del>	<del>((0.00))</del> <u>Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.</u>	<del>(((\$829.00))</del>
<del>((Couple with one essential person))</del>	<del>(((\$829.00))</del>	<del>((0.00))</del>	<del>(((\$829.00))</del>
<del>((b) If you are in shared living.))</del>			
<del>((SHARED LIVING—In the home of another person))</del> <u>Medical institution</u>	<del>((Federal Payment Level))</del>	<del>((State Supplement Payment Level))</del> <u>Monthly SSP Rate</u>	<del>((Combined Federal/ State Payment Level))</del>
Individual	<del>(((\$368.00))</del>	<del>\$(0.00)</del> <u>11.62</u>	<del>(((\$368.00))</del>
<del>((Individual with:</del> <del>—One essential person))</del>	<del>(((\$665.00))</del>	<del>((0.00))</del>	<del>(((\$665.00))</del>
<del>((Individual with an ineligible spouse))</del>	<del>(((\$368.00))</del>	<del>((100.00))</del>	<del>(((\$468.00))</del>
<del>((Couple))</del>	<del>(((\$552.67))</del>	<del>((0.00))</del>	<del>(((\$552.67))</del>
<del>((Couple with one essential person))</del>	<del>(((\$665.00))</del>	<del>((0.00))</del>	<del>(((\$665.00))</del>
<del>((c) If you are residing in a medical institution: Area 1 and 2.))</del>			
<del>((MEDICAL INSTITUTION))</del>	<del>((Federal Payment Level))</del>	<del>((State Supplement Payment Level))</del>	<del>((Combined Payment Level))</del>
<del>((Individual))</del>	<del>(((\$30.00))</del>	<del>((11.62))</del>	<del>((41.62))</del>

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

**WSR 04-03-102**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 20, 2004, 4:51 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 03-10-064 on May 6, 2003.

Title of Rule: Chapter 296-803 WAC, Lockout/tagout (control of hazardous energy).

Purpose: The department is rewriting and clarifying requirements relating to lockout/tagout (control of hazardous energy). This will make the lockout/tagout requirements easy to read and understand, making them more useful for employers and employees. This proposal will move the lockout/tagout requirements from chapter 296-24 WAC, General safety and health standards, to a new chapter, chapter 296-803 WAC, Lockout/tagout (control of hazardous energy).

**AMENDED SECTIONS:**

WAC 296-24-975 Selection and use of work practices, 296-45-175 Hazardous energy control (lockout/tagout), 296-54-57310 Logging machines—Chipping in woods locations, 296-79-220 Deactivating and lockout requirements, and 296-155-429 Lockout and tagging of circuits.

- Updating references.

**NEW SECTIONS:**

WAC 296-803-100 Scope, 296-803-200 Summary, 296-803-20005 Establish a written energy control program, 296-803-300 Summary, 296-803-30005 Make sure new or modified machines and equipment can accept lockout devices, 296-803-400 Summary, 296-803-40005 Provide appropriate means to control energy, 296-803-40010 Make sure lockout and tagout devices meet these requirements, 296-803-40015 Make sure lockout devices meet these additional requirements, 296-803-40020 Make sure tagout devices meet these additional requirements, 296-803-500 Summary, 296-803-50005 Use energy control procedures, 296-803-50010 Meet these requirements when applying lockout or tagout devices, 296-803-50015 Meet these additional requirements when applying lockout devices, 296-803-50020 Meet these additional requirements when applying tagout devices, 296-803-50025 Protect employees from the hazards of stored and residual energy, 296-803-50030 Verify that the machine or equipment is safe before starting work, 296-803-50035 Meet these requirements when removing lockout or tagout devices and energizing the machine or equipment, 296-803-50040 Meet these requirements if it's necessary to temporarily energize a machine, equipment, or component for testing or positioning, 296-803-50045 Protect employees during shift or personnel changes, 296-803-50050 Protect employees working in a group, 296-803-50055 Meet these additional requirements if more than one group is used, 296-803-50060 Coordinate with outside employers servicing or maintaining your machines or equipment, 296-803-600 Summary, 296-803-60005 Provide and document employee training on the energy control program, 296-803-60010 Provide additional training if you use tagout devices, 296-803-60015 Retrain employees when necessary, 296-803-700 Summary, 296-803-70005 Perform and document periodic reviews to verify

employees know and follow the energy control procedures, 296-803-70010 Do periodic reviews of procedures using lockout devices, 296-803-70015 Do periodic reviews of procedures using tagout devices, and 296-803-800 Definitions.

**REPEALED SECTIONS:**

WAC 296-24-110 The control of hazardous energy (lockout/tagout), 296-24-11001 Scope, application, and purpose, 296-24-11003 Definitions applicable to this part, 296-24-11005 General, 296-24-11007 Application of control, 296-24-11009 Release from lockout or tagout, 296-24-11011 Additional requirements, 296-24-11013 Reserved, 296-24-11015 Reserved, 296-24-11017 Reserved, and 296-24-119 Appendices.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Summary: See Title of Rule and Purpose above.

Reasons Supporting Proposal: See Title of Rule above.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Michael A. Silverstein, Tumwater, (360) 902-5495.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The lockout/tagout rules, in chapter 296-24 WAC, General safety and health standards, contain requirements for controlling hazardous energy. These requirements will be rewritten and moved into chapter 296-803 WAC, Lockout/tagout (control of hazardous energy). There are no anticipated effects of this rule making.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A number of criteria and exemptions were established by the small business economic impact statement (SBEIS) analysis. One key criteria that allows rule changes to be exempt from preparation of an SBEIS is presented in RCW 34.05.310 (4)(d): "rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect" are not subject to the SBEIS requirements. Because the proposed rule changes make clarifying and organizational changes for ease of understanding and use, but do not in any way alter the content of the original rules, there should not be an economical impact on Washington state business.

The analysis of the rule reveals that in addition to not imposing new costs on businesses, these revisions will actually make WISHA rules easier for employers and employees to understand and use, and thus actually save them time.

RCW 34.05.328 does not apply to this rule adoption. Significant rule-making criteria does not apply to the rule amendments because the changes simply clarify the language of the rule without changing its effect.

Hearing Location: Department of Labor and Industries, Auditorium, 7273 Linderson Way S.W., Tumwater, WA, on March 23, 2004, at 1:30 p.m.

PROPOSED

Assistance for Persons with Disabilities: Contact Sally Elliott by March 19, 2004, at (360) 902-5484 or yous235@lni.wa.gov.

Submit Written Comments to: Beverly Clark, Administrative Regulations Analyst, WISHA Services Division, P.O. Box 44620, Olympia, WA 98506-4620, e-mail clah235@lni.wa.gov, fax (360) 902-5516, by March 26, 2004.

Date of Intended Adoption: June 1, 2004.

January 20, 2004

Paul Trause

Director

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 296-24-110	The control of hazardous energy (lockout/tagout).
WAC 296-24-11001	Scope, application, and purpose.
WAC 296-24-11003	Definitions applicable to this part.
WAC 296-24-11005	General.
WAC 296-24-11007	Application of control.
WAC 296-24-11009	Release from lockout or tagout.
WAC 296-24-11011	Additional requirements.
WAC 296-24-11013	Reserved.
WAC 296-24-11015	Reserved.
WAC 296-24-11017	Reserved.
WAC 296-24-119	Appendices.

**AMENDATORY SECTION** (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

**WAC 296-24-975 Selection and use of work practices.** (1) General. Safety-related work practices shall be employed to prevent electric shock or other injuries resulting from either direct or indirect electrical contacts, when work is performed near or on equipment or circuits which are or may be energized. The specific safety-related work practices shall be consistent with the nature and extent of the associated electrical hazards.

(a) Deenergized parts. Live parts to which an employee may be exposed shall be deenergized before the employee works on or near them, unless the employer can demonstrate that deenergizing introduces additional or increased hazards or is infeasible due to equipment design or operational limitations. Live parts that operate at less than 50 volts to ground need not be deenergized if there will be no increased exposure to electrical burns or to explosion due to electric arcs.

Note 1: Examples of increased or additional hazards include interruption of life support equipment, deactivation of emer-

gency alarm systems, shutdown of hazardous location ventilation equipment, or removal of illumination for an area.

Note 2: Examples of work that may be performed on or near energized circuit parts because of infeasibility due to equipment design or operational limitations include testing of electric circuits that can only be performed with the circuit energized and work on circuits that form an integral part of a continuous industrial process in a chemical plant that would otherwise need to be completely shut down in order to permit work on one circuit or piece of equipment.

Note 3: Work on or near deenergized parts is covered by subsection (2) of this section.

(b) Energized parts. If the exposed live parts are not deenergized (i.e., for reasons of increased or additional hazards or infeasibility), other safety-related work practices shall be used to protect employees who may be exposed to the electrical hazards involved. Such work practices shall protect employees against contact with energized circuit parts directly with any part of their body or indirectly through some other conductive object. The work practices that are used shall be suitable for the conditions under which the work is to be performed and for the voltage level of the exposed electric conductors or circuit parts. Specific work practice requirements are detailed in WAC 296-24-960.

(2) Working on or near exposed deenergized parts.

(a) Application. This subsection applies to work on exposed deenergized parts or near enough to them to expose the employee to any electrical hazard they present. Conductors and parts of electric equipment that have been deenergized but have not been locked out or tagged according to this subsection shall be treated as energized parts, and WAC 296-24-960 applies to work on or near them.

(b) Lockout and tagging. While any employee is exposed to contact with parts of fixed electric equipment or circuits which have been deenergized, the circuits energizing the parts shall be locked out or tagged or both according to the requirements of this section. The requirements shall be followed in the order in which they are presented (i.e., (b)(i) of this subsection first, then (b)(ii) of this subsection.

Note 1: As used in this section, fixed equipment refers to equipment fastened in place or connected by permanent wiring methods.

Note 2: Lockout and tagging procedures that comply with chapter ((296-24-WAC Part A-4)) 296-803 WAC, Lockout/tagout (control of hazardous energy) will also be deemed to comply with (b) of this subsection provided that:

1. The procedures address the electrical safety hazards covered by this part; and
2. The procedures also incorporate the requirements of (b)(iii)(D) and (b)(iv)(B) of this subsection.

(i) Procedures. The employer shall maintain a written copy of the procedures outlined in (b) of this subsection and shall make it available for inspection by employees and by the director and his or her authorized representatives.

Note: The written procedures may be in the form of a copy of subsection (2) of this section.

(ii) Deenergizing equipment.

(A) Safe procedures for deenergizing circuits and equipment shall be determined before circuits or equipment are deenergized.

(B) The circuits and equipment to be worked on shall be disconnected from all electric energy sources. Control circuit



devices, such as push buttons, selector switches, and interlocks, shall not be used as the sole means for deenergizing circuits or equipment. Interlocks for electric equipment shall not be used as a substitute for lockout and tagging procedures.

(C) Stored electric energy which might endanger personnel shall be released. Capacitors shall be discharged and high capacitance elements shall be short-circuited and grounded, if the stored electric energy might endanger personnel.

Note: If the capacitors or associated equipment are handled in meeting this requirement, they shall be treated as energized.

(D) Stored nonelectrical energy in devices that could reenergize electric circuit parts shall be blocked or relieved to the extent that the circuit parts could not be accidentally energized by the device.

(iii) Application of locks and tags.

(A) A lock and a tag shall be placed on each disconnecting means used to deenergize circuits and equipment on which work is to be performed, except as provided in subitems (C) and (E) of this item. The lock shall be attached to prevent persons from operating the disconnecting means unless they resort to undue force or the use of tools.

(B) Each tag shall contain a statement prohibiting unauthorized operation of the disconnecting means and removal of the tag.

(C) If a lock cannot be applied, or if the employer can demonstrate that tagging procedures will provide a level of safety equivalent to that obtained by the use of a lock, a tag may be used without a lock.

(D) A tag used without a lock, as permitted by subitem (C) of this item, shall be supplemented by at least one additional safety measure that provides a level of safety equivalent to that obtained by the use of a lock. Examples of additional safety measures include the removal of an isolating circuit element, blocking of a controlling switch, or opening of an extra disconnecting device.

(E) A lock may be placed without a tag only under the following conditions:

(I) Only one circuit or piece of equipment is deenergized; and

(II) The lockout period does not extend beyond the work shift; and

(III) Employees exposed to the hazards associated with reenergizing the circuit or equipment are familiar with this procedure.

(iv) Verification of deenergized condition. The requirements of this subsection shall be met before any circuits or equipment can be considered and worked as deenergized.

(A) A qualified person shall operate the equipment operating controls or otherwise verify that the equipment cannot be restarted.

(B) A qualified person shall use test equipment to test the circuit elements and electrical parts of equipment to which employees will be exposed and shall verify that the circuit elements and equipment parts are deenergized. The test shall also determine if any energized condition exists as a result of inadvertently induced voltage or unrelated voltage backfeed even though specific parts of the circuit have been deenergized and presumed to be safe. If the circuit to be tested is over 600 volts, nominal, the test equipment shall be checked

for proper operation immediately before and immediately after this test.

(v) Reenergizing equipment. These requirements shall be met, in the order given, before circuits or equipment are reenergized, even temporarily.

(A) A qualified person shall conduct tests and visual inspections, as necessary, to verify that all tools, electrical jumpers, shorts, grounds, and other such devices have been removed, so that the circuits and equipment can be safely energized.

(B) Employees exposed to the hazards associated with reenergizing the circuit or equipment shall be warned to stay clear of circuits and equipment.

(C) Each lock and tag shall be removed by the employee who applied it or under his or her direct supervision. However, if this employee is absent from the workplace, then the lock or tag may be removed by a qualified person designated to perform this task provided that:

(I) The employer ensures that the employee who applied the lock or tag is not available at the workplace; and

(II) The employer ensures that the employee is aware that the lock or tag has been removed before he or she resumes work at that workplace.

(D) There shall be a visual determination that all employees are clear of the circuits and equipment.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-175 Hazardous energy control (lockout/tagout) procedures.** The provisions of this section apply to the use of lockout/tagout procedures for the control of energy sources in installations for the purpose of electric power generation, including related equipment for communication or metering. Locking and tagging procedures for the de-energizing of electric energy sources which are used exclusively for purposes of transmission and distribution are addressed by WAC 296-45-335.

Note 1: Installations in electric power generation facilities that are not an integral part of, or inextricably commingled with, power generation processes or equipment are covered under chapter 296-24 WAC.

Note 2: Lockout and tagging procedures that comply with chapter ((296-24)) 296-803 WAC will also be deemed to comply with this section if the procedures address the hazards covered by this section.

**AMENDATORY SECTION** (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

**WAC 296-54-57310 Logging machines—Chipping in woods locations.** In-woods chipping must be performed according to the following:

(1) Chipper access covers or doors remain closed until the drum or disc stops completely.

(2) Infeed and discharge ports are guarded to prevent contact with the disc, knives, or blower blades.

(3) The chipper is shut down and locked out according to the lockout/tagout requirements of chapter ((296-24 WAC, Part A-4.)) 296-803 WAC when an employee performs any servicing or maintenance.

(4) Detached trailer chippers are chocked when used on any slope where rolling or sliding of the chipper is reasonably foreseeable.

**AMENDATORY SECTION** (Amending WSR 99-16-083, filed 8/3/99, effective 11/3/99)

**WAC 296-79-220 Deactivating and lockout requirements.** (1) Control requirement. Whenever the unexpected startup of machinery, the energizing of electrical circuits, the flow of material in piping systems or the removal of guards would endanger workers, such exposure must be prevented by deactivating and locking out the controls as required by chapter ~~((296-24 WAC, Part A-4))~~ 296-803 WAC, Lockout/tagout (control of hazardous energy).

**EXCEPTION:** In instances where any machine must be in motion for proper adjustment, for removal or replacement of materials from the machine, for machine clothing changes or for roping up, the following precautions must be observed:

- The machine must be operated at thread or jog speed;
- Extension tools which minimize personnel exposure must be used where possible;
- The operating controls must at all times be under the control of a qualified operator or craftsman;
- All personnel must remain in view of the operator or other means of communication shall be established;
- All personnel must be beyond the reach of other machine section(s) or element(s) which offer potential exposure. In any instance where such potential exposure exists, such other section(s) or element(s) must be separately locked out.

(2) Group lockout or tagout devices. Procedures must meet the minimum requirements of chapter ~~((296-24 WAC, Part A-4))~~ 296-803 WAC, Lockout/tagout (control of hazardous energy). The employer must develop a specific written group lockout or tagout procedure and review it with the local plant labor/management safety committee before it can be utilized.

(3) Temporary or alternate power.

- Whenever possible, temporary or alternate sources of power to the equipment being worked on must be avoided.
- If the use of such power is necessary, all affected employees must be informed and the source of temporary or alternate power must be identified.

(4) Deactivating piping systems.

(a) Nonhazardous systems must be deactivated by at least locking out either the pump or a single valve.

(b) Lockout of the following hazardous material piping systems must isolate to the worksite and must provide protection against backflow where such potential exists:

- Gaseous systems that are operated at more than 200 psig;
- Systems containing any liquid at more than 500 psig;
- Systems containing any material at more than 130°F;
- Any cryogenic system,
- Systems containing material which is chemically hazardous as defined by NFPA 704 1996 Class 3 and 4;
- Systems containing material classified as flammable or explosive as defined in NFPA Class I.

Such systems must be deactivated by one of the following:

- Locking out both the pump and one valve between the pump and the worksite;
- Locking out two valves between the hazard source and the worksite;
- Installing and locking out a blank flange between the hazard source and worksite. When a blank flange (blind) is used to separate off portions of hazardous material systems from a portion which is in operation, the employer must develop and implement a procedure for installation and removal of the blank flange that will ensure all hazards have been eliminated;
- Line breaking between the hazard and the worksite;
- On hazardous chemical systems where the methods already listed are not feasible, or by themselves create a hazard, single valve closure isolation may be used provided that potentially exposed employees are adequately protected by other means such as personal protective equipment.
- On all steam systems where the methods already listed are not feasible, single valve closure isolation may be used provided that the system is equipped with valves meeting all requirements of ANSI B16.5-1996 and ANSI B16.34-1996. Where single valve isolation is used, the steamline must also be equipped with a bleed valve downstream from the valve closure to prove isolation of the worksite.

**Note:** Bleeder valves are recommended behind all primary valve closures on hazardous material systems. Consideration should be given to the nature of the material in the system when installing bleeder valves. To assist in preventing plugging, bleeder valves should generally be installed in the top one-third of the pipe. Short exhaust pipes should be installed on bleeder valves to direct the flow of possible escapement away from the position where an employee would normally be when using the bleeder valve.

**AMENDATORY SECTION** (Amending WSR 96-17-056, filed 8/20/96, effective 10/15/96)

**WAC 296-155-429 Lockout and tagging of circuits.**

(1) Controls. Controls that are deactivated during the course of work on energized or deenergized equipment or circuits shall be tagged and padlocked in the open position.

(2) Equipment and circuits. Equipment or circuits that are deenergized shall be rendered inoperative and have tags and locked padlocks attached at all points where such equipment or circuits can be energized.

(3) Tags. Tags shall be placed to identify plainly the equipment or circuits being worked on.

(4) Lockout and tagging. While any employee is exposed to contact with parts of fixed electric equipment or circuits which have been deenergized, the circuits energizing the parts shall be locked out or tagged or both according to the requirements of this section. The requirements shall be followed in the order in which they are presented (i.e., (a) of this subsection first, then (b) of this subsection).

**Note 1:** As used in this section, fixed equipment refers to equipment fastened in connected by permanent wiring methods.

**Note 2:** Lockout and tagging procedures that comply with chapter ~~((296-24 WAC, Part A-4))~~ 296-803 WAC will also be deemed to comply with this subsection provided that:

1. The procedures address the electrical safety hazards covered by this part; and
2. The procedures also incorporate the requirements of (c)(iv) and (d)(ii) of this subsection.

(a) Procedures. The employer shall maintain a written copy of the procedures outlined in this subsection and shall make it available for inspection by employees and by the director and his/her authorized representative.

Note: The written procedures may be in the form of a copy of this section, WAC 296-155-429.

(b) Deenergizing equipment.

(i) Safe procedures for deenergizing circuits and equipment shall be determined before circuits or equipment are deenergized.

(ii) The circuits and equipment to be worked on shall be disconnected from all electric energy sources. Control circuit devices, such as push buttons, selector switches, and interlocks, shall not be used as the sole means for deenergizing circuits or equipment. Interlocks for electric equipment shall not be used as a substitute for lockout and tagging procedures.

(iii) Stored electric energy which might endanger personnel shall be released. Capacitors shall be discharged and high capacitance elements shall be short-circuited and grounded, if the stored electric energy might endanger personnel.

Note: If the capacitors or associated equipment are handled in meeting this requirement, they shall be treated as energized.

(iv) Stored nonelectrical energy in devices that could reenergize electric circuit parts shall be blocked or relieved to the extent that the circuit parts could not be accidentally energized by the device.

(c) Application of locks and tags.

(i) A lock and a tag shall be placed on each disconnecting means used to deenergize circuits and equipment on which work is to be performed, except as provided in (c)(iii) and (v) of this subsection. The lock shall be attached to prevent persons from operating the disconnecting means unless they resort to undue force or the use of tools.

(ii) Each tag shall contain a statement prohibiting unauthorized operation of the disconnecting means and removal of the tag.

(iii) If a lock cannot be applied, or if the employer can demonstrate that tagging procedures will provide a level of safety equivalent to that obtained by the use of a lock, a tag may be used without a lock.

(iv) A tag used without a lock, as permitted by item (iii) of this subsection, shall be supplemented by at least one additional safety measure that provides a level of safety equivalent to that obtained by the use of a lock. Examples of additional safety measures include the removal of an isolating circuit element, blocking of a controlling switch, or opening of an extra disconnecting device.

(v) A lock may be placed without a tag only under the following conditions:

(A) Only one circuit or piece of equipment is deenergized; and

(B) The lockout period does not extend beyond the work shifts; and

(C) Employees exposed to the hazards associated with reenergizing the circuit or equipment are familiar with this procedure.

(d) Verification of deenergized condition. The requirements of this subsection shall be met before any circuits or equipment can be considered and worked as deenergized.

(i) A qualified person shall operate the equipment operating controls or otherwise verify that the equipment cannot be restarted.

(ii) A qualified person shall use test equipment to test the circuit elements and electrical parts of equipment to which employees will be exposed and shall verify that the circuit elements and equipment parts are deenergized. The test shall also determine if any energized conditions exist as a result of inadvertently induced voltage or unrelated voltage backfeed even though specific parts of the circuit have been deenergized and presumed to be safe. If the circuit to be tested is over 600 volts, nominal, the test equipment shall be checked for proper operation immediately before and immediately after this test.

(e) Reenergizing equipment. These requirements shall be met, in the order given, before circuits or equipment are reenergized, even temporarily.

(i) A qualified person shall conduct tests and visual inspections, as necessary, to verify that all tools, electrical jumpers, shorts, grounds, and other such devices have been removed, so that the circuits and equipment can be safely energized.

(ii) Employees exposed to the hazards associated with reenergizing the circuit or equipment shall be warned to stay clear of circuits and equipment.

(iii) Each lock and tag shall be removed by the employee who applied it or under his or her direct supervision. However, if this employee is absent from the work place, then the lock or tag may be removed by a qualified person designated to perform this task provided that:

(A) The employer ensures that the employee who applied the lock or tag is not available at the work place; and

(B) The employer ensures that the employee is aware that the lock or tag has been removed before he or she resumes work at that work place.

(iv) There shall be a visual determination that all employees are clear of the circuits and equipment.

## Chapter 296-803 WAC

### LOCKOUT/TAGOUT (CONTROL OF HAZARDOUS ENERGY)

#### NEW SECTION

**WAC 296-803-100 Scope.** This chapter applies to the service and maintenance of machines and equipment, including piping systems, if employees could be injured by the:

– Unexpected energization or start up of the machine or equipment;

**OR**

– Release of stored energy.

Energy sources include mechanical, hydraulic, pneumatic, chemical, thermal, or other energy, including gravity.

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**Note:** • Machines and equipment include those that produce high intensity electromagnetic fields.

• When other Title 296 WAC standards require the use of lockout or tagout, they have to be used and supplemented by the procedural and training requirements of this part.

**Exemption:** This chapter does not apply to:

• Construction activities covered by chapter 296-155 WAC, Construction work.

• Agriculture activities covered by chapter 296-307 WAC, Safety standards for agriculture.

• Maritime activities covered by chapter 296-56 WAC, Safety standards—Longshore, stevedore and related waterfront operations and chapter 296-304 WAC, Safety standards for ship repair, shipbuilding and shipbreaking.

• Oil and gas well drilling and servicing.

• Installations for generating, transmitting, and distributing electrical power (including related communication and metering equipment) that are controlled exclusively by electric utilities.

• Hot tap operations on pressurized pipelines used to transmit and distribute substances such as gas, steam, water, or petroleum products if the employer can demonstrate that all of the following apply:

– Continuity of service is essential.

– Shutdown of the system is impractical.

– Proven effective employee protection is provided by following documented procedures and using special equipment.

• Service and maintenance of fire alarm and extinguishing systems and their components if:

– Other employees depend on these systems for fire safety;

**AND**

– Employees working on fire extinguishing systems are protected from the unexpected release of hazardous energy by appropriate alternative measures.

• Work on electric equipment receiving power only through a cord and plug if:

– Unplugging the equipment eliminates the possibility of unexpected energization, unexpected start up, or the release of stored energy;

**AND**

– The plug is kept under the exclusive control of the employee doing the service or maintenance.

• Exposure to electrical hazards from electrical work on, near, or with conductors or equipment that is covered by chapter 296-24 WAC, Part L, Electrical.

• Service and maintenance during normal production operations, if an employee is not required to:

– Remove or bypass a guard or other safety device;

**OR**

– Place any body part into the point of operation or any other hazardous area created by machine operation.

• Minor tool changes, adjustments, and other minor service during normal production operations if:

– They are routine, repetitive, and integral to the use of the equipment for production;

**AND**

– The work is done using measures which provide effective protection from hazards.

**NEW SECTION**

**WAC 296-803-200 Summary.**

**Your responsibility:**

To establish an energy control program.

**You must:**

WAC 296-803-20005 Establish a written energy control program.

**NEW SECTION**

**WAC 296-803-20005 Establish a written energy control program.**

**You must:**

• Establish a written energy control program to protect employees that service or maintain a machine or equipment from injury caused by the:

– Unexpected energization or start up of the machine or equipment;

**OR**

– Release of stored energy.

• Make sure the program contains all of the following:

– Energy control procedures as described in WAC 296-803-500.

– Employee training as described in WAC 296-803-600.

– Periodic reviews as described in WAC 296-803-700.

• Develop and document in writing energy control procedures to protect employees doing service or maintenance of a machine or equipment from potentially hazardous energy.

**Exemption:** You do not have to have written energy control procedures for a particular machine or equipment if all of the following apply:

• The machine or equipment has a single energy source that is easily identified and can be isolated.

• The machine or equipment is completely deenergized and deactivated by isolating and locking out the energy source.

• There's no stored or residual energy that could be a hazard to employees, and the machine or equipment cannot reaccumulate such energy after it's been shut down.

• The energy source can be locked out with a single lockout device.

• The machine or equipment is isolated from the energy source and locked out during service or maintenance.

• The authorized employee doing the service or maintenance has exclusive control of the lockout device.

• The service or maintenance does not create a hazard for other employees.

• The machine or equipment has never been unexpectedly energized or activated during service or maintenance.

**You must:**

• Make sure energy control procedures clearly and specifically outline:

– The scope, purpose, authorization, rules, and techniques to control hazardous energy;

**AND**

– How you'll make sure employees follow the procedures.

• Make sure energy control procedures specifically identify at least the following:

– When the procedure must be used.

– What the specific procedural steps are for:

■ Shutting down, isolating, blocking, and securing the machine or equipment.

■ Placing, removing, and transferring lockout or tagout devices and who is responsible for them.

– How to test the machine or equipment to verify the effectiveness of lockout devices, tagout devices, and other energy control measures.

**Note:** Similar machines and equipment may be covered by a single written procedure if all of the following apply:

• They use the same type and magnitude of energy.

• They have the same or similar types of controls.

- The specific machines and equipment covered by the procedure are identified by at least type and location.

**NEW SECTION****WAC 296-803-300 Summary.****Your responsibility:**

To make sure new or modified machines and equipment can accept lockout devices.

**You must:**

WAC 296-803-30005 Make sure new or modified machines and equipment can accept lockout devices.

**NEW SECTION**

**WAC 296-803-30005 Make sure new or modified machines and equipment can accept lockout devices.**

**You must:**

• Make sure energy-isolating devices designed to accept a lockout device are provided on machines and equipment that:

- Are newly installed.
- Have major repair.
- Are renovated or modified.

**NEW SECTION****WAC 296-803-400 Summary.****Your responsibility:**

To provide appropriate means to control energy and tagout devices.

**You must:**

WAC 296-803-40005 Provide appropriate means to control energy.

WAC 296-803-40010 Make sure lockout and tagout devices meet these requirements.

WAC 296-803-40015 Make sure lockout devices meet these additional requirements.

WAC 296-803-40020 Make sure tagout devices meet these additional requirements.

**NEW SECTION**

**WAC 296-803-40005 Provide appropriate means to control energy.**

**You must:**

• Provide the means necessary to isolate, secure, or block machines and equipment from energy sources.

**Note:** Examples of means to control energy include:

- Locks.
- Tags.
- Chains.
- Wedges.
- Key blocks.
- Adapter pins.
- Self-locking fasteners.
- Blind flanges.
- Cribbing.

**NEW SECTION**

**WAC 296-803-40010 Make sure lockout and tagout devices meet these requirements.**

**You must:**

• Make sure lockout and tagout devices meet all of the following:

- Create **no** additional hazards.
- Have a distinctive design or appearance.
- Are the only devices used for controlling energy.
- Are **not** used for any other purpose.
- Are durable enough to withstand the environment they're used in for the maximum time they're expected to be used.
- Are standardized within the facility by color, shape, or size.
- Identify the person applying the device.

**NEW SECTION**

**WAC 296-803-40015 Make sure lockout devices meet these additional requirements.**

**You must:**

• Make sure lockout devices are strong enough so that removing them by other than the normal unlocking method requires:

- Excessive force;

**OR**

– Unusual techniques such as the use of bolt cutters or other metal-cutting tools.

**NEW SECTION**

**WAC 296-803-40020 Make sure tagout devices meet these additional requirements.**

**You must:**

- Make sure all tags:
  - Use the same print and format within a facility.
  - Are constructed and printed so they will not deteriorate and the message on the tag remains legible when:
    - Exposed to weather.
    - Used in wet or damp locations.
    - Used in corrosive environments such as areas where acid or alkali chemicals are handled or stored.
  - Have a warning about **not** energizing the machine or equipment.

**Note:** The warning on the tag should include wording such as:

- Do not start.
- Do not open.
- Do not close.
- Do not energize.
- Do not operate.

**You must:**

- Make sure tagout devices are strong enough to prevent unintentional or accidental removal.
- Make sure the means used to attach the tag to the energy-isolating device meets all of the following:
  - Is not reusable.
  - Is self-locking.
  - Can be attached by hand.

- Cannot be released with a force of less than fifty pounds.
- Is similar in design and basic characteristics to a one-piece, all-environment-tolerant, nylon cable tie.

**NEW SECTION****WAC 296-803-500 Summary.****Your responsibility:**

To make sure energy control procedures are used and include these requirements.

**You must:****ENERGY CONTROL PROCEDURES**

WAC 296-803-50005 Use energy control procedures.

**APPLYING LOCKOUT OR TAGOUT DEVICES**

WAC 296-803-50010 Meet these requirements when applying lockout or tagout devices.

WAC 296-803-50015 Meet these additional requirements when applying lockout devices.

WAC 296-803-50020 Meet these additional requirements when applying tagout devices.

**STORED ENERGY**

WAC 296-803-50025 Protect employees from the hazards of stored and residual energy.

**VERIFYING MACHINE ISOLATION**

WAC 296-803-50030 Verify that the machine or equipment is safe before starting work.

**REMOVING ENERGY CONTROL DEVICES**

WAC 296-803-50035 Meet these requirements when removing lockout or tagout devices and energizing the machine or equipment.

**TEMPORARY ENERGIZATION**

WAC 296-803-50040 Meet these requirements if it's necessary to temporarily energize a machine, equipment, or component for testing or positioning.

**SHIFT OR PERSONNEL CHANGES**

WAC 296-803-50045 Protect employees during shift or personnel changes.

**GROUP LOCKOUT/TAGOUT**

WAC 296-803-50050 Protect employees working in a group.

WAC 296-803-50055 Meet these additional requirements if more than one group is used.

**OUTSIDE EMPLOYEES**

WAC 296-803-50060 Coordinate with outside employers servicing or maintaining your machines or equipment.

**NEW SECTION****WAC 296-803-50005 Use energy control procedures.****You must:**

- Use energy control procedures to protect employees servicing or maintaining machines and equipment from potentially hazardous energy.

- Use a lockout system if an energy-isolating device can be locked out.

**Exemption:** A tagout system may be used instead of a lockout system if it meets all of the following:

- The tagout device is attached where you would have put the lockout device.

- The tagout system provides the same level of employee protection as a lockout system.
- You can demonstrate that the tagout system:
  - Meets all tagout requirements of this chapter.
  - Includes additional safety measures to provide the same level of safety as a lockout system.

**Note:** Additional safety measures used with the tagout system to provide protection equal to a lockout system could include actions such as:

- Removing part of the isolating circuit.
- Blocking a controlling switch.
- Opening an extra disconnecting device.
- Removing a valve handle.

**You must:**

- Use a tagout system if an energy-isolating device cannot be locked out.

**NEW SECTION****WAC 296-803-50010 Meet these requirements when applying lockout or tagout devices.****You must:**

- Make sure, before a machine or equipment is turned off, that the authorized employee knows **all** of the following:

- Type and magnitude of the energy.
- Hazards of the energy to be controlled.
- Method or means to control the energy.

- Turn off or shut down the machine or equipment using established procedures.

- Completely isolate the machine or equipment from its energy sources using the appropriate energy-isolating devices after the machine or equipment has been turned off.

- Make sure you or the authorized employee notify affected employees that the machine or equipment is being locked or tagged out before the devices are applied.

- Make sure a lockout or tagout device is applied:

- For each energy-isolating device.
- Only by the authorized employee doing the service or maintenance.

**NEW SECTION****WAC 296-803-50015 Meet these additional requirements when applying lockout devices.****You must:**

- Make sure lockout devices hold the energy-isolating device in a "safe" or "off" position.

**NEW SECTION****WAC 296-803-50020 Meet these additional requirements when applying tagout devices.****You must:**

- Make sure a tagout device is put on an energy-isolating device so it clearly shows that moving the energy-isolating device from the "safe" or "off" position is prohibited.

- Make sure a tagout device, when used with an energy-isolating device that can be locked out, is fastened to the device at the same point a lock would have been attached.

- Make sure a tagout device that cannot be attached directly to an energy-isolating device is located:

- As close as safely possible to the energy-isolating device;

AND

– In a position that is immediately obvious to anyone attempting to operate the energy-isolating device.

#### NEW SECTION

#### **WAC 296-803-50025 Protect employees from the hazards of stored and residual energy.**

**You must:**

- Make sure all potentially hazardous stored and residual energy is relieved, disconnected, restrained, or otherwise rendered safe after the lockout or tagout devices have been put on the energy-isolating devices.

- Continue to verify the isolation of machines and equipment that could reaccumulate stored energy to a hazardous level until:

- Service or maintenance is completed;

OR

- The possibility of reaccumulating hazardous energy does not exist.

#### NEW SECTION

#### **WAC 296-803-50030 Verify that the machine or equipment is safe before starting work.**

**You must:**

- Make sure the authorized employee verifies that the machine or equipment that's been locked out or tagged out has been isolated from all energy sources and deenergized before starting work.

**Note:** The authorized employee can verify that the machine or equipment has been isolated from its energy sources and stored energy has been made safe by using a method or combination of methods that may include, but are not limited to, the following:

- Trying to start or energize the machine or equipment (try-out).
- Testing with appropriate test equipment.
- Visually inspecting switches, valves, circuit breakers, etc., to confirm they have been secured in the "off" or "safe" position.

#### NEW SECTION

#### **WAC 296-803-50035 Meet these requirements when removing lockout or tagout devices and energizing the machine or equipment.**

**You must:**

- Make sure the authorized employee does the following before removing any lockout or tagout device:

- Inspects the work area to make sure nonessential items have been removed;

AND

- Verifies the machine or equipment is in operating condition and ready to energize.

- Make sure only the authorized employee who applied a lockout or tagout device removes it.

**Exemption:** The employer may have the lockout or tagout device removed by someone other than the authorized employee who applied it if all of the following conditions are met:

- The energy control program has documented, specific procedures and training for this situation.

- You can show that the specific procedures used are as safe as having the device removed by the authorized employee who applied it.

- The specific procedures include at least the following:

- Verifying the authorized employee who applied the device is not at the facility.

- Making all reasonable efforts to contact and inform the authorized employee that the lockout or tagout device is being removed.

- Making sure the authorized employee is informed, before resuming work at the facility, that the lockout or tagout device has been removed.

**You must:**

- Do the following before energizing or starting the machine or equipment:

- Notify affected employees that the lockout or tagout devices have been removed.

- Check that employees in the area are in positions that make it safe to energize the machine or equipment.

#### NEW SECTION

#### **WAC 296-803-50040 Meet these requirements if it's necessary to temporarily energize a machine, equipment, or component for testing or positioning.**

**You must:**

- Follow your normal energy control procedures to:

- Remove the lockout or tagout devices.

- Energize the machine, equipment, or component.

- Reapply the lockout or tagout devices when testing or positioning is completed.

#### NEW SECTION

#### **WAC 296-803-50045 Protect employees during shift or personnel changes.**

**You must:**

- Use specific procedures for shift or personnel changes to:

- Make sure there's continuous lockout or tagout protection during the change;

AND

- Provide for the orderly transfer of lockout or tagout device protection between employees.

#### NEW SECTION

#### **WAC 296-803-50050 Protect employees working in a group.**

**You must:**

- Make sure your energy control procedures provide each member of a crew, craft, department, or other group with the same level of protection as that provided by an individual lockout or tagout device.

- Make sure each authorized employee:

- Puts a personal lockout or tagout device on the group lockout device, lockbox, or comparable mechanism before beginning work;

AND

- Does **not** remove it until they have finished work on the machine or equipment.

- Assign a primary authorized employee who:

PROPOSED

- Has overall responsibility for the service or maintenance;
- Attaches their lockout or tagout device to the energy-isolating device when the equipment is deenergized and before any work begins;

AND

- Is the last person to remove their lockout or tagout device when the job is completed.

**Definition:**

The *primary authorized employee* is the authorized employee who has overall responsibility for meeting the requirements of the lockout/tagout procedures.

**NEW SECTION**

**WAC 296-803-50055 Meet these additional requirements if more than one group is used.**

**You must:**

- Do all of the following if more than one group works on a machine or equipment that has to be locked or tagged out:

- Assign an authorized employee as the group coordinator with overall responsibility to:

- Coordinate the different work groups;

AND

- Maintain continuous lockout or tagout protection.

- Assign a primary authorized employee in each group who has:

- Responsibility for the group of employees who are protected by a group lockout or tagout device;

AND

- A way to determine which employees of the group are exposed to the machine or equipment that's locked or tagged out.

**NEW SECTION**

**WAC 296-803-50060 Coordinate with outside employers servicing or maintaining your machines or equipment.**

**You must:**

- Do the following before allowing another employer's personnel to service or maintain machines or equipment if your energy control procedures require they be locked or tagged out:

- Inform the outside employer of your lockout or tagout procedures.

- Make sure the outside employer informs you of their lockout or tagout procedures.

- Make sure you and the outside employer confirm that all employees understand and will follow the restrictions of the other employer's energy control program.

**NEW SECTION**

**WAC 296-803-600 Summary.**

**Your responsibility:**

To train employees on your energy control program.

**You must:**

WAC 296-803-60005 Provide and document employee training on the energy control program.

WAC 296-803-60010 Provide additional training if you use tagout devices.

WAC 296-803-60015 Retrain employees when necessary.

**NEW SECTION**

**WAC 296-803-60005 Provide and document employee training on the energy control program.**

**You must:**

- Train employees to make sure that they:
  - Understand the purpose and function of the energy control program;

AND

- Have the knowledge and skills necessary to carry out their program responsibilities.

- Train each authorized employee in:

- The type and magnitude of energy available in the workplace.

- Recognizing hazardous energy sources that apply.

- Methods and means to isolate and control energy.

- Instruct each affected employee in the purpose and use of the energy control procedures.

- Instruct all employees who work or may work where energy control procedures might be used about the:

- Procedures being used;

AND

- Prohibition against attempting to restart or reenergize a machine or equipment that's locked out or tagged out.

- Document that employee training has been done and kept up to date.

- Include the employee's name and the training date.

**NEW SECTION**

**WAC 296-803-60010 Provide additional training if you use tagout devices.**

**You must:**

- Make sure employees are trained in the following:
  - Tags are warning devices and do not provide the same level of physical restraint as a lock.

- When attached to energy-isolating devices, tags are not to be:

- Removed without the approval of the authorized person responsible for it;

OR

- Bypassed, ignored, or otherwise defeated.

- Tags need to be legible and understandable to be effective.

- Tags may evoke a false sense of security.

- The meaning of tags needs to be understood as part of the overall energy control program.

- Tags and their means of attachment must be:

- Securely attached to energy-isolating devices so they cannot be inadvertently or accidentally detached;

AND

- Made of materials that will withstand the environmental conditions they will be exposed to.



NEW SECTION

**WAC 296-803-60015 Retrain employees when necessary.**

**You must:**

- Retrain authorized and affected employees to introduce new or revised control methods and procedures when there's a change in **any** of the following:

- Job assignments.
- Machines, equipment, or processes that present a new hazard.
- Energy control procedures.
- Retrain employees to reestablish proficiency when:
  - A periodic inspection shows the employee deviates from, or has inadequate knowledge of, the energy control procedures;

**OR**

- The employer has reason to believe retraining is necessary.

NEW SECTION

**WAC 296-803-700 Summary.**

**Your responsibility:**

To do periodic reviews to make sure employees know and use your energy control procedures.

**You must:**

WAC 296-803-70005 Perform and document periodic reviews to verify employees know and follow the energy control procedures.

WAC 296-803-70010 Do periodic reviews of procedures using lockout devices.

WAC 296-803-70015 Do periodic reviews of procedures using tagout devices.

NEW SECTION

**WAC 296-803-70005 Perform and document periodic reviews to verify employees know and follow the energy control procedures.**

**You must:**

- Do a periodic review at least annually to:
  - Make sure employees know and can apply the energy control procedures.
  - Correct any deviations or inadequacies identified.

**Exemption:** Energy control procedures used less frequently than once a year only need to be reviewed before being used.

**You must:**

- Have the periodic review done by an authorized employee other than the ones using the energy control procedure being reviewed.
- Document that periodic reviews have been done.
  - Include all of the following:
    - Machine or equipment the energy control procedure was used for.
    - Date of the review.
    - Employees included in the review.
    - Person doing the review.

NEW SECTION

**WAC 296-803-70010 Do periodic reviews of procedures using lockout devices.**

**You must:**

- Make sure, if a periodic review involves lockout devices, the reviewing employee reviews responsibilities with each authorized employee who uses the procedure.

**Note:** Periodic reviews of authorized employees using energy control procedures involving only lockout devices can be done in a group meeting if desired.

NEW SECTION

**WAC 296-803-70015 Do periodic reviews of procedures using tagout devices.**

**You must:**

- Make sure, if a periodic review involves tagout devices, the reviewing employee reviews with each authorized and affected employee the:

- Employee's responsibilities under the procedure;

**AND**

- Limitations of tagout devices.

**Note:** Periodic reviews of authorized and affected employees using energy control procedures involving tagout devices have to be done with each employee individually.

**Reference:** See WAC 296-803-60010. Provide additional training if you use tagout devices, in this chapter for the limitations of tagout devices.

NEW SECTION

**WAC 296-803-800 Definitions.**

**Affected employee.** An employee who's required to operate, use, or be in the area where a machine or equipment is locked or tagged out for service or maintenance.

**Authorized employee.** An employee who locks or tags out a machine or equipment to do service or maintenance.

**Can be locked out.** An energy-isolating device that can be locked in the "off" or "safe" position.

**Energized.** Connected to an energy source or containing residual or stored energy.

**Energy-isolating device.** A mechanical device that physically prevents transmitting or releasing energy. This includes, but is not limited to:

- Manually operated electrical circuit breakers.
- Disconnect switches.
- Manually operated switches that disconnect the conductors of a circuit from all ungrounded supply conductors if no pole of the switch can be operated independently.
- Line valves.
- Blocks.
- Similar devices used to block or isolate energy.

**Energy source.** Any source of electrical, mechanical, hydraulic, pneumatic, chemical, thermal or other energy, including gravity.

**Hot tap.** A procedure which involves welding on pressurized pipelines, vessels, or tanks to install connections or accessories. It's commonly used to replace or add sections of pipeline used in air, gas, water, steam, and petrochemical distribution systems without interrupting service.

**Lockout.** Placing a lockout device on an energy-isolating device using an established procedure to make sure the machine or equipment cannot be operated until the lockout device is removed.

**Lockout device.** A device that uses a positive means, such as a key or combination lock, to hold an energy-isolating device in the "safe" or "off" position. This includes blank flanges and bolted slip blinds.

**Normal production operations.** Using a machine or equipment for its intended production function.

**Primary authorized employee.** An authorized employee who has overall responsibility for meeting the requirements of the lockout/tagout procedures.

**Service and maintenance.** Activities such as constructing, installing, setting-up, adjusting, modifying, maintaining, and servicing machines or equipment. It also includes lubricating, cleaning, unjamming, and making tool changes.

**Setting-up.** Work done to prepare a machine or equipment for normal production operations.

**Tagout.** Placing a tagout device on an energy-isolating device using an established procedure to indicate that the energy-isolating device and the machine or equipment being controlled may not be operated until the tagout device is removed.

**Tagout device.** A prominent warning device, such as a tag and a means of attachment. It can be securely fastened to an energy-isolating device to indicate that the energy-isolating device and the machine or equipment being controlled may not be operated until the tagout device is removed.

#### WSR 04-03-104

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed January 21, 2004, 8:20 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 98-15-088.

Title of Rule: WAC 246-915-085 Continuing competency.

**Purpose:** These rules set the continuing competency requirements for licensed physical therapists. The proposed changes will create additional options for inactive therapists to maintain competence and clarify existing requirements.

**Other Identifying Information:** The legislature has mandated that the Board of Physical Therapy establish and administer requirements for continuing competency as a prerequisite for the renewal of a physical therapy license.

**Statutory Authority for Adoption:** RCW 18.74.023(4).

**Summary:** The proposed changes expand the continuing competency options by allowing the use of articles, video, and other multimedia devices; expand the settings and opportunities for meeting physical therapy experience requirements; and improve the clarity of the rules.

**Reasons Supporting Proposal:** The continuing competency requirement has proven problematic for physical therapists that choose not to practice in order to raise families or

pursue other interests. The proposed rule creates additional options for inactive therapists to maintain competence and also clarifies existing requirements.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Kris Waidely, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

**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 proposed changes are intended to provide greater flexibility or physical therapists to complete their continuing education requirements. The proposed changes will create additional options for inactive therapists to maintain competence and clarify existing requirements. The legislature has mandated that the Board of Physical Therapy establish and administer requirements for continuing competency as a prerequisite for the renewal of a physical therapy license. The proposed changes assure continued protection of consumers from incompetent physical therapy, while clarifying existing requirements and improving flexibility for physical therapists to maintain competency.

**Proposal Changes the Following Existing Rules:** The proposal amends WAC 246-915-085 to expand continuing competency options for licensed physical therapists, and provide greater clarity for existing requirements.

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

#### Small Business Economic Impact Statement

**Background:** Chapter 18.74 RCW regulates the practice of physical therapy in the state of Washington. The purpose of physical therapy regulation is to protect the public from being misled by incompetent, unethical and unauthorized persons, and to assure the highest degree of professional conduct and competency in the practice of physical therapy in this state.

Under RCW 18.74.023, the Board of Physical Therapy is empowered to establish and administer requirements for continuing competency as a prerequisite for physical therapy license renewal. RCW 18.74.023(4) calls for the establishment of continuing competency requirements and assurance of compliance before a physical therapy license can be renewed.

Under WAC 246-915-085, the board, in part, defines continuing competency as continuing education and requires, in addition to two hundred hours of physical therapy related employment, evidence of forty hours of continuing competency in the form of continuing education every two years. The continuing education can be earned through classroom or correspondence coursework, cassette tape, videotape, or book review. However, continuing education comes in a variety of forms and methods such as classroom lectures, facility in-services, clinical observations video review, etc., that are measured in increments ranging from fifteen to sixty minutes.

The board recognizes the almost universal conclusion that the current results of mandatory continuing education

programs are debatably effective. Therefore, the board has not sought to limit the professional development and interests of licensed physical therapists to continuing education activities only. The board believes professional skills and knowledge can be maintained and enhanced through active practice. For this reason, the Board of Physical Therapy has attempted to create a balance by establishing a relatively moderate requirement of forty contact hours of continuing education as well as two hundred hours of employment every two years. The board believes this rule satisfies the legislative mandate to assure professional competence. This requirement has been in effect since 1994 and has met the approval of the more than 3,700 licensed physical therapists required to comply with it.

**Purpose and Objective:** The Department of Health (DOH) is proposing a rule change that will:

- Allow physical therapists to utilize their time more efficiently and effectively when completing their continuing education requirements.
- Add clarity and enhance existing requirements for continued competency by clearly specifying which continuing education requirements are acceptable for a given number of hours.
- Maintain existing quality of care provided by well-informed and educated physical therapists.

**Rule-making Requirements of the Regulatory Fairness Act (chapter 19.85 RCW):** The Regulatory Fairness Act, RCW 19.85.030 requires the department to conduct a small business economic impact statement (SBEIS) for proposed rules that have more than minor impact on small businesses. As defined in RCW 19.85.020 a small business is "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."

**What does the proposed rule amendment do?** The board proposes rule changes that will clarify, specify and add language to the requirements for continuing competency. The proposed amendment:

- Adds the phrase "from birth date to birth date" to specify the two-year period for renewing licensure and completing continuing competence.
- Omits the word "contact" describing the hours for continuing education.
- Adds the requirement that only ten hours of continuing education may be used for book or article reviews.
- Adds the requirement that credentials of the presenter of certificates of completing continuing education must be identified as a recognized authority.
- Specifies that zero - four hours of running time of cassette and video must be reviewed for each two-page synopsis written by the licensee.
- Specifies that one book or article on each subject must be reviewed for each two-page synopsis written by the licensee.

**Affected Industries/Disproportionate Impact:** In preparing this small business economic impact statement

(SBEIS), the Department of Health used the following SIC codes:

SIC	Description	MINOR IMPACT THRESH.
8051	Skilled nursing care facilities	\$ 195.64
8052	Intermediate care facilities	\$ 66.10
8059	Nursing and personal care, nec	\$ 66.10
8062	General medical & surgical hospital	\$ 396.57
8069	Specialty hospitals exc. psychiatri	\$ 237.94
8082	Home health care services	\$ 122.94
8093	Specialty outpatient clinics, nec	\$ 116.33
8099	Health and allied services, nec	\$ 66.10

These eight SIC codes indicate a minor impact threshold of \$66.10 - \$396.57. Because the rule changes are only adding clarity to existing requirements and do not impose any major changes or requirements that affect the intent of the rule, there are no significant costs and additional burden. The estimated cost to health care practitioners and physical therapists for amending these rules is zero. Therefore, there is no disproportionate cost to small business.

**How the Department of Health Will Notify Businesses:** Upon adoption, these rules will be made available to businesses that involve physical therapists, physical therapist assistants and physical therapy aides in a number of ways.

- Available on the Internet via the Board of Physical Therapy website.
- Copies sent to all businesses that have asked to be placed on the interested persons mailing list.
- Included in the next updated law book which is sent upon request to businesses and licensees and available on the Internet.
- Available at the front counter for businesses and licensees.
- Copies mailed to appropriate schools.
- Copies available through the Code Reviser's Office, available to all businesses, licensees, and the public at large.

**How the Department of Health Has Involved Businesses in the Rule-Making Process:** During the comment period, town meetings were held and draft rules were sent to all Washington licensed physical therapists and all known physical therapist assistants through the Physical Therapy Association of Washington. Only comments in support of this amendment were received.

**Costs to the Department of Health to Administer the Regulation:** There are no new additional costs to the Department of Health to amend these rules. No additional review time and no additional analyses are required as a result of the amendments.

A copy of the statement may be obtained by writing to Department of Health, Board of Physical Therapy, P.O. Box 47868, Olympia, WA 98504-7868, phone (360) 236-4847, fax (360) 664-9077.

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RCW 34.05.328 applies to this rule adoption. This rule is significant because it creates a requirement for licensure.

Hearing Location: Department of Health, 310 Israel Road S.E., Room 139, Tumwater, WA 98501, on February 27, 2004, at 1:30 p.m. - 2:00 p.m.

Assistance for Persons with Disabilities: Contact Kris Waidely by February 23, 2004, TDD (800) 833-6388 or (360) 236-4847.

Submit Written Comments to: Department of Health, Kris Waidely, P.O. Box 47868, Olympia, WA 98504-7868, fax (360) 664-9077, by February 23, 2004.

Date of Intended Adoption: February 27, 2004.

January 20, 2004

Kris Waidely  
Program Manager

**AMENDATORY SECTION** (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-915-085 Continuing competency.** Licensed physical therapists must provide evidence of continuing competency in the form of continuing education and employment related to physical therapy ((must be submitted)) every two years. ((Licensees born in even numbered years shall submit their continuing competency record form with license renewal every even numbered year. Licensees born in odd numbered years shall submit their continuing competency record form with license renewal every odd numbered year.))

(1) Education - Licensed physical therapists must complete 40 hours of continuing education every two years as required in chapter 246-12 WAC, Part 7.

(a) Continuing education specifically relating to the practice of physical therapy((-));

((+)) (b) Participation in a course with specific goals and objectives relating to the practice of physical therapy;

((ii) ~~Cassette tape, video tape~~) (c) Audio or video recordings or other multimedia devices, and/or book/article review. A maximum of ten hours may be used for books/articles reviewed;

((iii)) (d) Correspondence ((~~coursework~~) course work completed.

(2) ((~~Physical therapy employment—200 hours specifically relating to physical therapy.~~) In addition to the requirements in subsection (1) of this section, 200 hours involving the application of physical therapy knowledge and skills, which may be obtained as follows:

(a) In the clinical practice of physical therapy; or

(b) In nonclinical activities that involve the direct application of physical therapy skills and knowledge, examples of which include, but are not limited to:

(i) Active service on boards or in physical therapy school or education program accrediting bodies;

(ii) Physical therapy teaching or presentations on:

(A) Patient/client management, prevention and wellness;

(B) Physical therapy ethics and standards of practice;

(C) Professional advocacy/involvement;

(iii) Developing course work in physical therapy schools or education programs or physical therapy continuing education courses;

(iv) Physical therapy research as a principal or associate researcher; and

(v) Physical therapy consulting.

(3) Licensees shall maintain records of all activities relating to continuing education and professional experience for a period of ((~~seven~~)) four years. Acceptable documentation shall mean:

(a) Continuing education. Certificates of completion, course sponsors, goals and objectives of the course, credentials of the presenter as a recognized authority on the subject presented, dates of attendance and total ((~~contact~~)) hours, for all continuing education being reported.

(b) ((~~Cassette tape, video tape~~)) Audio or video recordings or other multimedia devices, and/or book/article review. A two-page synopsis of each item reviewed must be written by the licensee.

(i) For audio or video recordings or other multimedia devices, a two-page double-spaced synopsis for every one to four hours of running time must be written by the licensee. Time spent writing a synopsis is not reportable.

(ii) For book/article review, a two-page double-spaced synopsis on each subject reviewed must be written by the licensee. Time spent writing a synopsis is not reportable.

(c) Correspondence ((~~coursework~~)) course work completed. Course description and/or syllabus and copies of the completed and scored examination must be kept on file by the licensee.

(d) Physical therapy employment. Certified copies of employment records or proof acceptable to the board of physical therapy employment for the hours being reported.

## WSR 04-03-107

### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed January 21, 2004, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-13-103.

Title of Rule: WAC 246-915-210, 246-915-220, 246-915-230, 246-915-240, 246-915-250, 246-915-260, 246-915-270, and 246-915-280, mandatory reporting.

Purpose: The rules identify when various entities must report to the Board of Physical Therapy regarding a physical therapist's conduct.

Statutory Authority for Adoption: RCW 18.74.023(3) and 18.130.070.

Summary: The proposed rules add the phrase "mandatory reporting" to the title for each section. The definition of home health agencies is included in WAC 246-915-210. In addition, the phrase "and home health agencies" is added to the title of WAC 246-915-230 in order to add clarity and emphasis to include the practices of physical therapy in home settings. The rules clarify the information that should be reported, and make editorial changes to improve the clarity of the rules.

PROPOSED

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

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 proposed rules add clarity to the titles of the existing rules in order to reemphasize their intent and further enhance their relevance and significance to the practice of physical therapy. The proposed rules add the phrase "mandatory reporting" to the title for each rule. In addition, the phrase "and home health agencies" is added to the title of WAC 246-915-230 in order to add clarity and emphasis to include the practices of physical therapy in home settings.

Proposal Changes the Following Existing Rules: WAC 246-915-210, 246-915-220, 246-915-230, 246-915-240, 246-915-250, 246-915-260, 246-915-270 and 246-915-280, adds "mandatory reporting" to the title of each section.

WAC 246-915-210 (1)(d), adds the definition of "home health agency" as defined by facilities licensing.

WAC 246-915-210(2) and 246-915-220(1), moves the report content information from WAC 246-915-220(1) to 246-915-210(2).

WAC 246-915-230, adds home health agency to add clarity and emphasis to include the practices of physical therapy in home settings.

WAC 246-915-240, clarifies when associations or societies should report to the board.

WAC 246-915-280, clarifies when state and federal agencies should report to the board.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department conducted an initial assessment and found that the proposed rules do not impose more than minor costs on the affected businesses. For this reason, a small business economic impact statement is not required under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption. This rule is not legislatively significant because it is a procedural rule and does not subject an individual to sanctions. The rule adds the phrase "mandatory reporting" to the title for each rule.

Hearing Location: Department of Health, 310 Israel Road S.E., Room 139, Tumwater, WA 98501, on February 27, 2004, at 1:30 p.m. - 2:00 p.m.

Assistance for Persons with Disabilities: Contact Kris Waidely by February 23, 2004, TDD (800) 833-6388 or (360) 236-4847.

Submit Written Comments to: Department of Health, Kris Waidely, P.O. Box 47868, Olympia, WA 98504-7868, fax (360) 664-9077, by February 23, 2004.

Date of Intended Adoption: February 27, 2004.

January 9, 2004

Kris Waidely  
Program Manager

AMENDATORY SECTION (Amending Order 144B, filed 2/20/91, effective 3/23/91)

**WAC 246-915-210 Mandatory reporting—General provisions.** (1) The following definitions apply to the requirements for mandatory reporting set out in WAC 246-915-220 through 246-915-280:

(a) "Unprofessional conduct" as used in these regulations shall mean the conduct described in RCW 18.130.180.

((2)) (b) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

((3)) (c) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

((4)) (d) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(e) "Board" means the physical therapy board, whose address is:

Department of Health  
(1300 Quincee Street)  
P.O. Box 47868  
Olympia, WA 98504-7868

((5)) (f) "Physical therapist" means a person licensed pursuant to chapter 18.74 RCW.

((6)) (g) "Mentally or physically disabled physical therapist" means a physical therapist who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice physical therapy with reasonable skill and safety to patients by reason of any mental or physical condition.

(2) All reports required by WAC 246-915-220 through 246-915-280 shall be submitted to the board as soon as possible. A report shall contain the following information if known:

(a) The name, address and telephone number of the person making the report.

(b) The name and address and telephone numbers of the physical therapist being reported.

(c) The case number of any patient whose treatment is a subject of the report.

(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.

(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

(f) Any further information which would aid the evaluation of the report.

AMENDATORY SECTION (Amending Order 103B, filed 12/21/90, effective 1/31/91)

**WAC 246-915-220 Mandatory reporting—Physical therapists.** (1) ~~((All reports required by these regulations shall be submitted to the board as soon as possible, but no later than sixty days after a determination is made.~~

PROPOSED

(2) A report should contain the following information if known:

(a) The name, address and telephone number of the person making the report.

(b) The name and address and telephone numbers of the physical therapist being reported.

(c) The case number of any patient whose treatment is a subject of the report.

(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.

(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

(f) Any further information which would aid the evaluation of the report.)) Physical therapists shall report to the board if the therapist has knowledge that:

(a) Another therapist has committed unprofessional conduct under RCW 18.130.180, including violations of chapter 18.74 RCW and chapter 246-915 WAC; or

(b) A physical therapist is unable to practice with reasonable skill and safety as the result of a physical or mental condition.

(2) Failure to comply with these reporting requirements may constitute a violation of laws which regulate the practice of physical therapy.

AMENDATORY SECTION (Amending Order 103B, filed 12/21/90, effective 1/31/91)

**WAC 246-915-230 Health care institutions and home health agencies—Mandatory reporting.** The chief administrator or executive officer of any hospital, home health agency, or nursing home shall report to the board when any physical therapist's services are terminated or are restricted based on a determination that the physical therapist has either committed an act or acts which may constitute unprofessional conduct or that the physical therapist may be mentally or physically disabled.

AMENDATORY SECTION (Amending Order 103B, filed 12/21/90, effective 1/31/91)

**WAC 246-915-240 Physical therapy associations or societies—Mandatory reporting.** The president or chief executive officer of any physical therapy association or society within this state shall report to the board when ~~((an association or society determines that a physical therapist has committed unprofessional conduct or that a physical therapist may not be able to practice physical therapy with reasonable skill and safety to patients as the result of any mental or physical condition and constitutes an apparent risk to the public health, safety or welfare. The report required by this subsection shall be made without regard to whether the license holder appeals, accepts or acts upon the determination made by the association or society. Notification of appeal shall be included))~~ the program has determined the physical therapist:

(1) Demonstrated incompetence or acted with negligence in the practice of physical therapy;

(2) Has engaged in unprofessional conduct under RCW 18.130.180; or

(3) Is mentally or physically unable to perform as a physical therapist. The report shall be made regardless to whether the physical therapist appeals, accepts or acts upon the determination made by the association or society. Any notification of appeals shall be included with the report.

AMENDATORY SECTION (Amending Order 103B, filed 12/21/90, effective 1/31/91)

**WAC 246-915-250 Health care service contractors and disability insurance carriers—Mandatory reporting.** The executive officer of ~~((every))~~ any health care service contractor and disability insurer, licensed under chapters 48.20, 48.21, 48.21A and 48.44 RCW operating in the state of Washington, shall report to the board all final determinations that a physical therapist has engaged in overcharging for services or has engaged in overutilization of services or has charged fees for services not actually provided.

AMENDATORY SECTION (Amending Order 103B, filed 12/21/90, effective 1/31/91)

**WAC 246-915-260 Professional liability carriers—Mandatory reporting.** ~~((Every))~~ Any institution or organization providing professional liability insurance directly or indirectly to physical therapists shall send a complete report of any malpractice settlement, award or payment as a result of a claim or action for damages alleged to have been caused by an insured physical therapist's incompetency or negligence in the practice of physical therapy.

AMENDATORY SECTION (Amending Order 103B, filed 12/21/90, effective 1/31/91)

**WAC 246-915-270 Courts—Mandatory reporting.** The board requests the assistance of all clerks of trial courts within the state to report all professional malpractice judgments and all convictions of licensed physical therapists, other than minor traffic violations.

AMENDATORY SECTION (Amending Order 103B, filed 12/21/90, effective 1/31/91)

**WAC 246-915-280 State and federal agencies—Mandatory reporting.** The board requests the assistance of executive officers of any state or federal program operating in the state of Washington, under which a physical therapist is employed to provide patient care services, to report to the board when the program has determined the physical therapist:

(1) Demonstrated incompetence or acted with negligence in the practice of physical therapy;

(2) Has engaged in unprofessional conduct under RCW 18.130.180; or

(3) Is mentally or physically unable to perform as a physical therapist. Whenever such a physical therapist has been judged to have demonstrated his/her incompetency or negligence in the practice of physical therapy, or has otherwise committed unprofessional conduct; or is a mentally or physically disabled physical therapist.

**WSR 04-03-108**  
**PROPOSED RULES**  
**HIGHER EDUCATION**  
**COORDINATING BOARD**  
 [Filed January 21, 2004, 8:49 a.m.]

43430, Olympia, WA 98504-3430, fax (360) 704-6251, e-mail johnk@hecb.wa.gov, by February 27, 2004.

Date of Intended Adoption: March 25, 2004.

January 20, 2004

John Klacik

Associate Director

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 03-15-097.

**Title of Rule:** Exception to state need grant award amount limitation.

**Purpose:** The proposed rule provides a limited two-year exception to the existing rule prohibiting the award from exceeding the value of public sector tuition and fees.

**Statutory Authority for Adoption:** Chapter 28B.80 RCW and RCW 28B.10.822.

**Statute Being Implemented:** Not applicable.

**Summary:** In the 2003-04 and 2004-05 academic years the proposed rule permits the state need grant award to exceed public sector tuition by up to \$50.

**Reasons Supporting Proposal:** The Higher Education Coordinating Board is working with a sector representative group of student aid administrators to determine whether a longer term or broader modification to the existing rule is necessary.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** John Klacik, 917 Lakeridge Way, Olympia, WA 98504, (360) 753-7851.

**Name of Proponent:** Higher Education Coordinating Board, public.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** The proposed rule allows institutions participating in the state need grant program to disburse awards that may exceed the tuition charged by as much as \$50. The proposed exception remains in effect for the 2003-04 and the 2004-05 years only.

It is estimated that the proposed rule change will affect about 2,700 community and technical college students. The cost of permitting this exception is about \$14.50 per student for a total cost of about \$39,000.

**Proposal Changes the Following Existing Rules:** Permits the state need grant award to exceed tuition by up to \$50 in the 2003-04 and 2004-05 academic years.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule affects students in public sector higher education institutions. It does not affect businesses in Washington.

RCW 34.05.328 does not apply to this rule adoption. The Higher Education Coordinating Board is not named in the RCW.

**Hearing Location:** Higher Education Coordinating Board, 3rd Floor Conference Room, 917 Lakeridge Way, Olympia, WA 98504, on February 24, 2004, at 9 a.m. to 12 p.m.

**Assistance for Persons with Disabilities:** Contact Belma Villa by February 23, 2004.

**Submit Written Comments to:** John Klacik, Associate Director, Higher Education Coordinating Board, P.O. Box

**AMENDATORY SECTION** (Amending WSR 99-16-015, filed 7/23/99, effective 8/23/99)

**WAC 250-20-041 Award procedure.** (1) The institution will offer grants to eligible students from funds reserved by the board. It is the institution's responsibility to ensure that the reserve is not over expended within each academic year.

(2) The state need grant award for an individual student shall be the base grant, appropriate for the sector attended and a dependent care allowance, if applicable, adjusted for the student's family income and rate of enrollment. Each eligible student receiving a grant must receive the maximum grant award for which he or she is eligible, unless such award should exceed the student's overall need or the institution's approved gift equity packaging policy.

(3) The grant amount for students shall be established as follows:

(a) The award shall be based on the representative average tuition, service, and activity fees charged within each public sector of higher education. The average is to be determined annually by the higher education coordinating board.

(b) Except for the 2003-04 and 2004-05 academic years, the base grant award shall not exceed the actual tuition and fees charged to the eligible student. During the 2003-04 and 2004-05 years the grant award may exceed the tuition charged to the eligible student by fifty dollars.

(c) The base grant award for students attending independent four-year institutions shall be equal to that authorized for students attending the public four-year research institutions. The base grant for students attending private vocational institutions shall be equal to that authorized for students attending the public community and technical colleges.

(4) The total state need grant award shall be reduced for students with family incomes greater than fifty percent of the state's median and for less than full-time enrollment.

(a) Students whose incomes are equal to fifty-one percent to seventy-five percent of the state's median family income shall receive seventy-five percent of the maximum award. Students whose incomes are equal to seventy-six percent to one hundred percent of the state's median family income shall receive fifty percent of the maximum award. Students whose incomes are equal to one hundred one percent to one hundred twenty-five percent of the state's median family income shall receive twenty-five percent of the maximum award.

(b) Eligible students shall receive a prorated portion of their state need grant for any academic period in which they are enrolled at least half-time, as long as funds are available. Students enrolled at a three-quarter time rate, at the time of disbursement, will receive seventy-five percent of their grant. Students enrolled half-time at the time of disbursement will receive fifty percent of their grant.

PROPOSED

(5) Depending on the availability of funds, students may receive the need grant for summer session attendance.

(6) The institution will be expected, insofar as possible, to match the state need grant with other funds sufficient to meet the student's need. Matching moneys may consist of student financial aid funds and/or student self-help.

(7) All financial resources available to a state need grant recipient, when combined, may not exceed the amount computed as necessary for the student to attend a postsecondary institution. The student will not be considered overawarded if he or she receives additional funds after the institution awards aid, and the total resources exceed his or her financial need by \$200 or less by the end of the academic year.

(8) The institution shall ensure that the recipient's need grant award, in combination with grant aid from all sources, not exceed seventy-five percent of the student's cost-of-attendance. In counting self-help sources of aid, the aid administrator shall include all loans, employment, work-study, scholarships, grants not based on need, family contribution, and unmet need.

(9) The institution will notify the student of receipt of the state need grant.

(10) Any student who has received at least one disbursement and chooses to transfer to another participating institution within the same academic year may apply to the board for funds to continue receipt of the grant at the receiving institution.

**WSR 04-03-109**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**  
 [Filed January 21, 2004, 9:42 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: Amend Regulation II, Section 2.07.

Purpose: To reduce emissions of gasoline vapors from fueling motor vehicles by adding training requirements as well as clarifying the recognition and repair of system defects.

Other Identifying Information: Section 2.07 pertains to Gasoline Dispensing Facilities.

Statutory Authority for Adoption: Chapter 70.94 RCW.  
 Statute Being Implemented: RCW 70.94.141.

Summary: This proposal will improve the effectiveness of the regulations already in place that require the recovery of gasoline vapors from fueling motor vehicles.

Reasons Supporting Proposal: Compliance with our regulations will improve with the addition of training requirements that will clarify the recognition of and repair of system defects.

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.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect these amendments.

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

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

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. 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 26, 2004, at 9:15 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by February 19, 2004, 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 16, 2004.

Date of Intended Adoption: February 26, 2004.

January 20, 2004

Larry C. Vaughn  
 Engineer

**AMENDATORY SECTION**

**REGULATION II SECTION 2.07 GASOLINE ((STATIONS)) DISPENSING FACILITIES**

~~(((a)) Applicability. This section shall apply to all facilities that load gasoline into the fuel tanks of motor vehicles, marine vessels, or aircraft directly from stationary storage tanks.~~

~~(1) Stage 1 vapor recovery system requirements shall apply to all gasoline storage tanks with a capacity of greater than 1,000 gallons:~~

~~(A) Installed after January 1, 1979; or~~

~~(B) Located at facilities with a gasoline throughput greater than 200,000 gallons per calendar year.~~

~~(2) Stage 2 vapor recovery system requirements shall apply to all gasoline storage tanks with a capacity of greater than 1,000 gallons (except those used exclusively for aviation or marine gasoline):~~

~~(A) Installed after August 2, 1991;~~

~~(B) Located at facilities in King, Pierce, and Snohomish Counties with a gasoline throughput greater than 600,000 gallons per calendar year; or~~

~~(C) Located at facilities in Kitsap County with a gasoline throughput greater than 840,000 gallons per calendar year.~~

~~(b) Stage 1 Requirements. It shall be unlawful for an owner or operator of the facility to cause or allow the transfer~~



of gasoline from a transport tank into a stationary storage tank unless:

(1) The stationary storage tank is equipped with a submerged fill line and a Stage 1 vapor recovery system certified by the California Air Resources Board and installed in accordance with the system's certification requirements; and

(2) The system is visually inspected after each product delivery and any equipment found to be defective (e.g., loose caps or adaptors, stuck poppet valves, damaged gaskets) is repaired or replaced as soon as possible but no later than 7 days after the inspection.

(e) Stage 2 Requirements. It shall be unlawful for an owner or operator of the facility to cause or allow the transfer of gasoline from the stationary storage tank into a motor vehicle fuel tank (except motorcycles) unless:

(1) The stationary storage tank and dispenser are equipped with a Stage 2 vapor recovery system certified by the California Air Resources Board and installed in accordance with the system's certification requirements;

(2) Operating instructions are conspicuously posted and include a warning against topping off and the Department of Ecology's toll free telephone number for complaints about the system;

(3) The system is inspected on a weekly basis and any equipment found to be defective (e.g., torn bellows, mini-boots or hoses, leaking spouts, swivels or hoses, missing latch coils, stiff swivels) is taken out of service until repaired or replaced; and

(4) The system is tested for compliance with its certification requirements (e.g., pressure decay, back pressure, air/liquid ratio) and any equipment found to be defective is repaired/replaced and retested for compliance within 30 days. In the event that repair and retesting of defective equipment cannot be accomplished within 30 days, a 30-day extension may be granted in writing, provided that the owner or operator demonstrates in advance to the Control Officer that the equipment is being repaired and retested as soon as possible.

(d) Compliance Tests. Compliance with the requirements in Section 2.07 (e)(4) of this regulation shall be achieved no later than July 1, 2000. Tests shall be performed in accordance with the test methods and Executive Orders of the California Air Resources Board in effect July 1, 1998. (Testing frequencies are specified in the Executive Orders.) These tests shall be exempt from the requirements of Section 3.07 of Regulation I. However, notification of the test date shall be submitted to the Agency at least 5 days in advance of the test and copies of all test results shall be kept on site for at least 2 years from the date of the test.)

#### (a) Applicability

This section applies to any facility that dispenses gasoline from a stationary storage tank with a rated capacity of more than 1,000 gallons. The provisions of this rule do not apply to any Stage 1 or Stage 2 vapor recovery system that is not required by this rule.

#### (b) Definitions

(1) CARB-CERTIFIED means a Stage 1 or Stage 2 vapor recovery system, equipment, or any component thereof, for which the California Air Resources Board (CARB) has evaluated its performance and issued an Executive Order (including any subsequent approval letters).

(2) NON-RETAIL GASOLINE DISPENSING FACILITY means a facility subject to this section that is not a retail gasoline dispensing facility.

(3) OWNER OR OPERATOR means a person who owns, leases, super-vises, or operates a facility subject to this regulation.

(4) RETAIL GASOLINE DISPENSING FACILITY means a facility with an annual gasoline throughput greater than 200,000 gallons that sells gasoline to the public for use in motor vehicles.

#### (c) Stage 1 Vapor Recovery Requirements

##### (1) Installation Requirements

(A) Owners or operators must install a CARB-certified Stage 1 vapor recovery system on any gasoline storage tank with a rated capacity of more than 1,000 gallons that is either located at a retail gasoline dispensing facility or installed after January 1, 1979.

(B) Any person installing a CARB-certified Stage 1 vapor recovery system must install the system in accordance with the CARB certification requirements in effect on the date of installation.

##### (2) Maintenance Requirements

(A) All Stage 1 vapor recovery systems shall be installed, operated, and maintained in accordance with the CARB certification requirements.

(B) After June 1, 2005, all dual-point Stage 1 vapor recovery systems located at retail gasoline dispensing facilities must be equipped with swivel adaptors.

##### (3) Self-Inspection Requirements

(A) Owners or operators of a retail gasoline dispensing facility must inspect each Stage 1 vapor recovery system no later than 12 hours after each gasoline delivery for the defects listed in Table 1(a) or 1(b), depending on the type of system installed, using the inspection procedures listed in the tables.

(B) Owners or operators of a non-retail gasoline dispensing facility must inspect each Stage 1 vapor recovery system between gasoline deliveries for the defects listed in Table 1(a) or 1(b) depending on the type of system installed, using the inspection procedures listed in the tables.

Table 1(a)  
Dual-Point Stage 1 Defects

Equipment	Inspection Procedures	Defects
Dust Cap (tank cap on top of adapter)	<ul style="list-style-type: none"> <li>• Visually inspect the dust cap on both the fill and vapor risers.</li> <li>• Try to turn the dust cap on both the fill and vapor risers by hand.</li> </ul>	<ul style="list-style-type: none"> <li>• Cap gasket is missing or damaged.</li> <li>• Cap is missing or damaged.</li> <li>• Cap turns with hand pressure.</li> </ul>
Adapter Vapor Riser (brass fitting on tank riser)	Slowly depress poppet and check gasket and poppet alignment.	Poppet is inoperative, not aligned properly, or the gasket is damaged.
Adapter (brass fitting on tank riser) (Not required for swivel adapters.)	Try to turn the adapters on both the fill and vapor risers by hand.	Adapter turns with hand pressure.
Fill Tube (from adapter to bottom of tank)	Visually inspect the fill tube gasket, if clearly visible after removal of dust cap. (Some fill tube assemblies may not allow observation of the fill tube gasket except by a service technician.)	Fill tube gasket is damaged or missing.
Spill Bucket	Visually inspect the liquid level in the spill bucket and the condition of the drain valve.	<ul style="list-style-type: none"> <li>• Liquid level is more than 1 inch.</li> <li>• Drain valve is open or leaking vapors.</li> </ul>

Table 1(b)  
Coaxial Stage 1 Defects

Equipment	Inspection Procedures	Defects
Dust Cap (tank cap on top of adapter)	<ul style="list-style-type: none"> <li>• Visually inspect the dust cap on the fill riser.</li> <li>• Try to turn the dust cap on the fill riser by hand.</li> </ul>	<ul style="list-style-type: none"> <li>• Cap gasket is missing or damaged.</li> <li>• Cap is missing or damaged.</li> <li>• Cap turns with hand pressure.</li> </ul>
Adapter (brass fitting on tank riser)	Slowly depress the coaxial drop tube, check poppet gasket and poppet alignment.	Poppet is inoperative or out of alignment, poppet gasket is damaged, or spring is broken.
Adapter (brass fitting on tank riser)	Try to turn the adapter by hand.	Adapter turns with hand pressure.
Spill Bucket	Visually inspect the liquid level in the spill bucket and the condition of the drain valve.	<ul style="list-style-type: none"> <li>• Liquid level is more than 1 inch.</li> <li>• Drain valve is open or leaking vapors.</li> </ul>

(4) Corrective Action Requirements for Stage 1 Defects

(A) Retail Gasoline Dispensing Facilities

(i) Whenever a Stage 1 defect as described in Table 1(a) or 1(b) is discovered, (including, but not limited to, during a self-inspection, an audit, or an Agency inspection), the owner or operator must repair it as soon as possible, but no later than 24 hours after discovery.

(ii) If the defect cannot be repaired within 24 hours after discovery, the owner or operator must remove the defective tank from service until the defect is repaired.

(B) Non-Retail Gasoline Dispensing Facilities

(i) Whenever a Stage 1 defect as described in Table 1(a) or 1(b) is discovered, (including, but not limited to, during a self-inspection, an audit, or an Agency inspection), the owner or operator must repair it before the next gasoline delivery.

(ii) The owner or operator must not receive any gasoline deliveries to the tank where the defect is located until the defect is repaired.

(5) Recordkeeping Requirements

(A) Owners or operators must keep a log of the results of each self-inspection, which must include the following:

- date of inspection,
- time of inspection (retail gasoline dispensing facilities only),
- name of person conducting inspection,
- description of all defects found during the inspection, and
- date and time of repair of the defects.

(B) The log must be kept on-site at the facility and available for inspection for at least 2 years after the date the record was made.

PROPOSED

PROPOSED

**(d) Stage 2 Vapor Recovery Requirements - Retail Gasoline Dispensing Facilities**

**(1) Installation Requirements**

(A) Owners or operators of a retail gasoline dispensing facility must install a CARB-certified Stage 2 vapor recovery system on any existing gasoline tank located at a facility where the annual gasoline throughput is greater than 600,000 gallons per year for facilities located in King, Pierce, or Snohomish counties and greater than 840,000 gallons per year for facilities located in Kitsap County, and on any gasoline tank with a rated capacity of more than 1,000 gallons installed after August 2, 1991.

(B) Any person installing a CARB-certified Stage 2 vapor recovery system must install the system in accordance with the CARB certification requirements in effect at the time of installation.

**(2) Maintenance Requirements**

(A) All Stage 2 vapor recovery systems installed after April 1, 2003 must be Onboard Refueling Vapor Recovery (ORVR) compatible and must be installed, operated, and maintained in accordance with the CARB certification requirements.

(B) All Stage 2 vapor recovery systems installed prior to April 1, 2003 shall be installed, operated, and maintained in accordance with the CARB certification requirements in effect as of April 1, 2003, even if CARB later decertifies the system.

**(3) Self-Inspection Requirements**

Owners or operators must inspect Stage 2 vapor recovery systems every day the facility is open for business for the defects listed in either Table 2(a) or 2(b), depending on the type of system installed, using the inspection procedures listed in the tables.

**Table 2(a)**  
**Vapor Balance Stage 2 Defects**

Equipment	Inspection Procedures	Defects
Nozzle Spout	Pull back the boot to ensure the latch ring is on the spout.	Latch ring is missing.
Nozzle	Visually inspect the boot (bellows) for holes or slits.	No boot hole shall be more than 1/4 inch diameter. No slit shall exceed 1/2 inch in length.
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Nozzle	Visually inspect faceplate for missing or damaged surface area.	1/4 or more of the circumference of the bellows faceplate is damaged or missing.
Nozzles Emco A3005 bellows A3007 bellows A4000 bellows A4001 bellows A4003 bellows A4005 bellows A4007 bellows A4015 bellows	Compress the boot and note the tension on the trigger. Release the boot and note the tension on the trigger.	If the trigger is loose when the boot is compressed or the trigger is firm when the boot is released, the insertion interlock is defective.

Equipment	Inspection Procedures	Defects
Husky V bellows OPW 111V flow 211V bellows		
Hose (from dispenser to nozzle) including Whip Hose	Visually inspect the hose for physical condition.	Hose has cuts, holes, is flattened, or kinked, or the fuel flow direction is incorrect (if marked on the hose).

**Table 2(b)**  
**Vacuum-Assist Stage 2 Defects**

Equipment	Inspection Procedures	Defects
Nozzle Spout Latch Coil	Visually inspect each nozzle for missing latch coils.	Latch coil is missing.
Nozzle	Visually inspect the mini-boot (bellows) for holes or slits.	No hole greater than 1/8 of the circumference of the mini-boot, or a slit greater than 1 1/2 inches long.
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Hose (from dispenser to nozzle)	Visually inspect the hose.	Hose has holes, is kinked or flattened for a length of more than 1/2 the hose diameter, is split or cut exposing 1/4 inch or more of steel belt, or fuel flow direction is incorrect (if marked on the hose).

**(4) Corrective Action Requirements for Stage 2 Defects**

(A) Whenever a Stage 2 defect as described in Tables 2(a) or 2(b) is discovered (including, but not limited to, during a self-inspection, an audit, or an Agency inspection), the owner or operator must repair it immediately.

(B) If the defect cannot be repaired within one hour after discovery, the defective equipment must be removed from service until the defect is repaired.

**(5) Recordkeeping Requirements**

(A) Owners or operators must keep a log of the results of each self-inspection, which must include the following:

- time and date of the inspection,
- person conducting the inspection,
- a description of all defects found during the inspection,
- time and date of repair of any defects, and
- whether any gasoline dispensing equipment was removed from service prior to repair.

(B) The log must be kept on-site at the facility and available for inspection for at least 2 years after the date the record was made.

**(e) Self-Inspection Training Requirements - Retail Gasoline Dispensing Facilities**

(1) Owners or operators of retail gasoline dispensing facilities with Stage 2 vapor recovery systems must provide training for all employees who are responsible for performing self-inspections of the Stage 1 and Stage 2 vapor recovery equipment within 30 days of hire and provide on-site

refresher training for those employees at least once every calendar year.

(2) The self-inspection training must include all of the following:

(A) The location, function, and operation of vapor recovery equipment.

(B) Why vapor recovery equipment must be inspected and maintained.

(C) How to inspect vapor recovery equipment.

(D) How to recognize a defect.

(E) Appropriate corrective actions when defects are discovered.

(F) How to keep the necessary records.

(G) The penalties for noncompliance.

(3) The person providing the training must conduct the training in accordance with this section.

(4) After conducting the training required by this section, the owner or operator must prepare a written training report that includes:

- name and address of person conducting the training,
- date of the training, and
- names of the persons trained.

Owners or operators must keep a copy of the training report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

(f) Audit Requirements - Retail Gasoline Dispensing Facilities

(1) Owners or operators of retail gasoline dispensing facilities with Stage 2 vapor recovery systems must obtain an audit of their self-inspection program at least once every 12 months. The audit must be conducted by a person who does not conduct self-inspections at the same facility.

(2) The audit must include the following:

(A) Review of the required records including: training, self-inspections, audits, and testing.

(B) Verification of the gasoline throughput on the registration.

(C) Inspection of the Stage 1 vapor recovery system for defects, and

(D) Inspection of the Stage 2 vapor recovery system for defects.

(3) The person conducting the audit must conduct the audit in accordance with this rule.

(4) After conducting the audit required by this section, the owner or operator must obtain a written audit report that includes:

- name and address of person conducting the audit,
- date of the audit,
- results of the audit including any findings and/or recommendations, and
- corrective actions taken by the owner or operator to address the findings and/or recommendations.

Owners or operators must keep a copy of the audit report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

(g) Stage 2 Testing Requirements - Retail Gasoline Dispensing Facilities

(1) Testing Requirements

(A) Owners or operators must obtain compliance tests of vacuum-assist Stage 2 vapor recovery systems at least once every 12 months, and tests of vapor-balance Stage 2 vapor recovery systems at least once every 24 months.

(B) The person performing the tests must conduct the following compliance tests for each Stage 2 vapor recovery system:

**Table 3**  
**Required Stage 2 Compliance Tests**

<u>Stage 2 Vapor Recovery Systems</u>	<u>CARB Tests Required</u>	<u>CARB Test Procedures</u>	<u>Date of Adoption</u>
<u>All Vapor-Balance</u>	<u>Pressure Decay</u>	<u>TP-201.3</u>	<u>March 17, 1999</u>
	<u>Back Pressure</u>	<u>TP-201.4</u>	<u>July 3, 2002</u>
	<u>Tank-Tie Test</u>	<u>TP-201.3C</u>	<u>March 17, 1999</u>
<u>All Vacuum-Assist</u>	<u>Pressure Decay</u>	<u>TP-201.3</u>	<u>March 17, 1999</u>
	<u>Back Pressure</u>	<u>TP-201.4</u>	<u>July 3, 2002</u>
	<u>Air-to-Liquid Ratio</u>	<u>TP-201.5</u>	<u>February 1, 2001</u>
	<u>Tank-Tie Test</u>	<u>TP-201.3C</u>	<u>March 17, 1999</u>
<u>Healy 600 G-70-165</u>	<u>Pressure Decay</u>	<u>TP-201.3</u>	<u>March 17, 1999</u>
	<u>Vapor Return Integrity Test</u>	<u>G-70-165 Exhibit 4</u>	<u>April 20, 1995</u>
	<u>Tank-Tie Test</u>	<u>TP-201.3C</u>	<u>March 17, 1999</u>
<u>Healy 400 ORVR G-70-186</u>	<u>Pressure Decay</u>	<u>TP-201.3</u>	<u>March 17, 1999</u>
	<u>Fill Neck Pressure Test</u>	<u>G-70-186 Exhibit 5</u>	<u>October 26, 1998</u>
	<u>Vapor Line Vacuum Integrity Test</u>	<u>G-70-186 Exhibit 4</u>	<u>October 26, 1998</u>
	<u>Tank-Tie Test</u>	<u>TP-201.3C</u>	<u>March 17, 1999</u>
<u>Hirt System G-70-177-AA</u>	<u>Pressure Decay</u>	<u>TP-201.3</u>	<u>March 17, 1999</u>
	<u>Air-to-Liquid Ratio</u>	<u>TP-201.5</u>	<u>February 1, 2001</u>
	<u>Tank-Tie Test</u>	<u>TP-201.3C</u>	<u>March 17, 1999</u>

PROPOSED

Note: Tank-tie test must be conducted at least once, or after any tank configuration changes to show the tanks are manifolded. The tank-tie test records must always be kept on-site to verify compliance.

(2) Testing Procedures

(A) The person performing the tests must conduct the testing in accordance with the CARB test procedures contained in Table 3. Owners or operators must keep the completed tests on-site and available for inspection.

(B) The tests listed in Table 3 are exempt from the requirements of Section 3.07 of Regulation I, however persons performing such tests must notify the Agency in writing at least 72 hours prior to conducting a test.

(3) Failed Compliance Tests

Owners or operators must notify the Agency within 24 hours of any failed compliance tests, if the defective equipment cannot be repaired or replaced by the person conducting the test at the time of the test. If the defective equipment cannot be repaired within 24 hours of a failed compliance test, the owner or operator must stop receiving and/or dispensing gasoline from the defective equipment until it is repaired. This does not include any operation of the equipment necessary to conduct a retest.

(4) Test Reports

(A) After the testing required by this section has been conducted, the owner or operator must obtain a written test report.

(B) The written report must include:

- name and address of the tester,
- date of the testing,
- equipment tested,
- test procedures used,
- results of the tests, and
- any repairs or corrective actions necessary to pass the tests.

(5) Recordkeeping Requirements for Owners and Operators

Owners or operators must keep a copy of the test report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

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

**WSR 04-03-111**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed January 21, 2004, 10:05 a.m.]

Original Notice.

Title of Rule: Washington Barley Commission, chapter 16-530 WAC.

Purpose: This rule-making proposal makes amendments to sections within the Washington Barley Commission's marketing order, chapter 16-530 WAC, to reflect recent statutory changes, while improving readability and clarity.

Statutory Authority for Adoption: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.66 RCW.

Summary: During the past three legislative sessions, significant amendments were made to the commission's enabling statute, chapter 15.66 RCW. These statutory changes prompted proposed amendments to chapter 16-530 WAC. Proposed amendments expand the commission's policy and purpose statements, update the definitions, update the commission member selection process, authorize an advisory vote for director-appointed commission members, add additional powers and duties to benefit the industry, update meeting and administrative procedures, and expand the commission's information and education role. These amendments achieve consistency with the statute, as well as, improve the readability and clarity of the marketing order.

Name of Agency Personnel Responsible for Drafting: Lynn Briscoe, Olympia, (360) 902-2043; Implementation and Enforcement: Mary Palmer-Sullivan, Spokane, (509) 456-4400.

Name of Proponent: Washington Barley Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule-making proposal makes amendments to sections within the Washington Barley Commission's marketing order, chapter 16-530 WAC. During the past three legislative sessions, significant amendments were made to the commission's enabling statute, chapter 15.66 RCW. These statutory changes prompted the proposed amendments to chapter 16-530 WAC to achieve consistency with the statute, as well as, to improve the readability and clarity of the marketing order. See Summary and Purpose above. The following are the proposed amendments: New sections WAC 16-530-005, Marketing order for Washington barley—Policy statement and 16-530-006 Marketing order purposes; amending WAC 16-530-010 Definition of terms, 16-530-020 Barley commission and 16-530-040 Assessments and collection; and repealing WAC 16-530-030 Marketing order purposes.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In accordance with RCW 15.66.053(2), the adoption of the final amendments to chapter 16-530 WAC will be determined by a referendum vote of the affected parties.

RCW 34.05.328 does not apply to this rule adoption. Washington State Department of Agriculture is not a named agency, therefore, exempt from this provision.

Hearing Location: Washington Wheat Foundation Annex, 109 East 1st Avenue, Ritzville, WA 99169, on March 2, 2004, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Virginia Walsh, Washington State Department of Agriculture, at (360) 902-1976, by February 18, 2004, TDD (360) 902-1996.

Submit Written Comments to: Lynn Briscoe, Commodity Commission Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, fax (360) 902-2092, e-mail lbriscoe@agr.wa.gov, by March 3, 2004, 5:00 p.m.

Date of Intended Adoption: July 26, 2004.

January 21, 2004

William E. Brookreson

Deputy Director

## NEW SECTION

**WAC 16-530-005 Marketing order for Washington barley—Policy statement.** (1) The marketing of barley within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its barley be properly promoted by:

(a) Enabling producers of barley to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the barley they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of barley within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the barley industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that barley be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's barley.

(b) Increase the sale and use of Washington state's barley in local, domestic, and foreign markets.

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's barley.

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's barley and products.

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of barley produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.66 RCW through this marketing order.

(4) The Washington state barley commission exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the commission is authorized to speak on behalf of Washington state government with regard to barley under the provisions of this marketing order.

## NEW SECTION

**WAC 16-530-006 Marketing order purposes.** (1) Purposes. This marketing order for barley is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; or increasing production efficiency, ensuring a fair regulatory environment; or increasing per capita consumption of barley in Washington state. The Washington state barley commission is designated by the director to conduct the following programs in accordance with chapter 15.66 RCW:

(a) To establish plans and conduct programs for marketing, education, and sales promotion. The commission may also engage in cooperative efforts in the domestic or foreign marketing of barley food products.

(b) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, handling, transportation, and marketing of barley.

(c) To adopt rules in accordance with chapter 34.05 RCW to provide for improving standards and grades of barley by defining, establishing, and providing labeling requirements with respect to the same.

(d) To investigate and take necessary action to prevent unfair trade practices.

(e) Subject to the provisions of the act, to provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of barley produced in Washington state to any elected official or officer or employee of any agency.

(f) To conduct programs for the purpose of providing information and education including:

(i) Marketing information and services for producers of barley.

(ii) Information and services enabling producers to meet their resource conservation objectives.

(iii) Barley-related education and training.

(2) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of barley.

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of the barley may be encouraged, expanded, improved, or made more efficient.

**AMENDATORY SECTION** (Amending Order 1857, filed 5/22/85, effective 7/1/85)

**WAC 16-530-010 Definition of terms.** ~~((As used in this marketing order, the following terms shall have the following meanings:))~~ Definitions for terms used in this chapter are also found in chapter 15.66 RCW, Washington State Agricultural Commodity Commissions Act. For the purposes of the barley marketing order, the following additional definitions shall apply:

(1) "Director" means the director of agriculture of the state of Washington or ~~((the director's duly appointed representatives))~~ any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter.

(2) "Act" means the Washington ~~((Agriculture Enabling))~~ State Agricultural Commodity Commissions Act ((of 1955 or)), chapter 15.66 RCW.

(3) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals, or any unit or agency of local or state government.

(4) "Producer" means any person who is engaged in the business of producing or causing to be produced for market, in commercial quantities, barley grown in the designated

affected area of the state of Washington. "To produce" means to act as a producer. For the purposes of the barley marketing order, "producer" shall include persons who contract to produce or grow any agricultural product on behalf of another person who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(5) "Affected producer" means any producer who is subject to this marketing order.

(6) "Commercial quantities" shall mean and include twenty tons produced for market in any calendar year by any producer.

~~((6))~~ (7) "Barley" means and includes all kinds and varieties of barley grown in the state of Washington.

~~((7))~~ (8) "Barley commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-530-020 of this marketing order.

~~((8))~~ "Marketing season" or "fiscal year" are synonymous and mean the twelve-month period beginning July 1 of any year and ending upon the last day of June, the following year, both dates inclusive.)

(9) "Marketing year" refers to the twelve-month period beginning June 1 of any year and ending on May 31. "Fiscal year" refers to the twelve-month period beginning July 1 of any year and ending on June 30.

(10) "Handler" means any person (~~engaged in the business of handling, selling, processing, storing, shipping, or distributing barley which he/she has purchased or acquired from a producer, or which he/she is shipping for or on behalf of a producer, and shall include any lending agency for a commodity credit corporation loan to producers~~) who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of barley that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

~~((10))~~ (11) "Commercial channels" means the sale of barley for use as food, feed, seed or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any barley, or products produced from barley.

~~((11))~~ (12) "Affected area" shall mean and include the following counties located in the state of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

**AMENDATORY SECTION** (Amending Order 1857, filed 5/22/85, effective 7/1/85)

**WAC 16-530-020 Barley commission.** (1) Establishment and membership. A barley commission is hereby established to administer this marketing order and shall be composed of five members who shall be affected producers (~~elected~~) appointed by the director as provided in this section and two members who shall be appointed by the (~~elected producer~~) commission members. In addition, the

director shall be (~~an ex-officio~~) a voting member of the commission.

(2) Representative districts. The affected area shall be divided into the five following districts:

(a) District I shall have one commission member, and shall include the counties of Chelan, Douglas, Ferry, Grant, Okanogan, Spokane, Stevens, and Pend Oreille.

(b) District II shall have one commission member, and shall include Whitman county.

(c) District III shall have one commission member, and shall include the counties of Asotin, Benton, Columbia, Garfield, and Walla Walla.

(d) District IV shall have one commission member, and shall include the counties of Adams, Franklin, Kittitas, Klickitat, and Yakima.

(e) District V shall have one commission member, and shall include Lincoln county.

(f) (~~Each district shall nominate one or more nominees, but elect one commission member only.~~) Producer positions appointed by the director shall be numbered one through five. Positions appointed by the commission members shall be numbered six and seven. The director's position shall be position eight.

(g) Nomination and appointment of director-appointed commission members shall be as set forth in chapter 15.66 RCW and specified by the director.

(3) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of (~~twenty-five~~) eighteen years. Producer members of the commission shall be producers of barley in the district in and for which they are nominated and (~~elected~~) appointed. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(4) Term of office(~~—Initial commission~~).

(a) The term of office of commission members shall be three years from the date of their (~~election~~) appointment and until their successors are (~~elected and qualified~~) appointed. The terms of office for the initial commission members shall be as follows:

District I shall terminate December 31, 1986.

Districts II and III shall terminate December 31, 1987.

Districts IV and V shall terminate December 31, 1988.

One appointed member's term shall terminate December 31, 1986.

The second appointed member's term shall terminate December 31, 1988.

The appointed members of the initial commission shall be elected by a majority of the elected commissioners on or before the adjournment of its third meeting.

(b) Within thirty days of the effective date of this amended marketing order, the names of the currently elected board members shall be forwarded to the director for appointment to the commission.

(5) Nomination and (~~election~~) appointment of commission members.

(a) Nomination and (~~election~~) appointment of director-appointed commission members shall be as set forth in ((the aet)) chapter 15.66 RCW and specified by the director. Dates will be set as follows:

(i) Nominating petitions for director-appointed positions shall be mailed not earlier than September 17 and not later than October 2 of each year in the district wherein ((a vacancy)) an open commission position(s) will occur. Nominating petitions shall be signed by not less than five affected producers of the district from which such a candidate will be ((elected)) appointed.

(ii) Final date for filing of nominating petitions for director-appointed positions to the director shall not be earlier than October 8 and not later than October 13 of each year.

(iii) Ballots for an advisory vote will be mailed to all producers in the district wherein ((a vacancy)) an open commission position(s) will occur, not earlier than October 18 and not later than November 2 of each year.

(iv) Ballots for an advisory vote shall be returned not later than December 2 of such year. An affected producer is entitled to one vote.

(v) When only one nominee is nominated by the affected producers for a director-appointed position, RCW 15.66.120 shall apply.

~~(i) ((With respect to the initial barley commission, the director shall call for nominations and elections as soon as practical after passage of the referendum. The ballot for the election of commissioners shall be secret.~~

~~(e) When only one nominee is nominated for any position on the board, the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected.)) Except with respect to the initial barley commission, the members of the commission not elected by the producers or appointed by the director shall be appointed by a majority of the commission within ninety days prior to the expiration of the term.~~

~~(6) Vacancies. ((In the event of a vacancy in an elected or appointed position on the commission, the remaining elected members of the commission shall select a qualified person to fill the unexpired term, at its first meeting after the occurrence of the vacancy.))~~

(a) In the event of a vacancy in a commission-appointed position, the remaining members shall select a qualified person to fill the term. The appointment shall be made at the commission's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in chapter 15.66 RCW.

(7) Powers and duties of commission. The commission shall have the following powers and duties:

(a) To elect a chairman and such other officers as determined advisable.

(b) To adopt, rescind and amend rules ((and regulations)) reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order.

(c) To administer, enforce, direct, and control the provisions of the marketing order and of this chapter relating thereto.

(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same.

(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same.

(f) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order.

(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by legal agencies of the state and make annual reports therefrom to the state auditor.

(h) Borrow money and incur indebtedness.

(i) Make necessary disbursements for routine operating expenses.

(j) Such other powers and duties that are necessary to carry out the purposes of this chapter.

(k) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with, and to effectuate the purposes of the act, and this marketing order.

(l) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least thirty days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(m) To accept and receive gifts and grants from private persons or private and public agencies and expend same.

(n) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes set forth in this marketing order.

(o) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes set forth in this marketing order. Personal service contracts must comply with chapter 39.29 RCW.

(p) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of barley.

(q) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(r) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this marketing order.

(s) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of barley including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(t) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's produc-



tion for a minimum three-year period pursuant to RCW 15.66.140.

(u) To maintain a list of names and addresses of persons who handle barley within the affected area and data on the amount and value of the barley handled for a minimum three-year period by each person pursuant to RCW 15.66.140.

(v) To maintain a list of names and addresses of all affected persons who produce barley and the amount, by unit, of barley produced during the past three years pursuant to RCW 15.66.143.

(w) To maintain a list of all persons who handle barley and the amount of barley handled by each person during the past three years pursuant to RCW 15.66.143.

(x) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(y) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid.

(z) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity.

(8) Procedure for commission.

(a) The commission shall, by resolution, establish a headquarters which shall continue as such unless and until so changed by the commission at which headquarters shall be kept the books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by the resolution of the commission. Notice of the time and place of regular meetings shall be published on or before January of each year in the Washington State Register. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(c) The commission shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the barley commission at least ten days prior to the meeting, through the regular news media.

(d) The commission shall establish by resolution, the time, place and manner of calling special meetings with reasonable notice to the members: Provided, ~~((however,))~~ That the notice to a member of any special meeting may be waived by a waiver ~~((thereof signed by each))~~ from that member ~~((thereof))~~ of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

(e) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(f) A quorum of the commission shall consist of at least five members.

(g) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall receive an amount not to exceed the amount specified in RCW ~~((15.66.130))~~ 43.03.230 as it exists

now or as hereafter amended, for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and travel expenses allowed by ~~((law to state employees))~~ RCW 43.03.050 and 43.03.060. The commission may adopt by resolution provisions for reimbursement of actual expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

AMENDATORY SECTION (Amending Order 1974, filed 4/13/88, effective 6/1/88)

**WAC 16-530-040 Assessments and collection.** (1) Assessments. The assessment on barley shall be one percent of the net receipts at the first point of sale. The assessment shall be levied and paid by the producer, or deducted, as provided in this section, whether the barley is sold in this or any other state.

(2) Collection of assessments. The collection of the assessment made and levied by the barley commission, pursuant to the provisions of the act, shall be paid by the producer ~~((thereof))~~ upon all commercial quantities of barley sold, under any or all of the methods of collection set forth in RCW 15.66.150, in accordance with rules ~~((and regulations))~~ to be ~~((promulgated))~~ adopted by the barley commission: Provided, ~~((however,))~~ That no assessment shall be levied or collected on barley grown and used by the producer for feed, seed, or personal consumption.

(3) Funds. All moneys collected by the barley commission shall be used only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and the barley marketing order.

At the end of each fiscal year, the commission shall credit each producer with any amount paid by ~~((such))~~ the producer in excess of the assessment rate. Refund may be made only upon satisfactory proof given by the producer in accordance with reasonable rules and regulations prescribed by the director.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-530-030 Marketing order purposes.

**WSR 04-03-112**

**PROPOSED RULES**

**DEPARTMENT OF TRANSPORTATION**

[Filed January 21, 2004, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-24-010.

Title of Rule: Commute trip reduction (CTR) performance grant program.

**Purpose:** To create the CTR performance grant program authorized during the 2003 legislative session.

**Statutory Authority for Adoption:** RCW 70.94.996.

**Statute Being Implemented:** RCW 70.94.556.

**Summary:** The legislature adopted statutes authorizing the creating of a CTR performance based grant program. These rules establish the operating parameters of the program.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Brian Lagerberg, Olympia, Washington (360) 705-7878.

**Name of Proponent:** Washington State Department of Transportation, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** This rule creates a grant program for projects that reduce the number of vehicle trips for commuting by changing the way employees arrive at work. The rule establishes the parameters of the grant program including eligibility, evaluation criteria and measurement. The grant program will create new services for employees and employers looking for viable commute options. The rule and grant program will be assessed annually to determine it [its] effectiveness and opportunities for improvements.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any costs on businesses in an industry.

RCW 34.05.328 does not apply to this rule adoption. The rules define the procedures for a grant program and are not subject to violation by a nongovernment party.

**Hearing Location:** Washington State Department of Transportation, Commission Board Room, 310 Maple Park Avenue S.E., Olympia, WA 98504, on February 25, 2004, at 1:00 p.m.

**Assistance for Persons with Disabilities:** Contact TDD (888) 833-6388.

**Submit Written Comments to:** Brian Lagerberg, Washington State Department of Transportation, P.O. Box 47387, Olympia, WA 98504-7387, fax (360) 705-6862, by February 11, 2004.

**Date of Intended Adoption:** February 25, 2004.

January 16, 2004

John F. Conrad

Assistant Secretary

Engineering and Regional Operations

## Chapter 468-60 WAC

### CTR PERFORMANCE GRANT PROGRAM

#### NEW SECTION

**WAC 468-60-010 Commute trip reduction performance grants.** The Washington state department of transportation (WSDOT) will develop, together with the commute trip reduction task force (CTR), and administer a CTR performance grant program designed to reduce the number of commute vehicle miles traveled (VMT) and commute vehicle

trips by employees. The 2003 legislature created this grant to provide financial incentives or compensation to organizations that increase the capacity of the transportation system by reducing the number of vehicle trips and miles traveled for commute purposes. The amounts granted will be based on the projected number of annual commute vehicle trips and commute VMT reduced during the grant period. The amount of funds provided to the grantee will be determined based on the actual performance of their project. If necessary, WSDOT will revise these rules following the first grant round to create a more effective and efficient grant program.

(1) **What are CTR performance grants?** Grants are awarded on a competitive basis to organizations for reducing commute vehicle trips and commute vehicle miles traveled. The grantee will receive funds based on the value to the transportation system of the project performance. The performance grant program is available to private employers, public agencies, nonprofit organizations, developers, and property managers who provide financial incentives to their own or other employees for ridesharing, public transportation, nonmotorized transportation, telework, and alternative work schedules, and that reduce the number of vehicle trips and miles traveled for commuting.

(2) **Definitions.** For purposes of this section, the following definitions apply.

(a) *Financial incentives* is defined as a policy, procedure, capital investment or payment intended to provide employees a financial gain if they commute in ways other than by driving alone. For example, the eligible incentives may include, but are not limited to: Providing a free transit pass, reducing the parking charge for rideshare vehicles, initiating parking charges for employee vehicles, reducing the cost of a transportation service such as a transit pass, paying the membership fee for a car sharing program, providing employees alternative work week schedules, providing a direct cash payment, reducing the insurance rate for employees who reduce the use of their vehicle for commuting, or reducing the distance an employee travels to work by reassigning their work location to a worksite closer to their home.

(b) *Car sharing* means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(c) *Telework* means a program where work functions that are normally performed at a traditional workplace are instead performed by an employee at his or her home at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(d) *Commute vehicle trips* is defined as the number of vehicle trips made to bring employees to work at a worksite or specified collection of worksites each morning.

(e) *Reduced commute vehicle trips* is defined as the change in the number of vehicle trips made to bring a consistent number of employees to a worksite or collection of worksites. Reduced vehicle trips can be calculated using two separate surveys that measure the number of vehicles arriving at the specified worksite(s) and making an adjustment for the change in employee responses for the two surveys. Subsection (16) of this section describes in detail the process used by WSDOT to calculate reduced commute vehicle trips.

(f) *Commute vehicle miles traveled (VMT)* is the average distance employees travel to work (one way) in a motor vehicle, divided by the vehicle occupancy. For passenger cars, trucks, vans, and motorcycles, WSDOT will calculate the vehicle occupancy from survey data using CTR task force guidelines, or from equivalent data as agreed by WSDOT and the applicant. For buses, WSDOT will assume an average occupancy of twenty-five persons. Bicycling, walking, train ridership, and the avoidance of commute vehicle trips via telework and use of compressed workweeks, will not be considered as using motor vehicles.

(g) *Reduced VMT* is defined as the measured change in the number of vehicle miles traveled per employee. Reduced VMT can be calculated from two separate surveys that measure the commute distance per employee and the way they commute to work.

(h) *Performance* is defined as the reduction in the number of commute vehicle trips to the work location and the reduction in the commute vehicle miles traveled by employees at the specified work location(s).

(i) *Eligible trips* are defined in this section as the commute trips taken by employees at the targeted worksite(s) established in the applications and measured in the proposed measurement methodology. To be considered an eligible reduced trip and VMT, the involved employee must benefit from the program implemented by the applicant.

(j) *Agent* is an organization or individual who represents the private employer, public agency, nonprofit organization, developer, or property manager and is charged with managing the grant program or providing the employee the financial service.

(k) A *cost effective application* is one that defines a project that will reduce commute vehicle trips and commute vehicle miles traveled at a cost less than the defined roadway capacity cost. This cost will vary by year and will be clearly identified on the grant application form.

(l) *Mode split* is the percentage of employees traveling to work using various means of transportation (known as modes). For example, if the drive alone mode split for a worksite is seventy-three percent, then seventy-three percent of the employees arriving at that site drove alone.

(m) *Commute mode* is the means of transportation an employee took to work. For example, their commute mode may be by driving alone, carpooling, alternative work schedule, teleworking, etc.

(3) **Who can apply?** These statewide grants are available on a competitive basis for private employers, public agencies, nonprofit organizations, developers, and property managers or their agents who provide financial incentives to their own or other employees for ridesharing, public transportation, nonmotorized transportation, telework, and compressed work weeks.

(4) **What kinds of projects will be funded?** To receive funds, the project must meet the review criteria and rank highly in the competitive review. The applicant determines the actual scope and design of the project. New and existing projects are eligible to receive a grant.

(5) **How much money is available?** The amount of funds made available for this program is set in the state transportation budget. For the 2003-2005 biennium, one million

five hundred thousand dollars is budgeted for the grants. No more than seven hundred fifty thousand dollars will be available for each fiscal year (July-June).

(6) **How will the grant funds be distributed?** A minimum amount of the grant funds is guaranteed to be available in each of three funding zones: Ten percent of available funds for Central Puget Sound (CPS) (King, Pierce, Snohomish counties), ten percent of available funds for non-Central Puget Sound applications, and ten percent of available funds for statewide applications (applications with worksites in the CPS and outside the CPS). The remaining grant funds will be awarded based on the project's ranking and available funds.

(7) **How much money will be awarded to individual grants?** Funds will be allocated based on the estimated commute vehicle trips and miles traveled reduced for the project. The applicant will provide an estimate of the anticipated performance and the amount of funds they request. Once the selection committee ranks the projects, WSDOT will award the grants based on committee ranking until seven hundred fifty thousand dollars is awarded in each fiscal year or all cost effective projects are funded. No one employer, etc., may receive more than one hundred thousand dollars per fiscal year.

(8) **How much money can be awarded to applications with multiple employer partners?** The total amount of funds that can be provided to a partnership application is the sum of the total amount eligible per employer up to two hundred fifty thousand dollars per application. No single application or project will be awarded a grant in excess of two hundred fifty thousand dollars per fiscal year.

(9) **How does the applicant apply for the grant?** This subsection describes the application procedures used in the performance grant program. WSDOT will notify eligible applicants of the open period for grant applications. WSDOT may open more than one grant period per year depending on whether all funds are awarded. Applicants apply for this grant by submitting a completed "Performance Grant Application" form during an open grant period. The "Performance Grant Application" form is available on request from the Washington state department of transportation and is available to be downloaded from the WSDOT website at: <http://wsdot.wa.gov/TDM/performancegrant/>.

(a) No private employer, public agency, nonprofit organization, developer, or property manager is eligible for grants under this section in excess of one hundred thousand dollars in any fiscal year.

(b) Eligible applicants may submit more than one application. However, no applicant may request more grant funds than they are eligible to receive.

(c) Applicants may, and are encouraged to, submit a grant application that will cover two years. Applications covering two years must estimate the number of vehicle trips and VMT reduced for each of the two fiscal years. Only one base measurement will be required for a two-year application. Recipients of two-year grants may receive the start-up portion of their award in the first year and the performance portion in the second year. In this situation, funding for the trips and VMT reduced will be assumed to have occurred in the second year of the project.

(d) The grant funds must be received by the grantee by the end of the fiscal year in which the application was received.

(e) No grants will be awarded to an applicant requesting compensation at a rate higher than the annualized cost of providing new roadway capacity. The annualized cost of providing new capacity will be provided by WSDOT as part of the application document.

(f) For purposes of distributing awarded funds, one trip is assumed to equal 13.07 VMT (the average commute distance measured as part of the CTR program) or the average one-way commute distance for the employees covered by the project. The applicant may, through documentation in the applications, provide a different trip to VMT ratio that is specific to employees in their proposal.

(g) An agent "who will provide the financial incentive to the employee" can submit a partnership grant application and be the prime grantee for the project. All procedures in this section will apply to the agent for this type of partnership grant.

(h) No applicant may claim a reduction in employee commute vehicle trips or commute VMT that is claimed as part of another application.

(10) **How will the application be reviewed?** An award committee comprised of between six and nine members will be selected by the chair of the CTR task force and will include at least two members of the commute trip reduction task force, at least one member from Central Puget Sound and one from the rest of the state, at least one employer, at least one transit member and at least one city government representative. Grants will be awarded based on the criteria as defined in subsection (11) of this section.

(11) **What are the review criteria?** The applications will be reviewed based on the following criteria.

(a) **Applicant provides incentives:** To be eligible for the grant, the applicant must provide financial incentives to their own or other employees for ridesharing, using public transportation, car sharing, or nonmotorized commuting.

(b) **Project predictability:** Are the estimates of employee participation and overall trip and VMT reduction likely to be achieved based on the assessment of the review committee?

(c) **Measurability:** The performance of the project must be measurable. If the applicant submits their own measurement approach, the measurement plan submitted must be as accurate an estimate of the trips reduced as would be generated if the applicant made use of the WSDOT-developed measurement tool (subsection (16) of this section).

(d) **Cost effectiveness:** Does the project have a high likelihood of achieving its benefits at a relatively low expenditure of performance grant funds? Are the projected benefits achievable at a cost less than providing the equivalent roadway capacity?

(e) **Sustainability:** If this project is funded, will its benefits continue after the grant-funded element of the project has been completed? Do the project design and partnerships indicate a high probability for continuing the project after all grant funds are used?

(f) **Thoroughness:** Has the project been thoroughly researched and carefully thought out? Are adequate details presented?

(g) **Redundancy:** Does the project propose to provide services that are already available for the employees?

(12) **How will the recipient receive the money?** Once the projects have been reviewed, prioritized and selected, the applicant will enter into a contract with the Washington state department of transportation for implementation of the project. This contract will establish the amount of money the grantee can receive for the project, the timelines and performance expectations. The funds will be provided to the grantee through three approaches: Start-up, performance and performance bonus.

(a) **Start-up:** The grantee may request up to fifty percent of awarded funds after project startup. Start-up funding will be provided dollar for dollar on a cost-reimbursable basis, but in no circumstances will this amount exceed fifty percent of the total project award.

(b) **Grant performance:** The remaining funds will be available to the grantee following the performance measurement. The grantee has the option to measure their performance halfway through the project and at the end of the year. If the grantee conducts a midterm measurement, they will be eligible to receive half of the performance funding following this measurement with the balance available after the second measurement survey. If the grantee elects to measure only at the end of the project, all of the remaining funds will be available, depending on the performance they achieved through their project. No performance funds will be available for any project that fails to perform.

(c) **Performance bonus:** The grantee will be eligible to receive up to twenty percent additional funds if the performance of their project exceeds their anticipated performance. These funds will only be provided at the end of the contract period and the grantee will receive the funds for additional performance based on the same award rate per trip reduced and same award rate per VMT reduced as identified in their application and subsequent contract. Note: No one employer, etc., may receive more than one hundred thousand dollars in a FY. The performance bonus portion of the funding will only be available if funds are remaining in the grant account.

(13) **Project timeline:** To receive all eligible grant funds for the fiscal year, the grantee must provide measured data on their project's performance to WSDOT by June 15th.

(14) **Receipt of grant funds:** The grantee must submit a grant fund disbursement form provided by WSDOT in order to receive their grant funds. On this form the grantee will identify the funds requested and documentation of performance or expenditures (if required). For the performance portion of the grant award, no funds will be made available without documentation of actual employee reductions in VMT and vehicle trips.

(15) **Performance documentation:** The applicant must, as part of the application, indicate how they will provide evidence of the performance made during the year. WSDOT will make available a survey instrument that can be used to measure performance at employer worksites. The grantee may elect to provide performance data in an alterna-

tive format approved by WSDOT. The measurement approach used by the applicant must clearly demonstrate how changes are calculated and adjustments made for changes in employee population.

(16) **Measurement of VMT and commute trips reduced:** Measurement of performance must provide actual counts of vehicle trips and VMT made by the employees in the program, preceding and following the grant period. The performance measurement must adjust for changes in employee populations during the grant period. WSDOT will use the following methodology to calculate changes in the number of commute trips and commute VMT at a project worksite(s):

(a) **Baseline survey.** At the beginning of the program, the worksite(s) will survey their employees about their commuting behavior using the standard WSDOT commute trip reduction employee survey form. This initial survey is called the baseline survey. WSDOT will calculate a baseline mode split, based on results from the baseline survey. In calculating this mode split, and those from subsequent surveys, WSDOT will calculate assumptions to adjust for missing data, days reported by employees as not worked, inconsistency between commute mode and vehicle occupancy data, and reported use of compressed workweeks as specified in the CTR guidelines published by WSDOT and available on the Internet <http://www.wsdot.wa.gov/tdm/tripreduction/CTRguide/SEC3.cfm>.

(b) **Performance measurement survey.** The grantee will survey the eligible project employees a second time by June 15th. This second survey is called the performance measurement survey.

(c) WSDOT will calculate the mode split based on the results of the performance measurement survey. Using the number of employees at the site during the first measurement survey and the mode split from the first measurement survey, WSDOT will calculate the average number of vehicle trips that employees took per day, during the first measurement survey period. Using this same number of employees,

WSDOT also will calculate the average number of trips the employees would have taken per day during the first measurement survey if they had the mode split calculated from the baseline survey.

(d) The difference between the two numbers calculated under subsection (2)(b) of this section is the change in the average number of trips per day at the site between the two surveys. These calculations take into consideration changes in employment at the site; the employer will not be entitled to increased payments due to a reduction in force or be penalized because of an increase in employment.

(e) WSDOT will calculate the average one-way distance for trips made by each mode in the performance measurement survey, and multiply this by the change in the average number of trips by that mode per day. The sum of these values for motorized commuting modes is the change in VMT.

**WSR 04-03-116**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Children's Administration)  
 [Filed January 21, 2004, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-06-083 and 02-20-016.

Title of Rule: Chapter 388-148 WAC, Licensing requirements for foster homes, staffed residential homes, group care facilities, and child-placing agencies.

Purpose: To revise rules to comply with federal funding statute and clarify language of the licensing requirements for homes, facilities, and child-placing agencies. The chapter incorporates a new set of licensing requirements for group receiving centers.

New or Amended	WAC #	Title
Amended	388-148-0005	What is the purpose of this chapter?
Amended	388-148-0010	What definitions do I need to know to understand this chapter?
Amended	388-148-0015	Am I required to have a license to provide care to children?
Amended	388-148-0025	How do you decide how many children I may serve in my home or facility?
Amended	388-148-0035	What personal characteristics do I need to provide care to children?
Amended	388-148-0040	What first aid and cardiopulmonary resuscitation (CPA) training is required?
Amended	388-148-0045	What HIV/AIDS training is required?
Amended	388-148-0050	How do I apply for a license?
Amended	388-148-0055	How long do I have to complete the licensing application packet?
Amended	388-148-0058	May I receive more than one in-home family license?
Amended	388-148-0060	May my relative or I be certified by a child-placing agency to be a foster parent and be an employee of that same agency?
Amended	388-148-0065	When may I be certified to provide care to children?
Amended	388-148-0070	Is there a difference between licensing and certification?
Amended	388-148-0075	May I be licensed with the department and certified by a child-placing agency at the same time?

PROPOSED

New or Amended	WAC #	Title
Amended	388-148-0085	Will the department license or continue to license a home or facility if the home or facility does not meet the licensing requirements?
Amended	388-148-0090	Does the department issue a probationary license?
Amended	388-148-0095	When are licenses denied, suspended or revoked?
New	388-148-0098	When is an employee or volunteer disqualified from having unsupervised access to a child at a licensed home, facility, or agency?
Amended	388-148-0100	Are there any other reasons that might cause me to lose my license?
Amended	388-148-0110	What may I do if I disagree with your decision to modify, deny, suspend or revoke my license?
Amended	388-148-0120	What incidents involving children must I report?
Amended	388-148-0125	What are your requirements for keeping client records?
New	388-148-0127	What are the requirements for information kept in facility logs for staffed residential homes and group care programs?
Amended	388-148-0130	What information may I share about a child or a child's family?
Amended	388-148-0135	What changes to my home or facility must I report to my licensor?
Amended	388-148-0140	What personnel policies must I have?
Amended	388-148-0150	Are local ordinances part of the licensing requirements?
Amended	388-148-0165	What are the requirements about the location of my home or facility?
Amended	388-148-0170	What steps must I take to ensure children's safety around outdoor bodies of water?
Amended	388-148-0180	Are alcoholic beverages or illegal drugs allowed at my home or facility?
Amended	388-148-0185	Is smoking permitted around children?
Amended	388-148-0200	Do I need first-aid supplies?
Amended	388-148-0220	What fire safety requirements must I follow to qualify for a license?
Amended	388-148-0225	What safety requirements are there for exits?
Amended	388-148-0230	Are there other fire safety requirements for inside a foster home or staffed residential home licensed for five or fewer children?
Amended	388-148-0235	What are the requirements for smoke detectors for foster homes and staffed residential homes licensed for five or fewer children?
Amended	388-148-0240	What are the requirements for fire extinguishers in homes and facilities?
Amended	388-148-0245	What fire escape measures must be taken for multi-level homes and facilities?
Amended	388-148-0250	What fire safety instructions must I give to children residing in a home or facility?
Amended	388-148-0255	What are the requirements for a fire evacuation plan?
Amended	388-148-0260	What are the general requirements for bedrooms?
Amended	388-148-0265	What are additional requirements for bedrooms for more than one person?
Amended	388-148-0270	What are the requirements for beds?
Amended	388-148-0275	Do I need a telephone at my home or facility?
Repealed	388-148-0285	Do I need a housekeeping sink?
Amended	388-148-0300	How must I ventilate my home or facility?
Amended	388-148-0305	What are the requirements for laundry facilities?
Amended	388-148-0315	What are the requirements for toilets, sinks, and bathing facilities?
Amended	388-148-0320	What are the requirements about drinking water?
Amended	388-148-0325	What are the requirements for sewage and liquid wastes?
Amended	388-148-0335	When must I get a physical exam for a child under my care?
Amended	388-148-0340	What are the requirements for immunizations for children?
Amended	388-148-0345	What must I do to prevent the spread of infections and communicable diseases?
Amended	388-148-0350	What are the requirements for obtaining consent for medical care for children under my care?

New or Amended	WAC #	Title
New	388-148-0352	What are the requirements for the management of medication for children in my care?
Amended	388-148-0355	May I accept medicine from a child's parent or guardian?
Repealed	388-148-0360	Whom do I notify about medication changes and reactions?
Amended	388-148-0365	When may children take their own medicine?
Amended	388-148-0375	How often must I feed children?
Amended	388-148-0380	How do I handle a child's special diet?
Amended	388-148-0395	What requirements must I meet for feeding babies?
Amended	388-148-0400	What are the requirements for diapers and diaper-changes areas?
New	388-148-0422	What are the requirements for privacy for children in out-of-home placements?
Amended	388-148-0425	What are the requirements about nondiscrimination?
Repealed	388-148-0427	Are there specific requirements regarding Native American children?
Amended	388-148-0430	May I take a foster child to church services, temple, mosque, or synagogue?
Amended	388-148-0445	What toys and activities must I provide to children?
Repealed	388-148-0450	What types of toys must I provide to children?
Amended	388-148-0455	Do I need permission to travel on an overnight trip, or out-of-state with my foster child?
Amended	388-148-0460	What requirements do you have for supervising children?
Amended	388-148-0470	What types of disciplinary practices are forbidden?
Amended	388-148-0480	When may a child be physically restrained?
Amended	388-148-0485	What types of physical restraint are not acceptable for children?
New	388-148-0487	What are the requirements for time-out or quiet rooms?
New	388-148-0488	Are time-delay mechanisms allowed on windows and doors of a facility or staffed residential home licensed for six?
Amended	388-148-0490	What must I do following an incident that involved using physical restraint?
Repealed	388-148-0500	May I receive more than one on-home care license?
Amended	388-148-0520	What are the training requirements for foster parents and prospective foster parents?
Amended	388-148-0525	How many children may my foster home serve?
Amended	388-148-0535	Do I need to have income separate from foster care payments?
Amended	388-148-0540	When may I use respite care?
New	388-148-0551	Who may provide care to a foster child in the foster home when the foster parent is away from the home?
New	388-148-0542	May someone under eighteen supervise a foster child in the foster home?
Amended	388-148-0555	Do I need a social summary for children under my care?
Amended	388-148-0560	Do I need a treatment plan for children under my care?
Amended	388-148-0585	What social service staff do I need?
Amended	388-148-0600	Do I need professional consultants for my program?
Amended	388-148-0605	Is in-service training required?
Amended	388-148-0610	What are the required ratios of social service staff to children under care?
Amended	388-148-0615	Are there specific fire safety requirements for the care of nonambulatory children?
Amended	388-148-0620	What safety features do I need for hazardous areas?
Amended	388-148-0625	What other requirements must I follow for smoke detectors?
Repealed	388-148-0630	What fire prevention measures must I take?
Repealed	388-148-0635	What are the requirements for fire sprinkler systems?
Amended	388-148-0640	What fire safety procedures do staff of a group care facility and a staffed residential home licensed for six children need to know?
Amended	388-148-0645	What are the requirements for fire drills and testing smoke detectors?
Repealed	388-148-0650	What requirements do you have regarding windows in staffed residential homes and group care facilities?

PROPOSED

New or Amended	WAC #	Title
Amended	388-148-0655	Are there different construction and fire safety requirements for facilities that have multiple licenses in the same building?
Amended	388-148-0660	Do mealtimes need to be established?
Amended	388-148-0670	What types of group care programs are licensed to provide care to children?
Amended	388-148-0685	Who may I serve as a group care program provider?
Amended	388-148-0695	Must I give a child an allowance?
Amended	388-148-0700	What are the qualifications for an executive director for a group care program or child-placing agency?
Amended	388-148-0705	Do I need an on-site program manager or social service staff at each group care facility?
Amended	388-148-0710	What are the responsibilities of the on-site program manager or social services staff for a group care facility?
Amended	388-148-0715	What qualifications must the on-site program manager for a group care program for a CPA program manager have?
New	388-148-0718	What are the responsibilities for child care staff at a group care program?
Amended	388-148-0720	What are the qualifications for child care staff or case aides for a group care program and a child-placing agency?
New	388-148-0722	What are the qualifications for health care staff for a group care program or a child-placing agency caring for medically fragile children?
Amended	388-148-0725	What is the ratio of child care staff to children in group care facilities?
Amended	388-148-0730	Are there room requirements for group care facilities?
Repealed	388-148-0735	When do I need a special care room?
Amended	388-148-0750	What maternity services must I provide?
Amended	388-148-0765	What types of health education must I offer expectant and new mothers?
Amended	388-148-0775	Do expectant and new mothers need to be under a physician's care?
Amended	388-148-0785	What is the proper ratio of staff to children in home or group care facilities offering maternity services?
Amended	388-148-0795	How is capacity determined for a maternity services facility?
Amended	388-148-0800	What is the purpose of day treatment programs?
Amended	388-148-0805	What staff must my day treatment program have?
Amended	388-148-0810	What consultants must my day treatment program have?
Amended	388-148-0830	What services must I provide for medically fragile children and children with severe developmental disabilities?
Amended	388-148-0860	Are there room requirements for group care facilities for medically fragile children under age six?
Amended	388-148-0870	What additional record-keeping requirements exist for medically fragile children and children with severe developmental disabilities?
Amended	388-148-0875	What types of crisis residential centers may be licensed?
Amended	388-148-0880	What levels of secure CRCs exist?
Amended	388-148-0885	What are the requirements for a level-one secure CRC?
Amended	388-148-0890	What are the requirements for a level-two secure CRC?
New	388-148-0892	What are the requirements for a level-three secure CRC?
Amended	388-148-0895	May a juvenile detention center operate a separate secure CRC program?
Amended	388-148-0900	What youth may a CRC serve?
Amended	388-148-0905	Can law enforcement officers place youth in secure CRC?
Amended	388-148-0915	What steps must be taken after a youth is admitted into a CRC?
Repealed	388-148-0935	How long may a youth stay at a CRC?
Amended	388-148-0995	What are the ratio requirements of youth care staff to youth in crisis residential centers?



New or Amended	WAC #	Title
Repealed	388-148-1020	Must a staffed residential home operate in conjunction with another program?
Amended	388-148-1025	What must be included in a written program description for a staffed residential home?
Amended	388-148-1030	What services must a staffed residential home provide?
Amended	388-148-1035	Who must be on the premises when children are under care at a staffed residential home?
Amended	388-148-1045	What is the ratio of child care staff to children in staffed residential homes?
Amended	388-148-1050	How many children may I serve in my staffed residential home?
Amended	388-148-1060	What services may a child-placing agency provide?
Repealed	388-148-1065	Do child-placing agency foster homes and group care facilities need to be licensed before placements?
New	388-148-1066	What written information is needed before a child is accepted for care by a child-placing agency?
Amended	388-148-1070	What health histories need to be provided to adoptive parents?
New	388-148-1076	What are the qualifications for an executive director, a program manager/social service staff, and a consultant for a child-placing agency?
New	388-148-1077	What are the qualifications for a case aide for a child-placing agency program?
New	388-148-1078	What are the qualifications for health care staff hired or contracted by a child-placing agency to provide services to children in care?
New	388-148-1097	What are the qualifications for a foster home licensor for a child-placing agency?
Amended	388-148-1085	How may my child-placing agency certify a foster home for licensing by the department?
Amended	388-148-1115	What are the requirements for adoptive services?
Amended	388-148-1120	What is the process for adoptions?
New	388-148-1205	What is a group receiving center?
New	388-148-1210	What age children may a center serve?
New	388-148-1215	What hours must a center be open?
New	388-148-1220	What services are provided or arranged for by a group receiving center?
New	388-148-1225	Is a center required to provide an orientation for a child placed?
New	388-148-1230	Does each child need space for personal items at the center?
New	388-148-1235	What staff training is required?
New	388-148-1240	What is the ratio of child care staff to children at a center?
New	388-148-1245	What are the requirements for supervision of children at a center?
New	388-148-1250	Who must be on the premises while children are in care at a center?
New	388-148-1255	What are the requirements for an activity program?
New	388-148-1260	What activities must I provide to children?
New	388-148-1265	What are the requirements for indoor recreation areas?
New	388-148-1270	What are the requirements for an outdoor recreation area?
New	388-148-1275	What are the size requirements for an outdoor recreation area?
New	388-148-1280	What are the requirements for playground equipment?

Statutory Authority for Adoption: RCW 74.15.030.

Statute Being Implemented: Chapter 74.15 RCW.

Summary: The changes to the chapter enhance health and safety for children and youth in homes and facilities licensed by Children's Administration, including a section on a new type of facility, group receiving centers, now available to provide emergency foster care to sibling groups. The other changes improve Children's Administration's ability to claim federal funding under the Social Security Act. These changes include amendments that provide clarification and flexibility

to licensees regarding safety around swimming pools, respite care, fire safety, and minimum qualifications for health care staff in facilities.

Reasons Supporting Proposal: The addition of group receiving center licensing requirements, compliance with federal statutes, overall clarity of language, and efficacy of rules affecting homes and facilities licensed by Children's Administration.

Name of Agency Personnel Responsible for Drafting and Implementation: Jean L. Croisant, P.O. Box 45710,

PROPOSED

Olympia, WA 98504-5710, (360) 902-7992; and Enforcement: Children's Administration, Division of Licensed Resources, Office of Foster Care Licensing, P.O. Box 45700, Olympia, WA 98504-5700.

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

Rule is necessary because of federal law, 45 C.F.R. 1355.

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of the chapter is to define the minimum general and specific licensing requirements for foster homes, staffed residential homes, group care facilities, and child-placing agencies. These homes and facilities must be regulated to ensure that children and youth experience safe and health care while in out-of-home placement. The anticipated effect will be the overall clarification of the licensing requirements and compliance with federal statutes to increase funding and support for children and youth residing in out-of-home placements.

Proposal Changes the Following Existing Rules: See Purpose above for list of amended, repealed, and new rules.

Some of the changes include:

- Licensing requirements for group receiving centers.
- Added flexibility in meeting the safety requirements for supervision around swimming pools.
- Addition of two sections allowing foster children to be supervised, occasionally, by relatives or friends of the foster parents who are under the age of eighteen.
- Clarification on the fire safety requirements.
- Clarification of the fire safety requirements for staffed residential homes (SRH). Separation of the requirements for SRH licensed for six and those licensed for five or fewer.
- Addition of qualifications for health care staff working in group care facilities.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Children's Administration conducted a survey of all group care providers, child-placing agencies, and a random sample of foster parents outlining proposed changes. It was determined from the survey results that their costs would be minor. Therefore, only minor costs will be imposed on small businesses affected by the changes. The preparation of a comprehensive small business economic impact statement is not required.

RCW 34.05.328 applies to this rule adoption. The proposed rule changes for chapter 388-148 WAC, Licensing requirements for foster homes, staffed residential homes, group care facilities, and child-placing agencies are "significant legislative rules" as defined in RCW 34.05.325 and require a cost-benefit analysis (CBA). A copy of the CBA may be requested by contacting Jean L. Croisant, at Children's Administration, Division of Program and Policy Development, P.O. Box 45710, Olympia, WA 98504-5710, (360) 902-7992, or loje300@dshs.wa.gov.

Hearing Location: Lacey Government Center, (public parking behind Sakura Japanese Restaurant), Room 104-B, 1009 College Street S.E., Lacey, WA 98503, on March 23, 2004, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by March 16, 2004,

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 23, 2004.

Date of Intended Adoption: No earlier than March 24, 2004.

January 15, 2004

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 04-05 issue of the Register.

## WSR 04-03-117

### PROPOSED RULES

## UTILITIES AND TRANSPORTATION COMMISSION

[Filed January 21, 2004, 11:20 a.m.]

Supplemental Notice to WSR 03-16-063.

Exempt from preproposal statement of inquiry under RCW 34.05.330 (1)(b).

Title of Rule: WAC 480-120-146 Changing service providers from one local exchange company (LEC) company to another. On June 17, 2003, Qwest Corporation filed a petition to amend this section to clarify the process to be followed when a customer migrates from one LEC to another, and the customer retains his/her telephone number via local number portability (LNP).

This supplemental proposal differs from the original Qwest proposal by adopting detailed national standards in Federal Communications Commission (FCC) rules for LNP. Qwest participated in drafting the revised rule language, and Qwest supports the rule revisions.

Purpose: This supplemental proposal would provide the companies with more options for compliance when customers change LEC service providers compared to the original Qwest proposal by adopting national LNP guidelines. In addition, the supplemental proposal would achieve compliance with commission-approved interconnection agreements.

Other Identifying Information: Docket No. UT-030964.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, and 34.05.330.

Summary: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Tom Wilson, Regulatory, 1300 South Evergreen Park Drive S.W., Olympia, WA, (360) 664-1282; Implementation and Enforcement: Carole J. Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA, (360) 664-1174.

Name of Proponent: Qwest Corporation, private.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This supplemental proposal continues to address issues raised by Qwest in its petition for rule making filed at WSR 03-16-063. Namely, the proposed language would per-

mit Qwest to meet the intent as well as the letter of the rule plus comply with commission-approved interconnection agreements. The supplemental proposal differs from the original Qwest proposal by providing greater flexibility to address all of the types of situations that arise when customers change LECs. The proposed language addresses the issue of flexibility by referencing detailed national standards in FCC rules for LNP. Compliance with national LNP guidelines also permits continued compliance with commission-approved interconnection agreements. Moreover, adoption of the national guidelines will ease the task of compliance for those companies that operate in multiple jurisdictions.

The proposed revised language will allow companies to utilize resources more efficiently and continue to service customers effectively.

Proposal Changes the Following Existing Rules: Existing WAC 480-120-146 Changing service providers from one LEC to another, does not address the situation where the migrating customer wishes to retain his/her telephone number through LNP.

In its petition for rule making, Qwest proposed that WAC 480-120-146 be amended to include a process for those customers who wish to retain the same telephone number via LNP. Qwest's original proposal recommended adoption of the LNP practices ordered in Docket No. UT-003022/UT-003040.

This supplemental proposal would offer companies more options for compliance with the rule by adoption of national guidelines, in contrast to the original Qwest proposal that would prescribe a single method of compliance.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule streamlines the process for confirming migrations from LEC to LEC using LNP, and utilizes resources more efficiently. Because there will not be any increase in cost resulting from the proposed rule, a small business economic impact statement is not required.

RCW 34.05.328 does not apply to this rule adoption. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on March 24, 2004, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Mary De Young by March 19, 2004, TDD (360) 586-8203 or (360) 664-1133.

Submit Written Comments to: Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504, e-mail to records@wutc.wa.gov, fax (360) 586-1150, by February 25, 2004. Please include Docket No. UT-030964 in your communication.

Date of Intended Adoption: March 24, 2004.

January 21, 2004

C. Robert Wallace  
for Carole J. Washburn  
Executive Secretary

AMENDATORY SECTION (Amending Docket No. UT-990146, General Order No. R-507, filed 12/12/02, effective 7/1/03)

**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.-~~) When a customer migrates from one local exchange company (LEC) to another, where applicable, the carriers involved must perform local number portability (LNP) in compliance with the Federal Communications Commission (FCC)-approved method and time frame, as adopted by the FCC under Title 47, Chapter I, Part 52.26 of the Code of Federal Regulations, for disconnecting that service following the scheduled port.

When the underlying carrier is providing local exchange services for resale by a LEC and then facilitates migration of that service to another LEC or back to itself, the underlying carrier shall notify the old LEC when the customer's service has been transferred.

The requirements of this section do not apply if the customer submitted the cancellation order directly to the LEC providing existing service.

## WSR 04-03-119

### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed January 21, 2004, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-13-014.

Title of Rule: WAC 246-915-182 Sexual misconduct.

Purpose: This rule provides protection to the public from unethical physical therapists inappropriately using their position of a health provider to foster an unprofessional, sexual relationship.

Other Identifying Information: The Board of Physical Therapy is empowered to adopt rules relating to standards of appropriateness of physical therapy care. The Uniform Disciplinary Act of RCW 18.130.180 describes the proposed conduct of a physical therapy provider. The proposed rule addresses issues of unprofessional sexual misconduct with current and former physical therapy clients.

Statutory Authority for Adoption: RCW 18.74.023(3), 18.74.025, 18.130.050(1), and 18.130.180(24).

Statute Being Implemented: Chapter 18.74 RCW.

Summary: The proposed rule defines inappropriate and unprofessional sexual misconduct in the physical therapist-client relationship.

Reasons Supporting Proposal: Rules will prevent physical therapists from engaging in sexual conduct or sexual activity with current and former clients.

PROPOSED

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

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 proposed rule defines inappropriate and unprofessional sexual misconduct in the physical therapist-client relationship. The proposed rule addresses issues of unprofessional sexual misconduct with current and former physical therapy clients. This rule provides protection to the public from unethical physical therapists inappropriately using their position of a health provider to foster an unprofessional, sexual relationship.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency has not conducted a small business [economic] impact statement. The proposed rule does not impose more than minor costs on small business per RCW 19.85.030.

RCW 34.05.328 applies to this rule adoption. This rule is legislatively significant because the proposal may be used to impose a penalty if violated.

Hearing Location: Department of Health, 310 Israel Road S.E., Room 139, Tumwater, WA 98501, on February 27, 2004, at 1:30 p.m. - 2:00 p.m.

Assistance for Persons with Disabilities: Contact Kris Waidely by February 23, 2004, TDD (800) 833-6388 or (360) 236-4847.

Submit Written Comments to: Department of Health, Kris Waidely, P.O. Box 47868, Olympia, WA 98504-7868, fax (360) 664-9077, by February 23, 2004.

Date of Intended Adoption: February 27, 2004.

December 19, 2003

Kris Waidely  
Program Manager

## NEW SECTION

**WAC 246-915-182 Unprofessional conduct—Sexual misconduct.** (1) The physical therapist shall never engage in sexual contact or sexual activity with current clients.

(2) Sexual contact or sexual activity is prohibited with a former client for two years after cessation or termination of professional services.

(3) The physical therapist shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of the physical therapist-client relationship. Factors which the board may consider in evaluating if the physical therapist-client relationship has been abusive includes, but is not limited to:

- (a) The amount of time that has passed since therapy terminated;
- (b) The nature and duration of the therapy;
- (c) The circumstances of cessation or termination;
- (d) The former client's personal history;
- (e) The former client's current mental status;

(f) The likelihood of adverse impact on the former client and others; and

(g) Any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the former client.

(4) The physical therapist shall never engage in sexually harassing or demeaning behavior with current or former clients.

(5) These rules do not prohibit:

(a) The provision of physical therapy services on an urgent, unforeseen basis where circumstances will not allow a physical therapist to obtain reassignment or make an appropriate referral;

(b) The provision of physical therapy services to a spouse, or family member, or any other person who is in a preexisting, established relationship with the physical therapist where no evidence of abuse of the physical therapist-client relationship exists.

## WSR 04-03-120

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed January 21, 2004, 11:35 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 03-24-054.

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-030 Owner name and address—Application for certificate of ownership and 308-56A-040 Name and address—Address.

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: Fred Stephens, 1125 Washington Street S.E., Olympia, (360) 902-3933.

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 413, 1125 Washington Street S.E., Olympia, WA 98507, on February 24, 2004, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Katherine Iyall Vasquez by February 23, 2004, 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 23, 2004.

Date of Intended Adoption: March 23, 2004.

January 21, 2004

Fred Stephens

Director

by Katherine Vasquez

**AMENDATORY SECTION** (Amending WSR 03-05-081, filed 2/19/03, effective 3/22/03)

**WAC 308-56A-030 Owner name and address—Recorded on vehicle record—Application for certificate of ownership.** (1) **What registered owner and lien holder or secured party information is required on the vehicle record application for certificate of ownership?**

Effective March 23, 2004, the application for certificate of ownership must include:

(a) The name of each registered owner (individual(s) or business) of the vehicle and, if the vehicle is subject to a lien or other security interest, the name of each secured party;

(b) The registered owner's ((mailing)) primary residence street address; and

(c) The ((first)) primary secured party's mailing address.

(2) **What does primary residence mean for an individual owner and a registered owner that is a business?**

(a) "Primary residence" means the domicile of the registered owner.

(b) In the case of an individual, the term "domicile" means the person's true, fixed and permanent home and place of habitation in Washington. The department will presume that a registered owner's primary residence is the same as the address used in driver's license records and voter registration records.

(c) In the case of a business, the term "domicile" means the principal place in Washington from which the trade or business of the registered owner is directed, managed or conducted.

**(3) Do the addresses for the application for certificate of ownership, vehicle record and registration need to conform to United States Postal Service (USPS) standards?**

Yes. USPS address standards must be used on all vehicle records, registrations, and certificates of ownership.

~~((3) Can more than one mailing address be shown on the application if there are multiple owners with different addresses?~~

~~No. The address of only one of the registered owners and the first secured party will be accepted on the application for certificate of ownership.)~~ (4) **Are there exceptions to the**

**requirement to provide a primary residence street address?**

Yes. Exceptions will be made for:

(a) Overseas mailing addresses for military personnel, e.g., Army or Air Force Personnel Post Office (APO) or Fleet Post Office (FPO) will be accepted;

(b) Members of the address confidentiality program administered through the secretary of state's office; or

(c) Those who do not have USPS mail delivery available at their primary residence street address.

**(5) Will the department renew a vehicle registration if the registered owner does not provide a primary residence street address?**

No. For purposes of determining if local taxes are due, the registered owner's primary residence street address is required for vehicle registration renewals unless one of the exceptions specified in subsection (4) of this section is met and the completed and signed Certificate of Fact for Address Verification, in the form of a declaration under penalty of perjury, is filed with the department.

**(6) What will the department do if it becomes aware that there is an error in the primary residence street address?**

The department will flag the record and the registered owner will be required, prior to the time of next renewal, to provide information to reconcile any discrepancy.

**(7) Can more than one address be shown on the vehicle record or application if there are multiple owners with different addresses?**

No. Only one address for the registered owner will be shown on the vehicle record.

**(8) Can more than one address be shown on the vehicle record of application if there is more than one secured party?**

No. Only one address for the primary secured party will be shown on the vehicle record.

**(9) Is the applicant or registered owner required to certify the truth of the information contained in the application for certificate of ownership or vehicle renewal?**

Yes, the applicant or registered owner must complete and sign a Certificate of Fact for Address Verification, in the form of a declaration under penalty of perjury.

**AMENDATORY SECTION** (Amending WSR 03-05-081, filed 2/19/03, effective 3/22/03)

**WAC 308-56A-040 Name and address—Change of address.** (1) **If the owner's address changes, does the owner need to notify the department?**

Yes.

(2) **What information does the owner need to provide to the department if their address changes?**

The owner ((shall)) must provide the department with the following information:

(a) The registered owner's name (individual(s) or business) as it appears on the ((department)) vehicle records;

(b) The license plate number or vehicle identification number (VIN) of each vehicle;

PROPOSED

(c) The new street address for the primary residence as defined in WAC 308-56A-030(2) with at least a five digit zip code and preferably a nine digit zip code; and

(d) The county of the new address.

(3) Are there exceptions to the requirement to provide a primary residence street address on the department's change of address form?

Yes. To be exempt from the requirement to provide the primary resident street address, the registered owner must complete and sign a Certificate of Fact for Address Verification, in the form of a declaration under penalty of perjury, that at least one of the exceptions in WAC 308-56A-030(4) is met. The department shall provide the required form of address verification.

(4) Does the address need to conform to United States Postal Service (USPS) standards?

Yes. USPS address standards must be used on all vehicle records, registrations, and certificates of ownership.

(5) Is the registered owner required to certify the truth of the information provided when using the department's change of address form?

Yes, the owner must sign the department's change of address form, which includes certification under penalty of perjury that the information provided is true and correct.

#### WSR 04-03-121

#### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed January 21, 2004, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-17-107.

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

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

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

Statutory Authority for Adoption: RCW 46.01.110, 46.16.135, [46.16.]225, [46.16.]490, [46.16.]276.

Summary: Amending WAC 308-96A-072 Square dancer license plates, 308-96A-074 Antique vehicle collector vehicle license plates, 308-96A-550 Vehicle special collegiate license plates, 308-96A-560 Special vehicle license plates, and 308-96A-021 Replacement plates—Requirements.

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: Lynda Henriksen, 1125 Washington Street S.E., Olympia, (360) 902-3811.

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 March 9, 2004, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Katherine Iyall Vasquez by March 8, 2004, TTY (360) 664-8885 or (360) 902-3718.

Submit Written Comments to: Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by March 8, 2004.

Date of Intended Adoption: April 6, 2004.

January 20, 2004

D. McCurley, Administrator  
Title and Registration Services

AMENDATORY SECTION (Amending WSR 01-10-069, filed 4/30/01, effective 5/31/01)

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

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

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

**(4) How does the department define "current license plate registration"?** For the purposes of this section, a current license plate registration is defined as: A registration that has not expired or a registration where it is less than one year past the expiration date.

**(5) Will I ever have to ((exchange)) replace my square dancer license plates?** Yes, the department has determined that all license plates be replaced on a seven-year rotation schedule. In addition to the license plate replacement fee, you may pay an additional plate retention fee to retain the same number/letter combination as shown on the current vehicle computer record as long as the plate meets a current approved license plate configuration and background.

Note: If the license plate has been reported as stolen or if the department record indicates the vehicle has been stolen, the same number/letter combination will not be issued.

**AMENDATORY SECTION** (Amending WSR 03-05-082, filed 2/19/03, effective 3/22/03)

**WAC 308-96A-074** (~~Antique vehicle~~) **Collector vehicle and restored license plates.** (1) **What is a collector vehicle license plate?** For the purposes of this section a collector vehicle license plate is a special license plate indicating "Collector Vehicle." The smaller size collector vehicle license plate is available for motorcycles. Collector vehicle owners must conform to the rules under RCW 46.16.307.

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

- (a) More than thirty years old; and
- (b) Capable of being operated upon the highway; and
- (c) Currently registered in Washington; and
- (d) Operated primarily as a collector vehicle.

(3) **How is a collector vehicle license plate to be displayed?** The collector vehicle license plate must be displayed on the rear of the vehicle for which it was issued. The collector vehicle license plate is not transferable to any other motor vehicle, but may stay with that vehicle upon transfer of ownership.

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

(5) **Are collector vehicle license plate(s) required to be replaced under RCW 46.16.233?** No, the collector vehicle license plates are exempt from the periodic vehicle license plate replacement schedule.

(6) **What is a "restored license plate"?** A restored license plate is a Washington state issued license plate designated for general use in the year of the vehicle's manufacture. The restored license plate may not be a specialized license plate. The restored license plate may be used instead of a collector vehicle license plate or horseless carriage license plate. The license plate must be restored to such a condition that it may be identified with its year of issue. Reproductions of the original are not acceptable for use as a restored license plate.

(7) **How is a restored license plate to be displayed?** The owner must display a single plate on the rear of the vehicle. If the vehicle owner has two identical license plates, the second license plate may be displayed on the front of the vehicle or on another vehicle.

(8) **If I sell my vehicle may I keep my restored license plate?** Yes. (~~You may keep the license plate if the vehicle ownership changes; however, it is not transferable to any other motor vehicle.~~) The restored plate(s) may be reassigned to another qualifying vehicle.

(9) **May I replace my restored license plate with another restored license plate?** Yes, however, your vehicle record must be updated to reflect the new plate number before it is displayed on the vehicle.

(10) **What additional fees are required to have a restored license plate assigned to my vehicle?** In addition to all other title and license fees required by law, you must pay an additional license fee of thirty-five dollars for the restored plate to be assigned to your vehicle. At the time a restored plate is assigned to a vehicle, the department will

require the certificate of ownership be submitted if that vehicle does not already have a "title purpose only" number.

(11) Will I be able to apply for a refund of fees I have paid if I decide to change my restored use plate to a regular issue plate? No. There is no provision in the law to issue a refund should you decide to change to a regular issue plate.

(12) May I apply the fees I paid for my restored plate towards the purchase of regular issued plates? No. Full fees must be paid for the new plates.

**AMENDATORY SECTION** (Amending WSR 03-05-082, filed 2/19/03, effective 3/22/03)

**WAC 308-96A-550 Vehicle special collegiate license plates.** (1) **What are the criteria for establishing collegiate license plates?** The ~~((department))~~ special license plate review board may preapprove and then the legislature must approve an application for special collegiate license plate series from an institution of higher education according to RCW 46.16.324. The following criteria must be satisfied:

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

~~((b)))~~ The plates will consist of numbers, letters, ~~((or figures or any combination thereof not exceeding))~~ colors and a symbol or artwork approved by the department and/or the special license plate review board.

(b) The numbers and letters combination cannot exceed seven positions.

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

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

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

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

(2) **How is the design for a collegiate plate determined?** The institution of higher education must provide a design including color and dimension specifications of the logo requested on the special collegiate license plate series with their application. Design services may be purchased through the department. The design must be legible and clearly identifiable as a Washington state plate to be approved by the department ~~((based on compatibility with the basic license plate design)), Washington state patrol, the special license plate review board and/or the legislature.~~

(3) **Who may apply for the special collegiate license plate?** Upon receipt of all applicable fees, the special collegiate license plate will be issued to ~~((the))~~ a registered owner of the vehicle ~~((regardless of the applicant's age, gender, reli-~~

~~gion, race, color, creed, marital status, national origin, disability, or affiliation with an institution of higher education).~~

(4) **When ownership of a vehicle issued collegiate license plates is sold, traded, or otherwise transferred, what happens to the plates?** The owner may relinquish the plates to the new vehicle owner or remove the plates from the vehicle for transfer to a replacement vehicle. If the plates are removed from the vehicle, a transfer fee to another vehicle shall be charged as provided in RCW 46.16.316(1).

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

(6) **Will I be able to (~~obtain the same~~) retain my current collegiate license plate number/letter combination if my plate is lost, defaced, or destroyed?** Yes. Upon the loss, defacement, or destruction of one or both collegiate license plates, the owner will make application for new collegiate or other license plates and pay the fees described in RCW 46.16.270 and 46.16.233 as applicable. See note following subsection ~~((8))~~(9) of this section.

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

(8) **How does the department define "current license plate registration"?** For the purposes of this section, a current license plate registration is defined as: A registration that has not expired or a registration where it is less than one year past the expiration date.

(9) **When I am required to replace my collegiate license plate, will I receive the same license plate number/letter combination?** Yes. ~~((If you request, you will receive replacement collegiate license plates with the same number/letter combination as shown on the vehicle computer record.))~~ In addition to the license plate replacement fee, you may pay an additional plate retention fee to retain the same number/letter combination as shown on the current vehicle computer record as long as the plate meets a current approved license plate configuration and background.

Note: If the license plate(s) has been reported as stolen or if the department record indicates the plate has been stolen, the same number/letter combination will not be issued. This is a law enforcement issue and is for the protection of the public.

**AMENDATORY SECTION** (Amending WSR 01-10-069, filed 4/30/01, effective 5/31/01)

**WAC 308-96A-560 Special vehicle license plates—Criteria for continued issuance. What criteria are used to discontinue issuing special vehicle license plates?** ~~((Except those license plates issued under RCW 46.16.301, 46.16.305 and 46.16.324))~~ A special license plate series may be canceled if:

(1) ~~The department ((may discontinue issuing special vehicle license plates after determining))~~ determines that

~~((less)) fewer~~ than five hundred special license plates in the approved configuration are purchased annually and no less than one thousand five hundred special license plates are purchased in any continuous three-year period. (Except those license plates issued under RCW 46.16.301, 46.16.305, and 46.16.324); or

(2) The legislature concurs with a recommendation from the special license plate review board to discontinue a plate series created after January 1, 2003; or

(3) The state legislature changes the law allowing that plate series.

**AMENDATORY SECTION** (Amending WSR 03-05-080, filed 2/19/03, effective 3/22/03)

**WAC 308-96A-021 Replacement plates—Requirements. (1) How do I obtain replacement plate(s) for my current Washington plate(s)?**

You obtain replacement plate(s) by applying~~((s))~~:

(a) Either in person; or

(b) By mail, to a Washington vehicle licensing office~~((s))~~;

(c) On-line through the department of licensing web page in conjunction with your registration renewal and seven-year replacement requirement.

(2) **When do I need to replace my plate(s)?**

You need to replace your plate(s) if:

(a) Your plate(s) are lost, ~~((stolen,))~~ destroyed, or mutilated. For an additional fee, you may replace them with the same number/letter combination as long as the plate meets a current approved license plate configuration and background; or

(b) Your plate(s) are stolen. You may not request the same number/letter combination (see the note at the end of this section); or

(c) The primary use of your vehicle has changed requiring new plate(s) designated for the new use of the vehicle. Example: A passenger car used to transport commodities, merchandise, produce, freight or animals for commercial purposes may be licensed as a commercial use truck; or

~~((e))~~ (d) Your vehicle license plates have reached the replacement cycle date established by this section by authority in RCW 46.16.233. For an additional fee, you may request the same number/letter combination as long as the plate meets a current approved license plate configuration and background.

(3) **Who can apply for replacement plate(s)?**

One of the registered owners must apply for replacement plate(s).

(4) **What documentation do I need to apply for replacement plate(s)?**

(a) If your plate(s) are lost, stolen (see note at end of this section), destroyed, or mutilated, you need to submit an affidavit of loss or letter of request describing the vehicle by Washington license plate or vehicle identification number. The affidavit of loss or letter of request must be signed by at least one of the registered owners. The registered owner's signature must be either notarized by a notary public or certified by a Washington vehicle license agent or subagent. A replacement plate fee will be charged. For an additional fee,



the same number/letter combination may be requested as long as the plate meets a current approved license plate configuration and background.

(b) If the primary use of your vehicle has changed requiring new plate(s) designated for the new use of the vehicle, the department will replace the plate(s) without the affidavit of loss or letter of request. A new plate fee will be charged.

**(5) What if the department issued incorrect plate(s) for my vehicle?**

When incorrect plate(s) have been issued due to departmental error, the department will replace the plate(s) without the affidavit of loss or letter of request. No replacement plate fee will be charged in this case.

**(6) What is the replacement cycle date for my license plate?** The replacement cycle date for your license plate is seven years from the date the license plate(s) were issued. Notification will be included on the renewal notice when it is necessary to replace the license plates for a vehicle.

~~(7) ((How will I obtain replacement plate(s)? You obtain replacement plate(s) by applying, either in person or by mail, to a Washington vehicle licensing office.~~

~~(8))~~ **(8) When I am required to replace ((a)) special license plate(s) on a currently registered vehicle, will I receive the same license plate number/letter combination? ((Special license plates in subsection (9)(b) through (m) of this section, upon request,)) Yes, for an additional fee, if you are replacing license plates on a currently registered vehicle, your license plates will be replaced with the same number/letter combination as shown on the vehicle computer record as long as the plate meets a current approved license plate configuration and background.**

~~((9))~~ **(8) What license plates are required to be replaced?** Vehicles that have license plates seven years or older that include:

- (a) Standard issue;
- (b) Collegiate;
- (c) HAM/MARS;
- (d) Personalized;
- (e) Ride share;
- (f) Disabled person;
- (g) Disabled veterans;
- (h) Pearl Harbor survivors;
- (i) Purple heart;
- (j) Stadium;
- (k) Square dancer;
- (l) Honorary Consular;
- (m) Former prisoner of war;

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

(o) Special plate series created after January 1, 2003.

~~((10))~~ **(9) What license plates are exempt from the replacement requirements?**

(a) Prorated vehicles over 16,000 pounds licensed under chapter 46.87 RCW;

(b) Commercial vehicles with declared gross weight over 26,000 pounds under RCW 46.16.233;

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

(d) Plates issued to government agencies with exempt use class; and

(e) ~~((Congressional))~~ Medal of Honor license plates.

**Note:** If the license plate has been reported as stolen or if the department record indicates the vehicle has been stolen, the same number/letter combination will not be issued. This is a law enforcement issue and is for the protection of the public.

PROPOSED



**WSR 04-03-033**  
**EXPEDITED RULES**  
**BUILDING CODE COUNCIL**

[Filed January 14, 2004, 8:40 a.m.]

Title of Rule: Chapter 51-13 WAC, Washington State Ventilation and Indoor Air Quality Code.

Purpose: To amend the Washington State Ventilation and Indoor Air Quality Code, chapter 51-13 WAC, to update standards and codes referenced within the document.

Statutory Authority for Adoption: RCW 19.27.190 and 19.27.020.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

Summary: Amendments are being made to the Ventilation and Indoor Air Quality Code to update references to the new codes adopted per RCW 19.27.031.

Reasons Supporting Proposal: RCW 19.27.190 and 19.27.020.

Name of Agency Personnel Responsible for Drafting and Implementation: Al Rhoades, Olympia, Washington 98504-8350, (360) 725-2970; and Enforcement: Local jurisdictions.

Name of Proponent: Washington State Building Code Council, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Chapter 51-13 WAC, Washington State Ventilation and Indoor Air Quality Code, is amended to reference the International Building Code, International Mechanical Code, and the International Fire Code in lieu of the Uniform Building Code, Uniform Mechanical Code, and the Uniform Fire Code. These model codes were changed in statute during the 2003 legislative session. Reference to the National Fire Protection Association Standards 58 and 54 is also added for liquefied petroleum gas installations per RCW 19.27.031(2). Some minor editorial changes have also been made to Sections 201.1503.2.6.

Proposal does not change existing rules.

**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 Tim Nogler, Managing Director, Washington State Building Code Council, P.O. Box 48350, Olympia, WA 98504-8350, AND RECEIVED BY March 22, 2004.

January 8, 2004  
 Stan Price  
 Council Chair

AMENDATORY SECTION (Amending WSR 98-02-047, filed 1/5/98, effective 7/1/98)

**WAC 51-13-106 Conflicts with other codes.**

106.1 Conflicts with Other Codes: In addition to the requirements of this Code, buildings must conform to the provisions of the State Building Code (chapter 19.27 RCW and chapters ((51-40, 51-42, 51-44 and 51-46)) 51-50, 51-52, 51-54 and 51-56 Washington Administrative Code). In case of conflicts between the ((Uniform)) International Building, Uniform Plumbing, ((Uniform)) International Mechanical, and ((Uniform)) International Fire Codes as adopted and amended in chapters ((51-40, 51-42, 51-44 and 51-46)) 51-50, 51-52, 51-54 and 51-56 Washington Administrative Code, the provisions of chapter 51-13 shall govern. This Code is not intended to abridge any safety or health requirements under any other applicable codes or ordinances.

Where, in any specific case, different sections of this Code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

Wherever in this Code reference is made to the appendix, the provisions of the appendix shall not apply unless specifically adopted.

106.2 Authority: Local legislative authorities are authorized and directed to enforce this Code. Local legislative authorities are authorized to promulgate, adopt, and issue those rules and regulations necessary for the effective and efficient administration of this Code.

AMENDATORY SECTION (Amending WSR 95-01-128, filed 12/21/94, effective 6/30/95)

**WAC 51-13-201 General.**

201.1 General: For the purposes of this Code, certain terms, phrases, words, and their derivatives shall be construed as specified in this section. Words used is the singular include the plural and the plural, the singular. Words used in the masculine gender include the feminine and feminine, the masculine.

Where terms are not defined in this section, the definitions shall be taken from Chapter 2 of the ((Uniform)) International Building Code.

Where terms are not defined in either this section or Chapter 2 of the ((Uniform)) International Building Code, ((they)) such terms shall have ((their ordinary)) ordinarily accepted meanings ((within)) such as the context ((with which they are used. Webster's Third International Dictionary of the English Language, Unabridged, copyrighted 1986, shall be considered as providing ordinarily accepted meanings)) implies.

**AMENDATORY SECTION** (Amending WSR 01-02-099, filed 1/3/01, effective 7/1/01)

**WAC 51-13-302 Mechanical ventilation criteria using performance or design methods for Group R Occupancies four stories and less.**

302.1 Applicability: Group R Occupancies four (4) stories and less as defined by the Washington State Building Code shall comply with either this section or Section 303.

302.1.1 Compliance by Calculations or Testing: Compliance with this section shall be demonstrated through engineering calculation or performance testing. Documentation of calculations or performance test results shall be submitted to the building official. Performance testing shall be conducted in accordance with recognized test methods.

302.1.2 Minimum Ventilation Performance: Each dwelling unit or guest room shall be equipped with source specific and whole house ventilation systems designed and installed to satisfy the ventilation requirements of this section.

All public corridors shall meet the ventilation requirements in section ((1203-3)) 1203 of the ((Uniform)) International Building Code.

**302.2 Source Specific Ventilation Requirements.**

302.2.1 Source Specific Ventilation: Source specific exhaust ventilation is required in each kitchen, bathroom, water closet, laundry room, indoor swimming pool, spa, and other rooms where excess water vapor or cooking odor is produced.

The minimum source specific ventilation effective exhaust capacity shall be not less than levels specified in Table 3-1.

302.2.2 Source Specific Ventilation Controls: Source specific ventilation systems shall be controlled by manual switches, dehumidistats, timers, or other approved means. Source specific ventilation system controls shall be readily accessible.

302.2.3 Source Specific Ventilation Ducts: Source specific ventilation ducts shall terminate outside the building. Exhaust ducts in systems which are designed to operate intermittently shall be equipped with back-draft dampers. All exhaust ducts in unconditioned spaces shall be insulated to a minimum of R-4. Terminal elements shall have at least the equivalent net free area of the duct work. Terminal elements for exhaust fan duct systems shall be screened or otherwise protected from entry by leaves or other material.

**302.3 Requirements for Whole House Ventilation Systems.**

302.3.1 Whole House Ventilation Systems: Each dwelling unit shall be equipped with a whole house ventilation system which shall be capable of providing the volume of outdoor air specified in Table 3-2 under normal operating conditions.

EXCEPTION: Maximum flow rates listed in Table 3-2 do not apply to heat recovery ventilation systems.

302.3.2 Whole House Ventilation System Controls: All ventilation system controls shall be readily accessible. Controls for whole house ventilation systems shall be capable of operating the ventilation system without energizing other energy-consuming appliances.

Intermittently operated whole house ventilation systems shall be constructed to have the capability for continuous operation, and shall have a manual control and an automatic control, such as a clock timer. At the time of final inspection, the automatic control timer shall be set to operate the whole house fan for at least eight hours a day. A label shall be affixed to the control that reads "Whole House Ventilation (see operating instructions)."

302.3.3 Fan Noise: Whole house fans located four feet or less from the interior grille shall have a sone rating of 1.5 or less measured at 0.1 inches water gauge. Manufacturer's noise ratings shall be determined as per HVI 915 (October 1995). Remotely mounted fans shall be acoustically isolated from the structural elements of the building and from attached duct work using insulated flexible duct or other approved material.

EXCEPTION: Whole house ventilation systems which are integrated with forced-air heating systems or heat-recovery ventilation systems are exempt from the sone rating requirements of this section.

302.3.4 Whole House Ventilation Ducts: All ducts shall terminate outside the building. Exhaust ducts in systems which are designed to operate intermittently shall be equipped with back-draft dampers. All exhaust ducts in unconditioned spaces shall be insulated to a minimum of R-4. All supply ducts in the conditioned space shall be insulated to a minimum of R-4.

**302.3.5 Outdoor Air.**

302.3.5.1 Outdoor Air Supply: A mechanical system shall supply outdoor air as required in Section 302.3.1. The mechanical system may consist of exhaust fans, supply fans, or both.

302.3.5.2 Outdoor Air Inlets: Inlets shall be screened or otherwise protected from entry by leaves or other material. Outdoor air inlets shall be located so as not to take air from the following areas:

- a) Closer than ten feet from an appliance vent outlet, unless such vent outlet is three feet above the outdoor air inlet.
- b) Where it will pick up objectionable odors, fumes, or flammable vapors.
- c) A hazardous or unsanitary location.
- d) A room or space having any fuel-burning appliances therein.
- e) Closer than ten feet from a vent opening of a plumbing drainage system unless the vent opening is at least three feet above the air inlet.
- f) Attic, crawl spaces, garages.

**302.3.5.3 Outdoor Air Distribution:** Outdoor air shall be distributed to each habitable room by means such as individual inlets, separate duct systems, or a forced-air system. Where outdoor air supplies are separated from exhaust points by doors, provisions shall be made to ensure air flow by installation of distribution ducts, undercutting doors, installation of grilles, transoms, or similar means where permitted by the ((Uniform)) International Building Code. Doors shall be undercut to a minimum of one-half inch above the surface of the finish floor covering.

**302.3.5.4 Doors and operable lites in windows** are deemed not to meet the outdoor air supply intake requirements.

**302.3.5.5 Individual Room Outdoor Air Inlets:** Where provided, individual room outdoor air inlets shall:

- a) Have controllable and secure openings;
- b) Be sleeved or otherwise designed so as not to compromise the thermal properties of the wall or window in which they are placed.

**302.3.5.6 Ventilation Integrated with Forced-Air Systems:** Where outdoor air is provided by a forced-air system, the outdoor air connection to the return air stream shall be located upstream of the forced-air system blower and shall not be connected directly into a furnace cabinet to prevent thermal shock to the heat exchanger.

**AMENDATORY SECTION** (Amending WSR 01-02-099, filed 1/3/01, effective 7/1/01)

**WAC 51-13-303 Mechanical ventilation criteria using prescriptive methods for Group R Occupancies four stories and less.**

**303.1 Applicability:** Group R Occupancies 4 stories or less shall comply with this section or Section 302. This section establishes minimum prescriptive design requirements for intermittently operated systems. Continuously operated systems shall comply with Section 302. A system which meets the requirements of this section shall be deemed to satisfy the requirements of this chapter.

**303.2 Minimum Ventilation Performance:** Each dwelling unit or guest room shall be equipped with source specific and whole house ventilation systems designed and installed to satisfy the ventilation requirements of this section. All public corridors shall meet the ventilation requirements in Section ((1203-3)) 1203 of the ((Uniform)) International Building Code.

**303.3 Source Specific Exhaust Ventilation Requirements.**

**303.3.1 Source Specific Ventilation:** Source specific exhaust ventilation is required in each kitchen, bathroom, water closet, laundry room, indoor swimming pool, spa, and other rooms where excess water vapor or cooking odor is produced. The minimum source specific ventilation effective exhaust capacity shall be not less than levels specified in Table 3-1.

**303.3.2 Source Specific Exhaust Fans:** Exhaust fans providing source specific ventilation shall have a minimum fan flow rating not less than 50 cfm at 0.25 inches water gauge for bathrooms, laundries, or similar rooms and 100 cfm at 0.25 inches water gauge for kitchens. Manufacturers' fan flow ratings shall be determined as per HVI 916 (April 1995) or AMCA 210.

**EXCEPTION:** Where a range hood or down draft exhaust fan is used to satisfy the source specific ventilation requirements for kitchens, the range hood or down draft exhaust shall not be less than 100 cfm at 0.10 inches water gauge.

**303.3.3 Source Specific Ventilation Controls:** Source specific ventilation systems shall be controlled by manual switches, dehumidistats, timers, or other approved means. Source specific ventilation system controls shall be readily accessible.

**303.3.4 Source Specific Ventilation Ducts:** Source specific ventilation ducts shall terminate outside the building. Exhaust ducts shall be equipped with back-draft dampers. All exhaust ducts in unconditioned spaces shall be insulated to a minimum of R-4. Terminal elements shall have at least the equivalent net free area of the duct work. Terminal elements for exhaust fan duct systems shall be screened or otherwise protected from entry by leaves or other material.

**303.4 Prescriptive Whole House Ventilation Systems:** Whole house ventilation shall be provided by a system that meets the requirements of either Section 303.3.1, 303.3.2, 303.3.3, or 303.3.4. A system which meets all of the requirements of one of these sections shall be deemed to satisfy the requirements for a whole house ventilation system.

**303.4.1 Intermittent Whole House Ventilation Using Exhaust Fans:** This section establishes minimum prescriptive requirements for intermittent whole house ventilation systems using exhaust fans. A system which meets all the requirements of this section shall be deemed to satisfy the requirements for a whole house ventilation system.

**303.4.1.1 Whole House Ventilation Fans:** Exhaust fans providing whole house ventilation shall have a flow rating at 0.25 inches water gauge as specified in Table 3-2. Manufacturers' fan flow ratings shall be determined according to HVI 916 (April 1995) or AMCA 210.

**303.4.1.2 Fan Noise:** Whole house fans located four feet or less from the interior grille shall have a sone rating of 1.5 or less measured at 0.1 inches water gauge. Manufacturer's noise ratings shall be determined as per HVI 915 (October 1995). Remotely mounted fans shall be acoustically isolated from the structural elements of the building and from attached duct work using insulated flexible duct or other approved material.

**303.4.1.3 Fan Controls:** The whole house ventilation fan shall be controlled by a 24-hour clock timer with the capability of continuous operation, manual and automatic control. The 24-hour timer shall be readily accessible. The 24-hour timer shall be capable of operating the whole house ventilation fan without energizing other energy-consuming appliances. At the time of final inspection, the automatic control timer shall be set to operate the whole house fan for at least

eight hours a day. A label shall be affixed to the control that reads "Whole House Ventilation (see operating instructions)."

303.4.1.4 Exhaust Ducts: All exhaust ducts shall terminate outside the building. Exhaust ducts shall be equipped with back-draft dampers. All exhaust ducts in unconditioned spaces shall be insulated to a minimum of R-4.

303.4.1.5 Outdoor Air Inlets: Outdoor air shall be distributed to each habitable room by individual outdoor air inlets. Where outdoor air supplies are separated from exhaust points by doors, provisions shall be made to ensure air flow by installation of distribution ducts, undercutting doors, installation of grilles, transoms, or similar means where permitted by the ((Uniform)) International Building Code. Doors shall be undercut to a minimum of one-half inch above the surface of the finish floor covering.

Individual room outdoor air inlets shall:

- a. Have controllable and secure openings;
- b. Be sleeved or otherwise designed so as not to compromise the thermal properties of the wall or window in which they are placed;
- c. Provide not less than four square inches of net free area of opening for each habitable space. Any inlet or combination of inlets which provide 10 cfm at 10 Pascals as determined by the Home Ventilating Institute Air Flow Test Standard (HVI 901 (November 1996)) are deemed equivalent to four square inches net free area.

Inlets shall be screened or otherwise protected from entry by leaves or other material. Outdoor air inlets shall be located so as not to take air from the following areas:

- a. Closer than 10 feet from an appliance vent outlet, unless such vent outlet is 3 feet above the outdoor air inlet.
- b. Where it will pick up objectionable odors, fumes or flammable vapors.
- c. A hazardous or unsanitary location.
- d. A room or space having any fuel-burning appliances therein.
- e. Closer than 10 feet from a vent opening of a plumbing drainage system unless the vent opening is at least 3 feet above the air inlet.
- f. Attic, crawl spaces, or garages.

**EXCEPTION:** Exhaust only ventilation systems do not require outdoor air inlets if the home has a ducted forced air heating system that communicates with all habitable rooms and the interior doors are undercut to a minimum of one-half inch above the surface of the finish floor covering.

303.4.2 Prescriptive Requirements for Intermittent Whole House Ventilation Integrated with a Forced-Air System: This section establishes minimum prescriptive requirements for intermittent whole house ventilation systems integrated with forced-air ventilation systems. A system which meets all the requirements of this section shall be deemed to satisfy the requirements for a whole house ventilation system.

303.4.2.1 Integrated Whole House Ventilation Systems: Integrated Whole House Ventilation Systems shall provide outdoor air at the rates specified in Table 3-2. Integrated Forced-Air Ventilation Systems shall distribute outdoor air to

each habitable room through the forced-air system ducts. Integrated Forced-Air Ventilation Systems shall have an outdoor air inlet duct connecting a terminal element on the outside of the building to the return air plenum of the forced-air system, at a point within four (4) feet upstream of the air handler. The outdoor air inlet duct connection to the return air stream shall be located upstream of the forced-air system blower and shall not be connected directly into a furnace cabinet to prevent thermal shock to the heat exchanger. The outdoor air inlet duct shall be prescriptively sized in accordance with Table 3-5. The system will be equipped with one of the following:

1. A motorized damper connected to the automatic ventilation control as specified in Section 303.3.2.2; or
2. A damper installed and set to meet minimum flow rates as specified in Table 3-2, by either field testing or following manufacturer's installation instructions based on site conditions; or
3. An automatic flow regulated device with field measured or field calculated minimum negative pressure of 0.07 inches water gauge at the point where the outside air duct is connected to the return air plenum.

303.4.2.2 Ventilation Controls: The whole house ventilation system shall be controlled by a 24-hour clock timer with the capability of continuous operation, manual and automatic control. This control will control the forced air system blower and if applicable the automatic damper. The 24-hour timer shall be readily accessible. The 24-hour timer shall be capable of operating the whole house ventilation system without energizing other energy-consuming appliances. At the time of final inspection, the automatic control timer shall be set to operate the whole house system for at least eight hours a day. A label shall be affixed to the control that reads "Whole House Ventilation (see operating instructions)."

303.4.2.3 Ventilation Duct Insulation: All supply ducts in the conditioned space shall be insulated to a minimum of R-4.

303.4.2.4 Outdoor Air Inlets: Inlets shall be screened or otherwise protected from entry by leaves or other material. Outdoor air inlets shall be located so as not to take air from the following areas:

- a. Closer than 10 feet from an appliance vent outlet, unless such vent outlet is 3 feet above the outdoor air inlet.
- b. Where it will pick up objectionable odors, fumes or flammable vapors.
- c. A hazardous or unsanitary location.
- d. A room or space having any fuel-burning appliances therein.
- e. Closer than 10 feet from a vent opening of a plumbing drainage system unless the vent opening is at least 3 feet above the air inlet.
- f. Attic, crawl spaces, or garages.

303.4.3 Prescriptive Requirements for Intermittent Whole House Ventilation Using a Supply Fan: This section establishes minimum prescriptive requirements for intermittent whole house ventilation systems using an inline supply fan. A system which meets all the requirements of this sec-

tion shall be deemed to satisfy the requirements for a whole house ventilation system.

**303.4.3.1 Outdoor Air: Supply Fan Ventilation Systems** shall distribute outdoor air to each habitable room through the forced-air system ducts or through dedicated ducts to each habitable room. Supply fans shall have the capacity to provide the amount of outdoor air specified in Table 3-2 at 0.4 inches water gauge as per HVI 916 (April 1995). The outdoor air must be filtered before it is delivered to habitable rooms. The filter may be located at the intake device, inline with the fan, or, in the case of a connection to the return plenum of the airhandler, using the furnace filter. An outdoor air inlet shall be connected to either the supply or return air stream.

**303.4.3.2 Ducts:** An outdoor air inlet duct connection to the supply air stream shall be located downstream of the forced-air system blower. An outdoor air inlet duct connection to the return air stream shall be located at least four feet upstream of the forced-air system blower and its filter. Neither type of duct shall be connected directly into a furnace cabinet to prevent thermal shock to the heat exchanger. The outdoor air inlet duct shall be prescriptively sized in accordance with Table 3-6. The terminal element on the outside of the building shall be sized two inches in diameter larger than the outdoor air inlet duct.

**303.4.3.3 Dampers:** The system shall be equipped with a back-draft damper and one of the following:

1. A calibrated manual volume damper installed and set to meet the measured flow rates specified in Table 3-2 by field testing with a pressure gauge and/or following manufacturer's installation instructions, or

2. A manual volume damper installed and set to meet the measured flow rates specified in Table 3-2 by field testing with a flow hood or a flow measuring station; or

3. An automatic flow-regulating device sized to the specified flow rates in Table 3-2 which provides constant flow over a pressure range of 0.2 to 0.6 inches water gauge.

**303.4.3.4 Ventilation Controls:** The whole house ventilation system shall be controlled by a 24 hour clock timer with the capability of continuous operation, manual and automatic control. This control will control the inline supply fan. The 24-hour timer shall be readily accessible. The 24 hour timer shall be capable of operating the whole house ventilation system without energizing other energy-consuming appliances. At the time of final inspection, the automatic control timer shall be set to operate the whole house system for at least eight hours a day. A label shall be affixed to the control that reads "Whole House Ventilation (see operating instructions)."

**303.4.3.5 Ventilation Duct Insulation:** All supply ducts in the conditioned space shall be insulated to a minimum of R-4.

**303.4.3.6 Outdoor Air Inlets:** Inlets shall be screened or otherwise protected from entry by leaves or other material. Outdoor air inlets shall be located so as not to take air from the following areas:

- a. Closer than 10 feet from an appliance vent outlet, unless such vent outlet is 3 feet above the outdoor air inlet.
- b. Where it will pick up objectionable odors, fumes or flammable vapors.
- c. A hazardous or unsanitary location.
- d. A room or space having any fuel-burning appliances therein.
- e. Closer than 10 feet from a vent opening of a plumbing drainage system unless the vent opening is at least 3 feet above the air inlet.
- f. Attic, crawl spaces, or garages.

**303.4.4 Prescriptive Requirements for Intermittent Whole House Ventilation Using a Heat Recovery Ventilation System:** This section establishes minimum prescriptive requirements for intermittent whole house ventilation using a heat recovery ventilation system.

**303.4.4.1 Heat Recovery Ventilation Systems:** All duct work in heat recovery ventilation systems shall be not less than six inch diameter. Balancing dampers shall be installed on the inlet and exhaust side. Flow measurement grids shall be installed on the supply and return. System minimum flow rating shall be not less than that specified in Table 3-2. Maximum flow rates in Table 3-2 do not apply to heat recovery ventilation systems.

**303.4.4.2 Ventilation Controls:** The whole house ventilation system shall be controlled by a 24 hour clock timer with the capability of continuous operation, manual and automatic control. This control will control the inline supply fan. The 24-hour timer shall be readily accessible. The 24 hour timer shall be capable of operating the whole house ventilation system without energizing other energy-consuming appliances. At the time of final inspection, the automatic control timer shall be set to operate the whole house system for at least eight hours a day. A label shall be affixed to the control that reads "Whole House Ventilation (see operating instructions)."

**303.4.4.3 Ventilation Duct Insulation:** All supply ducts in the conditioned space installed upstream of the heat exchanger shall be insulated to a minimum of R-4.

**303.4.4.4 Outdoor Air Inlets:** Inlets shall be screened or otherwise protected from entry by leaves or other material. Outdoor air inlets shall be located so as not to take air from the following areas:

- a. Closer than 10 feet from an appliance vent outlet, unless such vent outlet is 3 feet above the outdoor air inlet.
- b. Where it will pick up objectionable odors, fumes or flammable vapors.
- c. A hazardous or unsanitary location.
- d. A room or space having any fuel-burning appliances therein.
- e. Closer than 10 feet from a vent opening of a plumbing drainage system unless the vent opening is at least 3 feet above the air inlet.
- f. Attic, crawl spaces, or garages.

**AMENDATORY SECTION** (Amending WSR 01-02-099, filed 1/3/01, effective 7/1/01)

**WAC 51-13-304 Mechanical ventilation criteria and minimum ventilation performance for all other occupancies not covered in sections 302 and 303.**

304.1 Ventilation: The minimum requirements for operable area to provide natural ventilation are specified in the ((Uniform)) International Building Code ((UBC)) (IBC) as adopted by the state of Washington.

Where a mechanical ventilation system is installed, the mechanical ventilation system shall be capable of supplying ventilation air to each zone with the minimum outdoor air quantities specified in Table 3-4.

**EXCEPTION:** Where occupancy density is known and documented in the plans, the outside air rate may be based on the design occupant density. Under no circumstance shall the occupancies used result in outside air less than one-half that resulting from application of Table 3-4 estimated maximum occupancy values.

The outdoor air shall be ducted in a fully enclosed path directly to every air handling unit in each zone not provided with sufficient operable area for natural ventilation.

**EXCEPTION:** Ducts may terminate within 12 inches of the intake to an HVAC unit provided they are physically fastened so that the outside air duct is directed into the unit intake.

In all parking garages, other than open parking garages as defined in ((UBC 311.9)) IBC 406.3, used for storing or handling of automobiles operating under their own power and on all loading platforms in bus terminals, ventilation shall be provided at 1.5 cfm per square foot of gross floor area. The building official may approve an alternate ventila-

tion system designed to exhaust a minimum fourteen thousand cfm for each operating vehicle. Such system shall be based on the anticipated instantaneous movement rate of vehicles but not less than 2.5 percent (or one vehicle) of the garage capacity. Automatic carbon monoxide sensing systems may be submitted for approval.

In all buildings used for the repair of automobiles, each repair stall shall be equipped with an exhaust extension duct, extending to the outside of the building, which if over ten feet in length, shall mechanically exhaust three hundred cfm. Connecting offices and waiting rooms shall be supplied with conditioned air under positive pressure.

Combustion air requirements shall conform to the requirements of Chapter 7 of the ((UMC)) International Mechanical Code (IMC).

Mechanical refrigerating equipment and rooms storing refrigerants shall conform to the requirements of Chapter 11 of the ((UMC)) IMC.

304.2 Alternate Systems: Alternate systems designed in accordance with ASHRAE Standard 62.1.1999 shall be permitted.

**TABLE 3-1**  
Minimum Source Specific Ventilation Capacity Requirements

	Bathrooms	Kitchens
Intermittently operating	50 cfm	100 cfm
Continuous operation	20 cfm	25 cfm

**TABLE 3-2**  
**Ventilation Rates For All Group R Occupancies four (4) stories and less\***  
Minimum and Maximum Ventilation Rates: Cubic Feet Per Minute (CFM)

Floor Area, ft <sup>2</sup>	Bedrooms													
	2 or less		3		4		5		6		7		8	
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
<500	50	75	65	98	80	120	95	143	110	165	125	188	140	210
501-1000	55	83	70	105	85	128	100	150	115	173	130	195	145	218
1001-1500	60	90	75	113	90	135	105	158	120	180	135	203	150	225
1501-2000	65	98	80	120	95	143	110	165	125	188	140	210	155	233
2001-2500	70	105	85	128	100	150	115	173	130	195	145	218	160	240
2501-3000	75	113	90	135	105	158	120	180	135	203	150	225	165	248
3001-3500	80	120	95	143	110	165	125	188	140	210	155	233	170	255
3501-4000	85	128	100	150	115	173	130	195	145	218	160	240	175	263
4001-5000	95	143	110	165	125	188	140	210	155	233	170	255	185	278
5001-6000	105	158	120	180	135	203	150	225	165	248	180	270	195	293
6001-7000	115	173	130	195	145	218	160	240	175	263	190	285	205	308
7001-8000	125	188	140	210	155	233	170	255	185	278	200	300	215	323
8001-9000	135	203	150	225	165	248	180	270	195	293	210	315	225	338
>9000	145	218	160	240	175	263	190	285	205	308	220	330	235	353

\*For residences that exceed 8 bedrooms, increase the minimum requirement listed for 8 bedrooms by an additional 15 CFM per bedroom. The maximum CFM is equal to 1.5 times the minimum.

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TABLE 3-3  
Prescriptive Exhaust Duct Sizing

Fan Tested CFM @ 0.25 W.G.	Minimum Flex Diameter	Maximum Length Feet	Minimum Smooth Diameter	Maximum Length Feet	Maximum Elbows <sup>1</sup>
50	4 inch	25	4 inch	70	3
50	5 inch	90	5 inch	100	3
50	6 inch	No Limit	6 inch	No Limit	3
80	4 inch <sup>2</sup>	NA	4 inch	20	3
80	5 inch	15	5 inch	100	3
80	6 inch	90	6 inch	No Limit	3
100	5 inch <sup>2</sup>	NA	5 inch	50	3
100	6 inch	45	6 inch	No Limit	3
125	6 inch	15	6 inch	No Limit	3
125	7 inch	70	7 inch	No Limit	3

- For each additional elbow subtract 10 feet from length.
- Flex ducts of this diameter are not permitted with fans of this size.

TABLE 3-4  
Outdoor air requirements for ventilation<sup>1</sup>  
Occupancies not subject to sections 302 and 303

Application	Estimated Maximum <sup>2</sup> Occupancy P/1000 ft <sup>2</sup> or 100 m <sup>2</sup>	Outdoor Air Requirements cfm/person
<b>Dry Cleaners, Laundries<sup>3</sup></b>		
Commercial laundry	10	25
Commercial dry cleaner	30	30
Storage, pick up	30	35
Coin-operated laundries	20	15
Coin-operated dry cleaner	20	15
<b>Dwelling Units In Buildings Greater Than Four Stories or Attached to I-Occupancy Facilities</b>		
Bedroom & living area <sup>24</sup>		15
<b>Food and Beverage Service</b>		
Dining rooms	70	20
Cafeteria, fast food	100	20
Bars, cocktail lounges <sup>4</sup>	100	30
Kitchens (cooking) <sup>23</sup>	20	15
<b>Garages, Repair, Service Stations</b>		
Enclosed parking garage <sup>5</sup>		1.50 cfm/ft.sq.
Auto repair rooms		1.50 cfm/ft.sq.
<b>Hotels, Motels, Resorts, Congregate Residences with More Than Four Stories<sup>6</sup></b>		
Bedrooms		30 cfm/room
Living Rooms		30 cfm/room
Bath <sup>7</sup>		35 cfm/room
Lobbies	30	15
Conference rooms	50	20
Assembly rooms	120	15
Gambling casinos <sup>4</sup>	120	30
<b>Offices</b>		
Office space <sup>9</sup>	7	20

Application	Estimated Maximum <sup>2</sup> Occupancy P/1000 ft <sup>2</sup> or 100 m <sup>2</sup>	Outdoor Air Requirements cfm/person
Reception area	60	15
Telecommunication centers and data entry areas	60	20
Conference rooms	50	20
<b>Public Spaces</b>		
Corridors and utilities		0.05 cfm/ft.sq.
Public restroom, cfm/wc or urinal <sup>10</sup>		50
Lockers and dressing rooms		0.50 cfm/ft.sq.
Smoking lounge <sup>11</sup>	70	60
Elevators <sup>12</sup>		1.0 cfm/ft.sq.
<b>Retail Stores, Sales Floors, and Show Room Floors</b>		
Basement and street	30	0.30 cfm/ft.sq.
Upper floors	20	0.20 cfm/ft.sq.
Storage rooms	15	0.15 cfm/ft.sq.
Dressing rooms		0.20 cfm/ft.sq.
Malls and arcades	20	0.20 cfm/ft.sq.
Shipping and receiving	10	0.15 cfm/ft.sq.
Smoking lounge <sup>11</sup>	70	60
Warehouses	5	0.05 cfm/ft.sq.
<b>Speciality Shops</b>		
Barber	25	15
Beauty	25	25
Reducing salons	20	15
Florists <sup>13</sup>	8	15
Clothiers, furniture		0.30 cfm/ft.sq.
Hardware, drugs, fabric	8	15
Supermarkets	8	15
Pet shops		1.00 cfm/ft.sq.
<b>Sports and Amusement<sup>14</sup></b>		
Spectator areas	150	15
Game rooms	70	25
Ice arenas (playing areas)		0.50 cfm/ft.sq.
Swimming Pools (pool and deck area) <sup>15</sup>		0.50 cfm/ft.sq.
Playing floor (gymnasium)	30	20
Ballrooms and discos	100	25
Bowling alleys (seating areas)	70	25
<b>Theaters<sup>16</sup></b>		
Ticket booths	60	20
Lobbies	150	20
Auditorium	150	20
Stages, studios	70	15
<b>Transportation<sup>17</sup></b>		
Waiting rooms	100	15
Platforms	100	15
Vehicles	150	15
<b>Workrooms</b>		
Meat processing <sup>18</sup>	10	15
Photo studios	10	15
Darkrooms	10	0.50 cfm/ft.sq.
Pharmacy	20	15

EXPEDITED

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Application	Estimated Maximum <sup>2</sup> Occupancy P/1000 ft <sup>2</sup> or 100 m <sup>2</sup>	Outdoor Air Requirements cfm/person
Bank vaults	5	15
Duplicating, printing <sup>19</sup>		0.50 cfm/ft.sq.
<b>INSTITUTIONAL FACILITIES</b>		
<b>Education</b>		
Classroom	50	15
Laboratories <sup>20</sup>	30	20
Training shop	30	20
Music rooms	50	15
Libraries	20	15
Locker rooms		0.50 cfm/ft.sq.
Corridors		0.10 cfm/ft.sq.
Auditoriums	150	15
Smoking lounges <sup>11</sup>	70	60
<b>Hospitals, Nursing and Convalescent Homes</b>		
Patient rooms <sup>21</sup>	10	25
Medical procedure	20	15
Operating rooms	20	30
Recovery and ICU	20	15
Autopsy rooms <sup>22</sup>		0.50 cfm/ft.sq.
Physical Therapy	20	15
<b>Correctional Facilities</b>		
Cells	20	20
Dining halls	100	15
Guard station	40	15

1. Derived from ASHRAE Standard 62-1989.
2. Net occupiable space.
3. Dry-cleaning process may require more air.
4. Supplementary smoke-removal equipment may be required.
5. Distribution among people must consider worker location and concentration of running engine; stands where engines are run must incorporate systems for positive engine exhaust withdrawal. Contaminant sensors may be used to control ventilation.
6. Independent of room size.
7. Installed capacity for intermittent use.
8. See also food and beverage service, merchandising, barber and beauty shops, garages.
9. Some office equipment may require local exhaust.
10. Mechanical exhaust with no recirculation is recommended.
11. Normally supplied by transfer air, local mechanical exhaust; with no recirculation recommended.
12. Normally supplied by transfer air.
13. Ventilation to optimize plant growth may dictate requirements.
14. When internal combustion engines are operated for maintenance of playing surfaces, increased ventilation rates may be required.
15. Higher values may be required for humidity control.
16. Special ventilation will be needed to eliminate special stage effects.
17. Ventilation within vehicles may require special considerations.
18. Spaces maintained at low temperatures (-10°F. to+ 50°F.) are not covered by these requirements unless the occupancy is continuous. Ventilation from adjoining spaces is permissible. When the occupancy is intermittent, infiltration will normally exceed the ventilation requirements.

19. Installed equipment must incorporate positive exhaust and control of undesirable contaminants.
20. Special contamination control systems may be required for processes or functions including laboratory animal occupancy.
21. Special requirements or codes and pressure relationships may determine minimum ventilation rates and filter efficiency. Procedures generating contaminants may require higher rates.
22. Air shall not be recirculated into other spaces.
23. Makeup air for hood exhaust may require more ventilating air.
24. Occupant loading shall be based on the number of bedrooms as follows: first bedroom, two persons; each additional bedroom, one person. Where higher occupant loadings are known, they shall be used.

**TABLE 3-5**  
**Prescriptive Integrated Forced Air Supply Duct Sizing**

Required Flow (CFM) Per Table 3-2	Minimum Smooth Duct Diameter	Minimum Flexible Duct Diameter	Maximum Length <sup>1</sup>	Maximum Number of Elbows <sup>2</sup>
50-80	6"	7"	20'	3
80-125	7"	8"	20'	3
115-175	8"	10"	20'	3
170-240	9"	11"	20'	3

1. For lengths over 20 feet increase duct diameter 1 inch.
2. For elbows numbering more than 3 increase duct diameter 1 inch.

**TABLE 3-6**  
**Prescriptive Supply Fan Duct Sizing**

Supply Fan Tested CFM At 0.4" WG		
Specified volume from Table 3-2	Minimum Smooth Duct Diameter	Minimum Flexible Duct Diameter
50-90 CFM	4 inch	5 inch
90-150 CFM	5 inch	6 inch
150-250 CFM	6 inch	7 inch
250-400 CFM	7 inch	8 inch

**AMENDATORY SECTION** (Amending WSR 98-02-047, filed 1/5/98, effective 7/1/98)

**WAC 51-13-402 Solid fuel burning appliances and fireplaces.**

402.1 General: Solid fuel burning appliances and fireplaces shall satisfy one of the following criteria.

402.2 Solid Fuel Burning Appliances: Solid fuel burning appliances shall be provided with the following:

a) Tight fitting metal or ceramic glass doors.

b) 1. A source from outside the structure of primary combustion air, connected to the appliance as per manufacturer's specification. The air inlet shall originate at a point below the fire box. The duct shall be 4 inches or greater in diameter, not exceed 20 feet in length, and be installed as per manufacturer's instructions;

or

2. The appliance and manufacturer's recommended combustion air supply, as an installed unit, shall be certified by an independent testing laboratory to have passed Test No. 11 - Negative Pressure Test, Section 12.3, of ULC S627-M1984 "Space Heaters for Use with Solid Fuels," modified as follows:

A) Negative pressure of 8 Pascal shall be initially established with the chamber sealed and the air supply, if not directly connected to the appliance, closed off.

B) The air supply, if not directly connected to the appliance, shall then be opened.

C) The maximum allowable air exchange rate from chamber leakage and intentional air supply for the unit (appliance with combustion air supply) in the test chamber is 3.5 air changes per hour, or 28 cfm (cubic feet of air per minute), whichever is less.

**EXCEPTION:** Combustion air may be supplied to the room in which the solid fuel burning appliance is located in lieu of direct ducting, provided that one of the following conditions is met:

- 1) The solid fuel burning appliance is part of a central heating plant and installed in an unconditioned space in conformance with the ((Uniform)) International Mechanical Code; or
- 2) The solid fuel burning appliance is installed in existing construction directly on a concrete floor or surrounded by masonry materials as in a fireplace.

The combustion air terminus shall be located as close to the solid fuel burning appliance as possible and shall be provided with a barometric damper or equivalent. The combustion air source shall be specified by the manufacturer or no less than four (4) inches in diameter or the equivalent in area or as approved.

**402.3 Fireplaces:** Fireplaces shall be provided with each of the following:

a) Tightly fitting flue dampers, operated by a readily accessible manual or approved automatic control.

**EXCEPTION:** Fireplaces with gas logs shall be installed in accordance with the ((Uniform)) International Mechanical Code section 901, except that the standards for liquefied petroleum gas installations shall be NFPA 58 (Liquefied Petroleum Gas Code) and NFPA 54 (National Fuel Gas Code).

b) An outside source for combustion air ducted into the firebox. The duct shall be at least six (6) square inches, and shall be provided with an operable outside air duct damper.

**EXCEPTION:** Washington certified fireplaces shall be installed with the combustion air systems necessary for their safe and efficient combustion and specified by the manufacturer in accordance with the Washington state ((UBC Standard 31-2 (WAC 51-40-31200) and UBC section 3102.5.4 (WAC 51-40-3102))) building code standard 31-2 (WAC 51-50-31200) and International Building Code Section 2114 (WAC 51-50-2114).

c) Site built fireplaces shall have tight fitting glass or metal doors, or a flue draft induction fan, or as approved for minimizing back-drafting. Factory built fireplaces shall use doors listed for the installed appliance.

**402.4 Masonry Heaters:** Masonry heaters shall be approved by the department of ecology and shall contain both of the following:

a) Primary combustion air ducted from the outside of the structure to the appliance.

b) Tight fitting ceramic glass or metal doors. Flue damper, when provided, shall have an external control and when in the closed position shall have a net free area of not less than five percent of the flue cross sectional area.

**AMENDATORY SECTION** (Amending WSR 98-02-047, filed 1/5/98, effective 7/1/98)

**WAC 51-13-502 Statewide radon requirements.**

**502.1 Crawlspace:**

**502.1.1 General:** All crawlspaces shall comply with the requirements of this section.

**502.1.2 Ventilation:** All crawlspaces shall be ventilated as specified in section ((~~2306-7~~) 1203.3 of the ((~~Washington State Uniform~~) International Building Code (chapter ((~~51-40~~) 51-50 WAC)).

If the installed ventilation in a crawlspace is less than one square foot for each three hundred square feet of crawlspace area, or if the crawlspace vents are equipped with operable louvers, a radon vent shall be installed to originate from a point between the ground cover and soil. The radon vent shall be installed in accordance with sections 503.2.6 and 503.2.7.

**502.1.3 Crawlspace Plenum Systems:** In crawlspace plenum systems used for providing supply air for an HVAC system, aggregate, a permanently sealed soil gas retarder membrane and a radon vent pipe shall be installed in accordance with section 503.2. Crawlspaces shall not be used for return air plenums.

In addition, an operable radon vent fan shall be installed. The fan shall be located as specified in section 503.2.7. The fan shall be capable of providing at least one hundred cfm at one inch water column static pressure. The fan shall be controlled by a readily accessible manual switch. The switch shall be labeled "RADON VENT FAN."

**AMENDATORY SECTION** (Amending WSR 01-02-099, filed 1/3/01, effective 7/1/01)

**WAC 51-13-503 Radon prescriptive requirements.**

**503.1 Scope:** This section applies to those counties specified in section 501.2.2. This section establishes prescriptive construction requirements for reducing the potential for radon entry into all Group R Occupancies, and for preparing the building for future mitigation if desired.

In all crawlspaces, except crawlspace plenums used for providing supply air for an HVAC system, a continuous air barrier shall be installed between the crawlspace area and the occupied area to limit air transport between the areas. If a wood sheet subfloor or other material is utilized as an air bar-

rier, in addition to the requirements of section 502.1.6.2 of the Washington state energy code, all joints between sheets shall be sealed.

### 503.2 Floors in Contact with the Earth

503.2.1 General: Concrete slabs that are in direct contact with the building envelope shall comply with the requirements of this section.

EXCEPTION: Concrete slabs located under garages or other than Group R Occupancies need not comply with this chapter.

503.2.2 Aggregate: A layer of aggregate of four inch minimum thickness shall be placed beneath concrete slabs. The aggregate shall be continuous to the extent practical.

503.2.3 Gradation: Aggregate shall:

a) Comply with ASTM Standard C-33 Standard Specification for Concrete Aggregate and shall be size No. 8 or larger size aggregate as listed in Table 2, Grading Requirements for Coarse Aggregate; or

b) Meet the 1988 Washington State Department of Transportation specification 9-03.1 (3) "Coarse Aggregate for Portland Cement Concrete," or any equivalent successor standards. Aggregate size shall be of Grade 8 or larger as listed in section 9-03.1 (3) C, "Grading"; or

c) Be screened, washed pea gravel free of deleterious substances in a manner consistent with ASTM Standard C-33 with one hundred percent (100%) passing a one-half (1/2) inch sieve and less than five percent (5%) passing a No. 16 sieve. Sieve characteristics shall conform to those acceptable under ASTM Standard C-33.

EXCEPTION: Aggregate shall not be required if a substitute material or system, with sufficient load bearing characteristics, and having approved capability to provide equal or superior air flow, is installed.

503.2.4 Soil-Gas Retarder Membrane: A soil-gas retarder membrane, consisting of at least one layer of virgin polyethylene with a thickness of at least six mil, or equivalent flexible sheet material, shall be either placed directly under all concrete slabs so that the slab is in direct contact with the membrane, or on top of the aggregate with two inches (2") minimum of fine sand or pea gravel installed between the concrete slab and membrane. The flexible sheet shall extend to the foundation wall or to the outside edge of the monolithic slab. Seams shall overlap at least twelve inches. The membrane shall also be fitted tightly to all pipes, wires, and other penetrations of the membrane and sealed with an approved sealant or tape. All punctures or tears shall be repaired with the same or approved material and similarly lapped and sealed.

503.2.5 Sealing of Penetrations and Joints: All penetrations and joints in concrete slabs or other floor systems and walls below grade shall be sealed by an approved sealant to create an air barrier to limit the movement of soil-gas into the indoor air.

Sealants shall be approved by the manufacturer for the intended purpose. Sealant joints shall conform to manufacturer's specifications. The sealant shall be placed and tooled

in accordance with manufacturer's specifications. There shall be no gaps or voids after the sealant has cured.

503.2.6 Radon Vent: One continuous sealed pipe shall run from a point within the aggregate under each concrete slab to a point outside the building. Joints and connections shall be permanently gas tight. The continuous sealed pipe shall interface with the aggregate in the following manner, or by other approved equal method: The pipe shall be permanently connected to a "T" within the aggregate area so that the two end openings of the "T" lie within the aggregate area. A minimum of five feet of perforated drain pipe of three inches minimum diameter shall join to and extend from the "T."

The perforated pipe shall remain in the aggregate area and shall not be capped at the ends. The "T" and ~~((it's))~~ its perforated pipe extensions shall be located at least five feet horizontally from the exterior perimeter of the aggregate area.

The continuous sealed pipe shall terminate no less than twelve inches above the eave, and more than ten horizontal feet from a woodstove or fireplace chimney, or operable window. The continuous sealed pipe shall be labeled "radon vent." The label shall be placed so as to remain visible to an occupant.

The minimum pipe diameter shall be three inches unless otherwise approved. Acceptable sealed plastic pipe shall be smooth walled, and may include either PVC schedule 40 or ABS schedule of equivalent wall thickness.

The entire sealed pipe system shall be sloped to drain to the sub-slab aggregate.

The sealed pipe system may pass through an unconditioned attic before exiting the building; but to the extent practicable, the sealed pipe shall be located inside the thermal envelope of the building in order to enhance passive stack venting.

EXCEPTION: A fan forced sub-slab depressurization system includes:

- 1) Soil-gas retarder membrane as specified in section 503.2.4;
- 2) Sealing of penetrations and joints as specified in section 503.2.5;
- 3) A three-inch continuous sealed radon pipe shall run from a point within the aggregate under each concrete slab to a point outside the building;
- 4) Joints and connections ~~((may))~~ shall be gas tight, and may be of either PVC schedule 40 or ABS schedule of equivalent in wall thickness;
- 5) A label of "radon vent" shall be placed on the pipe so as to remain visible to the occupant;
- 6) Fan circuit and wiring as specified in section 503.2.7 and a fan.

If the sub-slab depressurization system is exhausted through the concrete foundation wall or rim joist, the exhaust terminus shall be a minimum of six feet from operable windows or outdoor air intake vents and shall be directed away from operable windows and outdoor air intake vents to prevent radon re-entrainment.

503.2.7 Fan Circuit and Wiring and Location: An area for location of an in-line fan shall be provided. The location shall be as close as practicable to the radon vent pipe's point of exit from the building, or shall be outside the building

shell; and shall be located so that the fan and all downstream piping is isolated from the indoor air.

Provisions shall be made to allow future activation of an in-line fan on the radon vent pipe without the need to place new wiring. A one hundred ten volt power supply shall be provided at a junction box near the fan location.

**503.2.8 Separate Aggregate Areas:** If the four-inch aggregate area underneath the concrete slab is not continuous, but is separated into distinct isolated aggregate areas by a footing or other barrier, a minimum of one radon vent pipe shall be installed into each separate aggregate area.

**EXCEPTION:** Separate aggregate areas may be considered a single area if a minimum three-inch diameter connection joining the separate areas is provided for every thirty feet of barrier separating those areas.

**503.2.9 Concrete Block Walls:** Concrete block walls connected to below grade areas shall be considered unsealed surfaces. All openings in concrete block walls that will not remain accessible upon completion of the building shall be sealed at both vertical and horizontal surfaces, in order to create a continuous air barrier to limit the transport of soil-gas into the indoor air.

**WSR 04-03-034**  
**EXPEDITED RULES**  
**BUILDING CODE COUNCIL**

[Filed January 14, 2004, 8:41 a.m.]

**Title of Rule:** Chapter 51-04 WAC, Policies and procedures for consideration of statewide and local amendments to the State Building Code.

**Purpose:** To amend WAC 51-04-030, to update referenced codes and standards.

**Statutory Authority for Adoption:** RCW 19.27.190 and 19.27.020.

**Statute Being Implemented:** Chapters 19.27 and 34.05 RCW.

**Summary:** Amendments are being made to update references to the new codes adopted per RCW 19.27.031.

**Reasons Supporting Proposal:** RCW 19.27.190 and 19.27.020.

**Name of Agency Personnel Responsible for Drafting and Implementation:** Tim Nogler, Olympia, Washington 98504-8350, (360) 725-2966; and **Enforcement:** Local jurisdictions.

**Name of Proponent:** Washington State Building Code Council, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** WAC 51-04-030 is amended to reference the International Building Code, International Mechanical Code, and the International Fire Code in lieu of the Uniform Building Code, Uniform Mechanical Code, and the Uniform Fire Code.

Proposal does not change existing rules.

**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 Tim Nogler, Managing Director, Washington State Building Code Council, P.O. Box 48350, Olympia, WA 98504-8350, AND RECEIVED BY March 22, 2004.

January 8, 2004

Stan Price  
Council Chair

**AMENDATORY SECTION** (Amending WSR 98-24-077, filed 12/1/98, effective 7/1/99)

**WAC 51-04-030 Policies for consideration of proposed local government residential amendments.** All amendments to the building code, as adopted by cities and counties for implementation and enforcement in their respective jurisdictions, that apply to single and multifamily buildings as defined by RCW 19.27.015, shall be submitted to the council for approval.

The council shall consider and approve or deny all proposed local government residential amendments to the building code within ninety days of receipt of a proposal, unless alternative scheduling is agreed to by the council and the proposing entity.

All local government residential amendments to the building code that require council approval shall be submitted in writing to the council, after the city or county legislative body has adopted the amendment and prior to implementation and enforcement of the amendment by the local jurisdiction.

It is the policy of the council to encourage joint proposals for local government residential amendments from more than one jurisdiction. Local government residential amendments submitted to the council for approval should be based on:

- (1) Climatic conditions that are unique to the jurisdiction.
- (2) Geologic or seismic conditions that are unique to the jurisdiction.
- (3) Environmental impacts such as noise, dust, etc., that are unique to the jurisdiction.
- (4) Life, health, or safety conditions that are unique to the local jurisdiction.
- (5) Other special conditions that are unique to the jurisdiction.

**EXCEPTIONS:** Appendices or portions thereof that have the effect of amending the uniform codes, that do not conflict with the building code for single and multifamily residential buildings as defined by RCW 19.27.015, may be adopted by local jurisdictions without council review or approval.

EXPEDITED

Local government residential amendments to:

- (1) Chapter 1, 17, or 34 of the ((Uniform)) International Building Code;
- (2) Chapter 1 of the ((Uniform)) International Mechanical Code;
- (3) ((Article)) Chapter 1 of the ((Uniform)) International Fire Code;
- (4) Chapter 1 of the Uniform Plumbing Code;
- (5) Chapter 1 or 11 of the State Energy Code; or
- (6) Chapter 1 of the Ventilation and Indoor Air Quality Code need not be submitted to the Council for review and approval provided that such amendments do not diminish the construction requirements of those chapters.

Those portions of the supplement or accumulative supplements that affect single and multifamily residential buildings as defined by RCW 19.27.015 that are not adopted by the council shall be submitted to the council for consideration as local government residential amendments to the building code.

Local government residential amendments shall conform to the limitations provided in RCW 19.27.040.

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 Carmen Moore, Washington State Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-44001, e-mail moog235@LNI.wa.gov, AND RECEIVED BY March 22, 2004.

January 20, 2004

Paul Trause  
Director

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

**WAC 296-127-011 Time for determining prevailing wage.** (1) Prevailing wage rates for all public work contracts will be determined by the industrial statistician and published on the first business day of February and the first business day of August of each year. These rates shall become effective thirty days after the date of publication. However, the industrial statistician may revise an established prevailing wage rate in response to an administrative or judicial finding overturning the established rate, or at any time necessary to correct an error, with such revision becoming effective thirty days after the date of publication. However, in the event of an emergency as determined by the director of the department, such revised rate shall take effect upon publication.

(2) The department shall establish deadlines for the submission of:

(a) Completed wage surveys, for inclusion of submitted data in the survey computations;

(b) Newly ratified collective bargaining agreements for inclusion in the semiannual prevailing wage publication;

(c) Notice of collectively bargained wage and benefit adjustments, and/or relevant contractual changes, for inclusion in the semiannual prevailing wage publication; and

(d) Notice of changes in apprenticeship standards and incremental wage rates for inclusion in the semiannual prevailing wage publication.

(3) The applicable prevailing wage rates for a given public works contract will be determined as follows:

(a) For all public works contracts, except janitorial or building service maintenance contracts, the applicable prevailing wage rates shall be the rates that are in effect on the date when bids by prime contractors are due for submission to contract awarding agencies. These rates shall remain in effect for the duration of the contract.

(b) If contracts are not awarded within six months of the date bids are due, the applicable prevailing wage rates shall be those that are in effect on the date the contract is awarded. These rates shall remain in effect for the duration of the contract.

(c) For work orders issued under job order contracts pursuant to chapter 301, Laws of 2003, the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.

### WSR 04-03-083

#### EXPEDITED RULES

#### DEPARTMENT OF

#### LABOR AND INDUSTRIES

[Filed January 20, 2004, 11:37 a.m.]

Title of Rule: Chapter 296-127 WAC, Prevailing wage.

Purpose: The purpose of this rule making is to make changes to the prevailing wage rules (chapter 296-127 WAC) based on the enactment of chapter 301, Laws of 2003 (an act relating to job order contracting for public works, SSB [SHB] 1788).

Other Identifying Information: Prevailing wage.

Statutory Authority for Adoption: Chapter 39.12 RCW, RCW 43.22.270, 43.22.051, and chapter 301, Laws of 2003 (SHB 1788).

Statute Being Implemented: Chapter 39.12 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Rich Ervin, Tumwater, (360) 902-5310; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

Name of Proponent: Washington State Department of Labor and Industries, governmental.

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

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

These rule changes are necessary to conform with recent legislative changes. The proposed rules specify that work orders issued under job order contracts pursuant to chapter 301, Laws of 2003, the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.

Proposal Changes the Following Existing Rules: See Purpose above.

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL

EXPEDITED

(4) If a contract for public work is not awarded pursuant to bids, the applicable prevailing wage rates shall be those that are in effect on the date when the contract is executed. These rates shall remain in effect for the duration of the contract.

(5) A schedule of the applicable prevailing wage rates must be included by:

(a) Contract awarding agencies, in the bid specifications and contract documents for each contract.

(b) Contractors, in the bid and/or contract documents provided to subcontractors.

**WSR 04-03-105**  
**EXPEDITED RULES**  
**DEPARTMENT OF HEALTH**

(Board of Pharmacy)

[Filed January 21, 2004, 8:22 a.m.]

Title of Rule: WAC 246-887-160 Uniform Controlled Substances Act, Schedule III.

Purpose: This rule lists the drugs that have been designated as Schedule III controlled substances.

Statutory Authority for Adoption: RCW 18.64.005, 69.50.201.

Statute Being Implemented: RCW 69.50.201.

Summary: The proposed rule amendment will add the drug Buprenorphine to Schedule III of the Uniform Controlled Substances Act.

Reasons Supporting Proposal: Amending this rule to add Buprenorphine to Schedule III will make state law consistent with federal rules. In October 2002, the federal government published a final rule moving Buprenorphine from Schedule V to Schedule III.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Donald H. Williams, 310 Israel Road, Tumwater, WA 98501, 236-4825.

Name of Proponent: Department of Health, Washington State Board of Pharmacy, governmental.

Rule is necessary because of federal law, Federal Register, October 7, 2002, Volume 67, Number 194, 21 C.F.R. part 1308.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule will place Buprenorphine in Schedule III of the Uniform Controlled Substances Act. In October 2002, the federal government moved Buprenorphine from Schedule V to Schedule III. This action was taken after the drug's abuse potential and dependence profile was reevaluated. By moving Buprenorphine to Schedule III, there will be stricter controls placed on the drug. The tighter controls are intended to deter abuse of the drug.

Proposal Changes the Following Existing Rules: Adds Buprenorphine to the substances listed in 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, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, AND RECEIVED BY March 23, 2004.**

January 2, 2004

D. H. Williams

Executive Director

AMENDATORY SECTION (Amending WSR 03-02-021, filed 12/23/02, effective 1/23/03)

**WAC 246-887-160 Schedule III.** The board finds that the following substances have a potential for abuse less than the substances listed in Schedules I and II, and have currently accepted medical use in treatment in the United States and that the abuse of the substances may lead to moderate or low physical dependency or high psychological dependency. The board, therefore, places each of the following substances in Schedule III.

(a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule III.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations are referred to as excepted compounds in Schedule III as published in 21 CFR 1308.13 (b)(1) as of April 1, 1984, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing:
  - (i) Amobarbital;
  - (ii) Secobarbital;
  - (iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

- (2) Any suppository dosage form containing:

**EXPEDITED**

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

(4) Chlorhexadol;

(5) Ketamine, its salts, isomers, and salts of isomers—some other names for ketamine: (<plus-minus>)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(6) Lysergic acid;

(7) Lysergic acid amide;

(8) Methypylon;

(9) Sulfondiethylmethane;

(10) Sulfonethylmethane;

(11) Sulfonmethane;

(12) Tiletamine and zolazepam or any salt thereof—some trade or other names for a tiletamine-zolazepam combination product: Telazol some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone—some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4] diazepam 7 (1H)-one flupyrzapon.

(d) Nalorphine.

(e) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Chlorotestosterone;
- (3) Clostebol;
- (4) Dehydrochlormethyltestosterone;
- (5) Dihydrotestosterone;
- (6) Drostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone (Formebolone);
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nandrolone;
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenbolone; and

(28) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

The following are implants or pellets which are exempt:

Ingredients	Trade Name	Company
Testosterone Propionate, Oestradiol Benzoate	F-TO	Animal Health Div. Upjohn International Kalamazoo, MI
Trenbolone Acetate	Finaplix-H	Hoechst-Roussel Agri-Vet Co., Somerville, NJ
Trenbolone Acetate	Finaplix-S	Hoechst-Roussel Agri-Vet Co., Somerville, NJ
Testosterone Propionate, Estradiol Benzoate	Heifer-oid	Anchor Division Boehringer Ingelheim St. Joseph, MO
Testosterone Propionate, Estradiol Benzoate	Heifer-oid	Bio-Ceutic Division Boehringer Ingelheim St. Joseph, MO
Testosterone Propionate, Estradiol Benzoate	Heifer-oid	Ivy Laboratories, Inc. Overland Park, KS
Testosterone Propionate, Estradiol Benzoate	Implus	The Upjohn Co. Kalamazoo, MI
Trenbolone Acetate, Estradiol	Revalor-s	Hoechst-Roussel Agri-Vet Co., Somerville, NJ
Testosterone Propionate, Estradiol Benzoate	Synovex H	Syntex Laboratories Palo Alto, CA

(f) The following anabolic steroid products containing compounds, mixtures, or preparations are exempt from the recordkeeping, refill restrictions, and other Controlled Substances Act requirements:

Ingredients	Trade Name	Company
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Androgyn L.A.	Forest Pharmaceuticals St. Louis, MO
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Andro-Estro 90-4	Rugby Laboratories Rockville Centre, NY
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	depANDROGYN	Forest Pharmaceuticals St. Louis, MO
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	DEPO-T.E.	Quality Research Laboratories Carmel, IN

EXPEDITED



Ingredients	Trade Name	Company
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	depTESTROGEN	Martica Pharmaceuticals Phoenix, AZ
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Duomone	Wintec Pharmaceutical Pacific, MO
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	DURATESTRIN	W.E. Hauck Alpharetta, GA
Testosterone cypionate 50 mg/ml Esterified cypionate 2 mg/ml	DUO-SPAN II	Primedics Laboratories Gardena, CA
Esterified estrogens 1.25 mg. Methyltestosterone 2.5 mg.	Estratest	Solvay Pharmaceuticals Marietta, GA
Esterified estrogens 0.525 mg. Methyltestosterone 1.25 mg.	Estratest HS	Solvay Pharmaceuticals Marietta, GA
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	PAN ESTRA TEST	Pan American Labs Covington, LA
Conjugated estrogens 1.25 mg. Methyltestosterone 10 mg.	Premarin with Methyltestosterone	Ayerst Labs, Inc. New York, NY
Conjugated estrogens 0.625 mg. Methyltestosterone 5 mg.	Premarin with Methyltestosterone	Ayerst Labs, Inc. New York, NY
Testosterone propionate 25 mg Estradiol benzoate 2.5 mg	Synovex H Pellets in process	Syntex Animal Health Palo Alto, CA
Testosterone propionate 10 parts Estradiol benzoate 1 part	Synovex H Pellets in process, granulation	Syntex Animal Health Palo Alto, CA
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testagen	Clint Pharmaceutical Nashville, TN
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	TEST-ESTRO Cypionates	Rugby Laboratories Rockville Centre, NY
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cyp 50 Estradiol Cyp 2	I.D.E.-Interstate Amityville, NY
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cypionate-Estradiol Cypionate Injection	Best Generics No. Miami Beach, FL
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cypionate-Estradiol Cypionate Injection	Goldline Labs Ft. Lauderdale FL

Ingredients	Trade Name	Company
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cypionate-Estradiol Cypionate Injection	Schein Pharmaceuticals Port Washington, NY
Testosterone cypionate 50 mg/ml Estradiol cypionate 2 mg/ml	Testosterone Cypionate-Estradiol Cypionate Injection	Steris Labs, Inc. Phoenix, AZ
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Testosterone Enanthate-Estradiol Valerate Injection	Goldline Labs Ft. Lauderdale FL
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Testosterone Enanthate-Estradiol Valerate Injection	Schein Pharmaceuticals Port Washington, NY
Testosterone enanthate 90 mg/ml Estradiol valerate 4 mg/ml	Testosterone Enanthate-Estradiol Valerate Injection	Steris Labs, Inc. Phoenix, AZ

(g) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in paragraph (e) of this section:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(1) Buprenorphine.(i) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved product. (Some other names for dronabinol [6aR-trans]-6a,7,8, 10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d] pyran-i-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.)

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 04-03-113****EXPEDITED RULES****DEPARTMENT OF TRANSPORTATION**

[Filed January 21, 2004, 10:27 a.m.]

Title of Rule: WAC 468-100-306 Reestablishment expenses—Nonresidential moves.

Purpose: To amend WAC 468-100-306 to reflect regulatory changes made by the Federal Highway Administration (FHWA) in April of 1993 to the Federal Regulations 49 C.F.R., Part 24, Section 24.304 pertaining to actual reasonable expenses necessary to reestablish a displaced farm, non-profit organization, or small business at its new site.

Other Identifying Information: Eliminates regulatory maximums set forth in subsections (1)(c), (h), and (j) of WAC 468-100-306 by eliminating subsection (1)(m) of WAC 468-100-306.

Statutory Authority for Adoption: RCW 8.26.035.

Statute Being Implemented: WAC 468-100-306.

Summary: The Washington State Department of Transportation, based on authority granted in RCW 8.26.035, is using the expedited process to eliminate subsection (1)(m) of WAC 468-100-306(1) which discusses old regulatory limits removed by the FHWA in 1993. The elimination of this subsection is needed to comply with 49 C.F.R., Part 24, Section 24.304.

Reasons Supporting Proposal: The Washington State Department of Transportation must comply with the federal regulations as supported in 49 C.F.R., Part 24, Section 24.304.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dianna Ayers, Real Estate Services, P.O. Box 47338, Olympia, WA 98504-7338, (360) 705-7329.

Name of Proponent: Washington State Department of Transportation, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Dianna Ayers, Washington State Department of Transportation, Real Estate Services, Relocation Assistance, P.O. Box 47338, Olympia, WA 98504-7338.

Rule is necessary because of federal law, 49 C.F.R., Part 24, Section 24.304.

Explanation of Rule, its Purpose, and Anticipated Effects: Back in 1993, the FHWA removed internal federal restrictions placed on three subsections within the provisions of reestablishment expenses for relocating a farm, nonprofit

organization, or small business that is impacted by public projects involving federal assistance. Revisions were never made to the Washington Administrative Code to reflect this change. FHWA determined the internal restrictions on these three subsections placed undue burden on displaced businesses. Upon notification of this change in 1993, WSDOT should have taken the necessary steps to eliminate subsection (1)(m) of WAC 468-100-306.

Proposal Changes the Following Existing Rules: The existing rule will be changed by eliminating subsection (1)(m) of WAC 468-100-306. This change must be made to comply with federal regulations as amended by 58 F.R. 26070, April 30, 1993 (effective date June 1, 1993).

**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 Gerald L. Gallinger, Director, Real Estate Services, Washington State Department of Transportation, P.O. Box 47338, Olympia, WA 98504-7338, e-mail gallinger@wsdot.wa.gov, fax (360) 705-8611, AND RECEIVED BY March 22, 2004.

January 16, 2004

John F. Conrad

Assistant Secretary

Engineering and Regional Operations

AMENDATORY SECTION (Amending WSR 01-02-027, filed 12/22/00, effective 1/22/01)

**WAC 468-100-306 Reestablishment expenses—Non-residential moves.** In addition to the payments available under WAC 468-100-303, a small business, as defined in WAC 468-100-002(~~((16))~~~~((17))~~) (17), farm or nonprofit organization may be eligible to receive a payment, not to exceed (~~((ten))~~) fifty thousand dollars, for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at a replacement site.

(1) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the agency. They may include, but are not limited to, the following:

(a) Repairs or improvements to the replacement real property as required by federal, state, or local law, code, or ordinance.

(b) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(c) Construction and installation costs for exterior signing to advertise the business.

(d) Provision of utilities from right of way to improvements on the replacement site.

(e) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(f) Licenses, fees, and permits when not paid as part of moving expenses.

(g) Feasibility surveys, soil testing and marketing studies.

(h) Advertisement of replacement location.

(i) Professional services in connection with the purchase or lease of a replacement site.

(j) Increased costs of operation during the first two years at the replacement site for such items as:

(i) Lease or rental charges;

(ii) Personal or real property taxes;

(iii) Insurance premiums; and

(iv) Utility charges, excluding impact fees.

(k) Impact fees or one-time assessments for anticipated heavy utility usage.

(l) Other items that the agency considers essential to the reestablishment of the business.

~~((m) Expenses in excess of the regulatory maximums set forth in (e), (h) and (j) of this subsection may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the agency, be waived by the agency funding the program or project, but in no event shall total costs payable under this section exceed the ten thousand dollar statutory maximum.))~~

(2) Ineligible expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(a) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(b) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(c) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in WAC 468-100-306 (1)(e).

(d) Interest on money borrowed to make the move or purchase the replacement property.

(e) Payment to a part-time business in the home which does not contribute materially to the household income.



## WSR 04-02-014

## PERMANENT RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 29, 2003, 4:57 p.m.]

Date of Adoption: December 24, 2003.

**Purpose:** The Division of Developmental Disabilities (DDD) will establish a new program for individuals in need of employment/day program services. Under existing rules, employment and day program services were paid as state supplementary payments or through the counties. These rules identify a new program whereby DDD will pay individuals directly with state-only funds and require that these individuals purchase the necessary employment/day program services. When effective, these rules will replace the emergency rules filed as WSR 04-01-144.

**Citation of Existing Rules Affected by this Order:** Amending WAC 388-825-020, 388-825-055, 388-825-100, 388-825-120, 388-825-205, 388-825-252, 388-825-254, 388-850-035, and 388-850-045.

**Statutory Authority for Adoption:** RCW 71A.12.030.

**Other Authority:** RCW 71A.10.020, 2001-03 Supplemental Budget ESSB 6387 (chapter 371, Laws of 2002).

Adopted under notice filed as WSR 03-21-156 on October 22, 2003.

**Changes Other than Editing from Proposed to Adopted Version:** The term "community alternatives program (CAP) waiver" was changed to "home and community based services (HCBS) waiver administered by DDD" in WAC 388-825-060, 388-825-205, and 388-825-252. The changes were made because The Community Alternatives Program waiver is expiring and will be replaced with new HCBS waivers.

**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 12, Amended 9, 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 12, Amended 9, Repealed 0.

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

December 24, 2003

Jim Schnellman

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

**AMENDATORY SECTION** (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

**WAC 388-825-020 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty to care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Adolescent"** means a DDD eligible child age thirteen through seventeen years.

**"Attendant care"** means provision of physical and/or behavioral support to protect the safety and well being of a client.

**"Best interest"** includes, but is not limited to, client-centered benefits to:

- (1) Prevent regression or loss of skills already acquired;
- (2) Achieve or maintain economic self-support;
- (3) Achieve or maintain self-sufficiency;
- (4) Prevent or remedy neglect, abuse, or exploitation of individuals unable to protect their own interest;
- (5) Preserve or reunite families; and
- (6) Provide the least-restrictive setting that will meet the person's medical and personal needs.

**"Client or person"** means a person the division determines under RCW 71A.16.040 and WAC 388-825-030 eligible for division-funded services.

**"Community support services"** means one or more of the services listed in RCW 71A.12.040 including, but not limited to the following services: Architectural, case management, early childhood intervention, employment, counseling, family support, respite care, information and referral, health services and equipment, therapy services, and residential support.

**"Companion home"** means the same as **"intensive individual supported living support."**

**"Department"** means the department of social and health services of the state of Washington.

**"Director"** means the director of the division of developmental disabilities.

**"Division or DDD"** means the division of developmental disabilities of the department of social and health services.

**"Emergency"** means a sudden, unexpected occurrence demanding immediate action.

**"Exemption"** means the department's approval of a written request for an exception to a rule in this chapter.

**"Family"** means individuals, of any age, living together in the same household and related by blood, marriage, adoption or as a result of sharing legal custody of a minor child.

**"Family resources coordinator"** means the person who is:

- (1) Recognized by the IDEA Part C lead agency; and
- (2) Responsible for:
  - (a) Providing family resources coordination;
  - (b) Coordinating services across agencies; and
  - (c) Serving as a single contact to help families receiving assistance and services for their eligible children who are under three years of age.

**"ICF/MR"** means a facility certified as an intermediate care facility for the mentally retarded by Title XIX to provide services to the mentally retarded or persons with related conditions.

"**ICF/MR Eligible**" for admission to an ICF/MR means a person is determined by DDD as needing active treatment as defined in CFR 483.440. Active treatment requires:

- (1) Twenty-four hour supervision; and
- (2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.

"**Individual**" means a person applying for services from the division.

"**Individual alternative living**" means provision of community-based individualized client training, assistance and/or ongoing support to enable a client to live as independently as possible with minimal services.

~~("Individual supportive living service" (also known as companion home) means provision of twenty-four hour residential support in a nonlicensed home for one adult person with developmental disabilities.)~~

"**Intelligence quotient score**" means a full scale score on the Wechsler, or the intelligence quotient score on the Stanford-Binet or the Leiter International Performance Scale.

"Intensive individual supported living support" (also known as companion home) means provision of twenty-four hour residential support in a nonlicensed home for no more than one adult person with developmental disabilities in a regular family residence approved and contracted by the department ensuring client health, safety and well-being.

"**Medicaid personal care**" is the provision of medically necessary personal care tasks as defined in chapter 388-15 WAC.

"**Nonresidential programs**" means programs including, but not limited to, county-funded habilitation services.

"**Nursing facility eligible**" means a person is assessed by DDD as meeting the requirements for admission to a licensed nursing home as defined in WAC 388-71-0700 (3) through (5). The person must require twenty-four hour care provided by or under the supervision of a licensed nurse.

"**Other resources**" means resources that may be available to the client, including but not limited to:

- (1) Private insurance;
- (2) Medicaid;
- (3) Indian health care;
- (4) Public school services through the office of the superintendent of public instruction; and
- (5) Services through the department of health.

"**Part C**" means early intervention for children from birth through thirty-five months of age as defined in the Individuals with Disabilities Education Act (IDEA), Part C and 34 CFR, Part 303 and Washington's federally approved grant.

"**Residential habilitation center**" or "**RHC**" means a state-operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities.

"**RHC capacity**" means the maximum number of eligible persons that can reside in a residential habilitation center without exceeding its 1997 legislated budgeted capacity.

"**Residential programs**" means provision of support for persons in community living situations. Residential programs include DDD certified community residential services and support, both facility-based such as, licensed group

homes, and non-facility based, i.e., supportive living, intensive tenant support, and state-operated living alternatives (SOLA). Other residential programs include individual alternative living, intensive individual supportive living services, adult family homes, adult residential care services, nursing homes, and children's foster homes.

"**Respite care**" means temporary residential services provided to a person and/or the person's family on an emergency or planned basis.

"**Secretary**" means the secretary of the department of social and health services or the secretary's designee.

"State supplementary payment (SSP)" is the state paid cash assistance program for certain DDD eligible SSI clients.

"**Vacancy**" means an opening at a RHC, which when filled, would not require the RHC to exceed its 1997 biannually budgeted capacity, minus:

- (1) Twenty-six beds designated for respite care use; and
- (2) Any downsizing related to negotiations with the Department of Justice regarding community placements.

"**Vulnerable adult**" means a person who has a developmental disability as defined under RCW 71A.10.020.

AMENDATORY SECTION (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

**WAC 388-825-055 Authorization of services.** (1) The division's field services section shall be responsible for authorizing services agreed to by the person/family including, but not limited to:

(a) Placement to and from residential habilitation centers;

(b) Community residential services;

(c) Family support services; ~~((and))~~

(d) Nonresidential programs; and

(e) Employment/day programs when the person receives the funding directly from DDD to pay for the services, subject to the eligibility requirements in WAC 388-825-060 and the restrictions in WAC 388-825-065. Allowable employment/day program services are listed in WAC 388-850-035.

(2) The division's authorization of state funded services shall be based on the ~~((availability of))~~ services and funding available.

(a) Persons must meet the programmatic and financial eligibility requirements for the specific services;

(b) Funding for state paid services is available in the state operating budget; and

(c) SSP funding is not available to the client.

(3) The division will include the following persons when determining authorized services:

(a) The person;

(b) The person's parent or guardian and may include:

(i) The person's advocate; or

(ii) Other responsible parties.

(4) Per RCW 71A.16.010 the division shall offer adults the choice of admittance to a residential habilitation center if all of the following conditions exist:

(a) An RHC vacancy is available;

(b) Funding, specifically designated for this purpose in the state operating budget, is available for alternative community support services;

(c) The person or their family is requesting residential services;

(d) The person meets ICF/MR or nursing facility eligibility for the available RHC vacancy;

(e) The person is the most in need of residential services as determined by DDD after reviewing all persons determined eligible for ICF/MR or nursing facility level of care. DDD will make this selection based on the following criteria:

(i) The person is age eighteen or older;

(ii) The person's/family's health and safety is in jeopardy due to the lack of necessary residential support and supervision:

(A) Priority is given to eligible persons/families currently without necessary residential supports;

(B) Other eligible persons will be considered based on their risk of losing residential supports due to unstable or deteriorating circumstances.

(f) The person's alternative DDD funded community support services would cost seventy percent or more of the average RHC rate, assuming a minimum household size of three persons.

(5) If RHC capacity is not being used for permanent residents, the division will make these vacancies available for respite care or any other services the department determines are needed and allowable within the rules governing the use of federal funds.

(a) Admission of a child or adolescent to an RHC for respite care requires the written approval of the division director or designee.

(b) Respite care exceeding thirty days in a calendar year is subject to subsection (6) of this section.

(6) The division shall not make an emergency or temporary admission of a person to a residential habilitation center for thirty-one days or more without the written approval of the division director or the director's designee if the admission is not a choice provided under subsection (4) of this section.

(a) Children twelve years of age and younger shall not be admitted to an RHC.

(b) Admission of an adolescent to an RHC can only occur if:

(i) DDD determines that foster placement services cannot meet the emergency needs of the child/family; and

(ii) A voluntary placement plan is in place with DDD with the goal of community placement or family reunification; and

(iii) Progress towards placement planning is reported to the division director at least every ninety days.

(7) The division shall authorize county-funded services only when the((:

~~(a))~~ service is included in a department contract(~~(;~~ and ~~(b))~~ and the person is not receiving funding directly from DDD for employment/day program services:

~~(a) The person is at least twenty-one years of age and (graduated from school during their twenty-first year, or) is no longer attending school; or~~

(b) The person is age twenty and graduates prior to his/her July or August twenty-first birthday; or

~~(c) ((Person is twenty-two years of age or older; or~~

~~(d) Person)) The child is two years of age or younger and eligible for early intervention services.~~

(8) The department shall require a person to participate in defraying the cost of services provided when mandated by state or federal regulation or statute.

#### NEW SECTION

**WAC 388-825-060 What are the eligibility requirements for persons who receive funds directly for employment/day programs?** (1) You must have received the State Supplementary Payment for an employment/day program between September 2002 and July 2003.

(2) This program is available only to individuals born prior to September 1, 1981.

(3) If you were born between September 1, 1979 and August 31, 1981:

(a) You received employment/day program services from a county or a county-contracted provider funded by DDD between July 1, 2001 and June 30, 2003, and:

(i) You have been assessed by DDD, the division of vocational rehabilitation (DVR) or the department of services for the blind to be in need of long-term support; and

(ii) You receive services from a county or a county-contracted provider; and

(iii) You have developed a plan with DDD for employment/day program services.

(b) If you are on the home and community based services (HCBS) waiver administered by DDD and received employment/day program services between July 1, 2001 and August 31, 2002, but receive no HCBS waiver services from DDD other than employment/day program services, you will receive employment/day program services according to WAC 388-850-035. You will not receive funds directly from DDD for employment/day program services.

(4) If you were born prior to September 1, 1979 and you have been assessed by DDD, the division of vocational rehabilitation (DVR) or the department of services for the blind to be in need of long-term support:

(a) You were authorized by DDD and the county for employment/day program services for December 2002; and

(b) These services were funded totally with state funds; and

(c) You continue to receive services from a county or county-contracted provider.

#### NEW SECTION

**WAC 388-825-064 What are the restrictions on the use of the funds paid directly to persons for employment/day programs?** For employment/day program services, you are required to use this money to purchase employment/day program services from a county or a county-contracted provider.

PERMANENT

NEW SECTION

**WAC 388-825-070 What happens if I do not spend the funds paid directly to me for employment/day programs as specified in WAC 388-825-065?** The department will stop sending these funds directly to you and has the right to recover any funds sent directly to you if it is determined that these funds were not spent as required in WAC 388-825-065.

NEW SECTION

**WAC 388-825-075 How much money will I receive?** The department will determine the amount of your payment on an individual basis.

NEW SECTION

**WAC 388-825-076 How often will I receive a direct payment check for my employment/day program services?** You will receive a monthly warrant/check from the state.

NEW SECTION

**WAC 388-825-077 Who will the warrant/check be sent to?** (1) The warrant/check will be sent directly to your protective payee or representative payee if you have one.

(2) If you do not have a protective payee or representative payee, the warrant/check will be sent directly to you.

NEW SECTION

**WAC 388-825-078 How will the warrant/check be sent?** You may choose to have your check delivered through the US Postal Service, or as an electronic funds transfer.

NEW SECTION

**WAC 388-825-085 What is a representative payee?** A representative payee is a person, organization, institution or agency that manages your DDD direct payments. They may also provide services such as helping you manage your money.

NEW SECTION

**WAC 388-825-086 Who can be a representative payee for my DDD direct payment funds for employment/day program services?** (1) A representative payee may be:

- (a) The person, organization, institution or agency that acts as your representative payee for Supplemental Security Income (SSI);
- (b) Your parent, if you are under eighteen;
- (c) Your spouse; or
- (d) A person, organization, institution or agency you select if the department approves your selection.

(2) If you select a representative payee under subsection (1)(d) of this section, the department will evaluate the selection according to the following criteria:

- (a) The relationship of the payee to you;
- (b) The amount of interest the payee shows in you;

(c) Any legal authority the payee has to act on your behalf;

(d) Whether the payee has custody of you; and

(e) Whether the payee is in a position to know of and look after your needs.

(3) The DDD director or designee will approve or deny your request for a representative under subsection (1)(d) of this section.

NEW SECTION

**WAC 388-825-087 What are the responsibilities of a representative payee?** A representative payee has the responsibility to:

(1) Spend the DDD direct payment funds on you or your behalf;

(2) Notify the department if any event happens that may affect the amount of benefits you receive;

(3) Submit to the department, upon our request, a written report accounting for the payments received; and

(4) Notify the department if any change in the payee's circumstances that would affect performance of the payee responsibilities.

NEW SECTION

**WAC 388-825-090 When will DDD recover direct payment funds sent to me for employment/day program services?** DDD may recover funds, known as an overpayment, when:

(1) You did not spend the direct payment funds on employment/day program services as specified in WAC 388-825-065; or

(2) You were no longer eligible for services from the division of developmental disabilities in the month in which the SSP was issued; or

(3) Your assessed need has changed.

NEW SECTION

**WAC 388-825-095 Who is liable for repayment of an overpayment?** (1) If you received the money in your own name, you are responsible for repayment.

(2) If you are paid through a representative payee, both you and the representative payee may be responsible for repayment.

(a) You are responsible to the extent that the incorrect payments were spent on you or your behalf. Funds conserved by a representative payee to which you do not have direct access have not been spent on you or your behalf.

(b) If the incorrect payments were spent on you or your behalf and the representative payee is without fault in connection with the overpayment, you are solely responsible for repayment.

(c) The representative payee is solely responsible for repayment if:

(i) The incorrect payments were not spent on you or your behalf; and

(ii) The representative payee is at fault in connection with the overpayment.

PERMANENT



(d) A government entity or an institution can be a representative payee and can be found responsible for repayment—just as a private individual can.

(e) You and the representative payee are both responsible for repayment when the incorrect payments have been spent on you or your behalf and the representative payee is at fault.

(3) The representative payee is at fault when the representative payee was aware of the reason you were not eligible for the direct payment funds.

**AMENDATORY SECTION** (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

**WAC 388-825-100 Notification.** (1) The department shall notify the client or applicant, the parent when the client or applicant is a minor, ~~((and))~~ or the guardian when the client or applicant is an adult, of the following decisions:

(a) Denial or termination of eligibility set forth in WAC ~~((388-825-100))~~ 388-825-030 and 388-825-035;

(b) Development or modification of the individual service plan set forth in WAC 388-825-050;

(c) Authorization, denial, reduction, or termination of services or funds paid directly to the client set forth in WAC 388-825-055 or payment of SSP set forth in chapter 388-827 WAC ~~((388-825-100))~~; and

(d) Admission or readmission to, or discharge from, a residential habilitation center.

(2) The notice shall set forth appeal rights pursuant to WAC 388-825-120 and a statement that the client's case manager can be contacted for an explanation of the reasons for the action.

(3)(a) The department shall provide notice of a denial or partial authorization of a family support services request and a statement of reason for denial or partial authorization, or reduction to the person or persons described in subsection (1) of this section. The department shall send such notice no later than five working days before the end of the month previous to the month for which service was requested;

(b) The department shall make available an administrative review of a decision to deny or partially authorize services upon receipt of a written request by a person or persons described in subsection (1) of this section to the administrator of the region in which the client is living. The regional office must receive a request for administrative review by the last working day of the month;

(c) The client shall state in the written request why the client or client's family believes their service priority designation is not correct;

(d) Upon receipt of request for administrative review, the regional administrator or designee shall review the request and the client file; and

(e) The department shall send the results of the administrative review to the client and/or family within the first five working days of the service month for which the client is being denied or receiving a partial authorization for services.

(4) The department shall provide at least thirty days' advance notice of action to terminate a client's eligibility, terminate or reduce a client's service, or discharge a client from a residential habilitation center to the community. Transfer or

removal of a client from a service set forth in WAC 388-825-120 (5)(f) is governed by that section, and reduction of family support funding during the service authorization period is covered by subsection (3)(a) of this section.

(5) All parties affected by such department decision shall be consulted, whenever possible, during the decision process by the responsible field services regional office in person and/or by telephone.

(6) The division shall ensure notification to the school district in which a school-aged child is to be placed when a placement decision is reached.

**AMENDATORY SECTION** (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

**WAC 388-825-120 Adjudicative proceeding.** (1) A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an adjudicative proceeding to contest the following department actions:

(a) Denial or termination of eligibility set forth in WAC ~~((388-825-100))~~ 388-825-030 and 388-825-035;

(b) Development or modification of the individual service plan set forth in WAC 388-825-050;

(c) Authorization, denial, reduction, or termination of services or funds paid directly to the client set forth in WAC 388-825-055 or payment of SSP set forth in chapter 388-827 WAC ~~((388-825-100))~~;

(d) Admission or readmission to, or discharge from, a residential habilitation center;

(e) A claim the client, former client, or applicant owes an overpayment debt;

(f) A decision of the secretary under RCW 71A.10.060 or 71A.10.070;

(g) A decision to change a client's placement from one category of residential services to a different category of residential services.

(2) Adjudicative proceedings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter, and by chapter 388-02 WAC. If any provision in this chapter conflicts with chapter 388-02 WAC, the provision in this chapter shall govern.

(3) The applicant's application for an adjudicative proceeding shall be in writing and filed with the DSHS office of appeals within twenty-eight days of receipt of the decision the appellant wishes to contest.

(4) The department shall not implement the following actions while an adjudicative proceeding is pending:

(a) Termination of eligibility;

(b) Reduction or termination of service, except when the action to reduce or terminate the service is based on the availability of funding and/or service; or

(c) Removal or transfer of a client from a service, except when a condition in subsection (5)(f) of this section is present.

(5) The department shall implement the following actions while an adjudicative proceeding is pending:

(a) Denial of eligibility;

(b) Development or modification of an individual service plan;

(c) Denial of service;

(d) Reduction or termination of service when the action to reduce or terminate the service is based on the availability of funding or service;

(e) After notification of an administrative law judge's (or review judge) ruling that the appellant has caused an unreasonable delay in the proceedings; or

(f) Removal or transfer of a client from a service when:

(i) An immediate threat to the client's life or health is present;

(ii) Service termination or transfer for a specific group of clients in order to meet the intent of and comply with sections 205 and 207, chapter 371, Laws of 2002;

(iii) The client's service provider is no longer able to provide services due to:

(A) Termination of the provider's contract;

(B) Decertification of the provider;

(C) Nonrenewal of provider's contract;

(D) Revocation of provider's license; or

(E) Emergency license suspension.

((iii)) (iv) The client, the parent when the client is a minor, or the guardian when the client is an adult, approves the decision.

(6) When the appellant files an application to contest a decision to return a resident of a state residential school to the community, the procedures specified in RCW 71A.10.050(2) shall govern the proceeding. These procedures include:

(a) A placement decision shall not be implemented during any period during which an appeal can be taken or while an appeal is pending and undecided unless the:

(i) Client's or the client's representative gives written consent; or

(ii) Administrative law judge (or review judge) after notice to the parties rules the appellant has caused an unreasonable delay in the proceedings.

(b) The burden of proof is on the department; and

(c) The burden of proof is whether the specific placement proposed by the department is in the best interests of the resident.

(7) The ~~((initial order shall be made))~~ administrative law judge shall issue an initial or final order within sixty days of the department's receipt of the application for an adjudicative proceeding. When a party files a petition for administrative review, allowed under WAC 388-02-0215 (4)(w)(x) and/or (y), the review order shall be made within sixty days of the department's receipt of the petition. The decision-rendering time is extended by as many days as the proceeding is continued on motion by, or with the assent of, the appellant.

**AMENDATORY SECTION** (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

**WAC 388-825-205 Who is eligible to participate in the family support opportunity program?** (1) All individuals living with their families determined to be developmentally disabled according to WAC 388-825-030 and 388-825-035 are eligible to participate in the program if their family requires assistance in meeting their needs. However, the program will fund or provide support services only as funding is available.

(2) Persons currently receiving services under WAC ((388-825-030)) 388-825-252, Family support services, may volunteer to participate in the program.

(3) Families will receive program services based on one or more of the following criteria: The date of application, the date the family was placed on the wait list, eligibility for SSP or other available funding, and/or HCBS waiver status.

(4) Availability of the SSP makes the family ineligible for other state only funding for the same service.

**AMENDATORY SECTION** (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

**WAC 388-825-252 Family support services.** (1) The purpose of the family support program is to:

(a) Reduce or eliminate the need for out-of-home residential placement of a client where the in-home placement is in the client's best interest;

(b) Allow a client to live in the most independent setting possible; and

(c) Have access to services best suited to a client's needs.

(2) The department's family support services shall include, the following services:

(a) Respite care, including the use of community activities which provide respite;

(b) Attendant care;

(c) Nursing services provided by a registered nurse or licensed practical nurse, that cannot be provided by an unlicensed caregiver, including but not limited to, ventilation, catheterization, insulin injections, etc., when not covered by another resource;

(d) Therapeutic services, provided these therapeutic services are not covered by another resource such as medicaid, private insurance, public schools, or child development services funding, including:

(i) Physical therapy;

(ii) Occupational therapy;

(iii) Behavior management therapy; and

(iv) Communication therapy; or

(v) Counseling for the client relating to a disability.

(3) Receiving family support services is based on:

(a) Funding for state paid services available in the state operating budget;

(b) SSP funding available to the client/family; or

(c) HCBS waiver status.

(4) The following rules, subsections (5) through (9), apply only to family support services authorized by the department and do not govern services purchased by the family with SSP (state supplementary payment) funding (see WAC 388-827-0145 and 388-827-0170).

(5) Up to nine hundred dollars of the service need level amount in WAC ((388-825-252)) 388-825-254 may be used during a one year period for flexible use as follows. The requested service must be necessary as a result of the disability of the client.

(a) Training and supports including parenting classes and disability related support groups;

(b) Specialized equipment and supplies including the purchase, rental, loan or refurbishment of specialized equipment or adaptive equipment not covered by another resource

including Medicaid. Mobility devices such as walkers and wheelchairs are included, as well as communication devices and medical supplies such as diapers for those more than three years of age;

(c) Environmental modification including home repairs for damages, and modifications to the home needed because of the disability of the client;

(d) Medical/dental services not covered by any other resource. This may include the payment of insurance premiums and deductibles and is limited to the premiums and deductibles of the client;

(e) Special formulas or specially prepared foods needed because of the disability of the client;

(f) Parent/family counseling dealing with a diagnosis, grief and loss issues, genetic counseling and behavior management;

(g) Specialized clothing adapted for a physical disability, excessive wear clothing, or specialized footwear;

(h) Specialized utility costs including extraordinary supplemental utility costs related to the client's disability or medical condition;

(i) Transportation costs for gas or tickets (ferry fare, transit cost) for a client to get to essential services and appointments, if another resource is not available;

(j) Other services approved by the DDD regional administrator or designee that will replace or reduce ongoing departmental expenditures and will reduce the risk of out-of-home placement. Exemption requests under this section are not subject to appeal.

~~((4))~~ (6) Recommendations will be made to the regional administrator by a review committee. The regional administrator will approve or disapprove the request and will communicate reasons for denial to the committee.

~~((5))~~ (7) Payment for services specified in subsection ~~((3))~~ (5), except ~~((3))~~(5)(a) and (h), shall cover only the portion of cost attributable to the client.

~~((6))~~ (8) Requests must be received by DDD no later than midway through the service authorization period unless circumstances exist justifying an emergency.

~~((7))~~ (9) A plan shall be developed jointly by the family and the department for each service authorization period. The department may choose whether to contract directly with the vendor, to authorize purchase by another agency, or may reimburse the parent of the client.

~~((8))~~ (10) Emergency Services. Emergency funds may be requested for use in response to a single incident or situation or short term crisis such as care giver hospitalization, absence, or incapacity. The request shall include anticipated resolution of the situation. Funds shall be provided for a limited period not to exceed two months. All requests are to be reviewed and approved or denied by the regional administrator or designee.

~~((9))~~ (11) A departmental service authorization shall state the type, amount, and period (duration) of service. Each department authorization shall constitute a new service for a new period.

~~((10))~~ (12) If the client becomes eligible and begins to receive Medicaid Personal Care services as defined in WAC ~~((388-15-202 through 388-15-203))~~ 388-71-0202 and 388-71-0203, the family support funding will be reduced at the

beginning of the next month of service. The family will receive notice of the reconfiguration of services at least five working days before the beginning of the month.

~~((11))~~ (13) If requested family support services are not authorized, such actions shall be deemed a denial of services.

~~((12))~~ (14) Family support services may be authorized below the amount requested by the family for the period. When, during the authorized service period, family support services are reduced or terminated below the amount specified in service authorizations, the department shall deem such actions as a reduction or termination of services.

AMENDATORY SECTION (Amending WSR 02-01-074, filed 12/14/01, effective 1/14/02)

**WAC 388-825-254 Service need level rates.** (1) The department shall base periodic service authorizations on:

(a) Requests for family support services described in WAC 388-825-252 (2) ~~((of this section))~~ and (5);

(b) Service need levels ~~((as described in WAC 388-825-252(3) of this chapter))~~. The amount of SSP (state supplementary payment) available to a client will be included when calculating the monthly allocation of state family support dollars.

(c) Service need level lid amounts ~~((are))~~ as follows:

(i) Clients designated for service need level one (WAC 388-825-256) may receive up to one thousand one hundred fifty-six dollars per month or two thousand four hundred sixty-two dollars per month if the client requires licensed nursing care in the home:

(A) If a client is receiving funding through Medicaid Personal Care or other DSHS in-home residential support, the maximum payable through family support shall be five hundred twelve dollars per month;

(B) If the combined total of family support services at this maximum plus in-home support is less than one thousand one hundred fifty-six dollars additional family support can be authorized to bring the total to one thousand one hundred fifty-six dollars.

(ii) Clients designated for service need level two (WAC 388-825-256) may receive up to four hundred fifty-six dollars per month if not receiving funding through Medicaid personal care:

(A) If a client is receiving funds through Medicaid personal care or other DSHS in-home residential support service, the maximum receivable through family support shall be two hundred fifty-six dollars per month;

(B) If the combined total of family support services at this maximum plus in-home support is less than fifty-six hundred four dollars, additional family support can be authorized to bring the total to four hundred fifty-six dollars.

(iii) Clients designated for service need level three (WAC 388-825-256) may receive up to two hundred fifty-six dollars per month provided the client is not receiving Medicaid personal care. If the client is receiving Medicaid personal care or other DSHS in-home residential support service, the maximum receivable through family support shall be one hundred twenty-eight dollars per month; and

(iv) Clients designated for service level four (WAC 388-825-256) may receive up to one hundred twenty-eight dollars per month family support services.

((e)) (d) Availability of family support funding;

((e)) (e) Authorization by a review committee, in each regional office, which reviews each request for service;

((e)) (f) The amounts designated in subsection (1)(b)(i) through (iv) of this section are subject to periodic increase if vendor rate increases are mandated by the legislature.

(2) The department shall authorize family support services contingent upon the applicant providing accurate and complete information on disability-related requests.

(3) The department shall ensure service authorizations do not exceed maximum amounts for each service need level based on the availability of funds.

(4) The department shall not authorize a birth parent, adoptive parent, or stepparent living in the same household as the client as the direct care provider for respite, attendant, nursing, therapy, or counseling services for a child seventeen years of age or younger.

**AMENDATORY SECTION** (Amending WSR 99-19-104, filed 9/20/99, effective 9/20/99)

**WAC 388-850-035 Services—Developmental disabilities.** (1) A county may purchase and provide services listed under chapter 71A.14 RCW.

(a) The department shall pay a county for department authorized services provided to an eligible developmentally disabled person.

(b) DD eligible persons who receive funding from DDD directly for employment or day program services shall pay the county or a county contracted provider for services.

(2) A county may purchase or provide authorized services. Authorized services may include, but are not limited to:

- (a) Early childhood intervention services;
- (b) Employment services;
- (c) Community access services;
- (d) Residential services;
- (e) Individual evaluation;
- (f) Program evaluation;
- (g) County planning and administration; ~~(and)~~
- (h) Consultation and staff development; and
- (i) Oversight of the DDD money sent directly to the DDD eligible person.

**AMENDATORY SECTION** (Amending WSR 99-19-104, filed 9/20/99, effective 9/20/99)

**WAC 388-850-045 Funding formula—Developmental disabilities.** (1) For the purposes of this section, "county" shall mean the legal subdivision of the state, regardless of any agreement with another county to provide developmental disabilities services jointly.

(2) The allocation of funds to counties shall be based on the following criteria:

(a) Each county shall receive a base amount of funds. The amount shall be based on the prior biennial allocation, including any funds from budget provisos from the prior

biennium, and subject to the availability of state and federal funds;

(b) The distribution of any additional funds provided by the legislature or other sources shall be based on a distribution formula which best meets the needs of the population to be served as follows:

(i) On a basis which takes into consideration minimum grant amounts, requirements of clients residing in an ICF/MR or clients on one of the division's Title XIX home and community-based waivers, and the general population of the county, and special education enrollment as well as the population eligible for county-funded developmental disabilities services;

(ii) On a basis that takes into consideration the population numbers of minority groups residing within the county;

(iii) A biennial adjustment shall be made after these factors are considered; and

(iv) ~~((Countries))~~ Counties not receiving any portion of additional funds pursuant to this formula shall not have their base allocation reduced due to application of this formula.

(c) Funding appropriated through legislative proviso, including vendor rate increases, shall be distributed to the population directed by the legislature utilizing a formula as directed by the legislature or using a formula specific to that population or distributed to identified people;

(d) The ability of the community to provide funds for the developmental disability program provided in chapter 71A.14 RCW may be considered with any or all of the above.

(3)(a) A county may utilize seven or less percent of the county's allocated funds for county administrative expenses. A county may utilize more than seven percent for county administration with approval of the division director. A county electing to provide all services directly, in addition to county administration, is exempt from this requirement.

(b) A county may receive funds for oversight of employment/day program services purchased by DDD clients with money sent directly to the client based on the following conditions:

(i) The oversight funds for the recipients described below will be allocated at the same rate that the county received in their original 2001-2003 DDD county program agreement for administrative expenses for these same individuals. These funds will be calculated by using the date the recipient began receiving funds directly if the recipient:

(A) Was born between September 1, 1979 and August 31, 1981; and

(B) Received a county or county-contracted service between July 1, 2001 and June 30, 2002; and

(C) Continues to receive a county or county-contracted service.

(ii) Oversight funds for the recipients described below will be allocated at the same rate that the county received in their original 2001-2003 DDD county program agreement for administrative expenses for these same individuals. These funds will be calculated by using the date the recipient began receiving funds directly if the recipient:

(A) Was born prior to September 1, 1979; and  
(B) Was authorized by DDD and the county for employment/day program services for December, 2002; and

(C) Continues to receive a county or county-contracted service.

(iii) The oversight funds for recipients described below shall equal up to seven percent of the amount of the funds received directly by the recipient, if the recipient:

(A) Was born between September 1, 1979 and August 31, 1981; and

(B) Received no county or county-contracted service prior to July 1, 2002; and

(C) Received or will receive a county or county-contracted service between July 1, 2002 and June 30, 2003; and

(D) Continues to receive a county or county-contracted service.

(4) The department may withhold five or less percent of allocated funds for new programs, for statewide priority programs, and for emergency needs.

### WSR 04-03-001

#### PERMANENT RULES

#### ENVIRONMENTAL HEARINGS OFFICE

[Filed January 7, 2004, 2:34 p.m.]

Date of Adoption: January 5, 2004.

Purpose: At the request of the Department of Agriculture, our agency amended existing Pollution Control Hearings Board (PCHB) rules in order to help facilitate transfer of the livestock nutrient management program from the Department of Ecology to the Department of Agriculture.

Citation of Existing Rules Affected by this Order: Amending chapter 371-08 WAC.

Statutory Authority for Adoption: RCW 34.05.360 and ESSB 5889.

Adopted under notice filed as WSR 03-23-126 on November 19, 2003.

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 1, Repealed 0.

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

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

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

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

January 7, 2004

Eric Z. Lucas

Administrative Appeals Judge  
and Rules Coordinator

#### NEW SECTION

**WAC 371-08-306 Livestock nutrient management program (LNMP).** As used in this chapter, and chapter 43.21B RCW, when referring to appeals related to civil penalties and orders issued by the department of agriculture, under the LNMP, pursuant to chapters 90.48 and 90.64 RCW, the following terms shall have the following meaning:

(1) "Department" means the department of agriculture.

(2) "Director" means the director of the department of agriculture.

**AMENDATORY SECTION** (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

**WAC 371-08-315 Membership, function and jurisdiction.** (1) **Members.** The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals from the decisions and orders of the department of agriculture pursuant to chapters 90.48 and 90.64 RCW, the department of ecology, from the decisions of air pollution control authorities established pursuant to chapter 70.94 RCW, and from the decisions of local health departments, when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.110:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.105.095, 70.107.050, 86.16.081, 88.46.090, 90.03.600, 90.48.144, 90.56.310, 90.56.320, 90.56.330 (~~and~~), 90.58.560 and chapter 90.64 RCW.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 18.104.065, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.107.060, 88.46.070, 90.14.130, 90.14.190 (~~and~~), 90.48.120 and chapter 90.64 RCW.

(c) The issuance, modification, termination or denial of any permit certificate or license by the department of ecology or any air pollution control authority.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits or of biosolid permits pursuant to chapter 70.95 RCW.

(e) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.

(f) Any other decision by the department of ecology, the administrator of marine safety or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(3) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.

**WSR 04-03-006**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

[Order 03-03—Filed January 8, 2004, 12:55 p.m.]

Date of Adoption: January 8, 2004.

Purpose: To modify funding limitation methodology that will allow services to be delivered pursuant to chapter 25, Laws of 2003, E1.

Citation of Existing Rules Affected by this Order: Amending WAC 182-20-400.

Statutory Authority for Adoption: RCW 41.05.220.

Adopted under notice filed as WSR 03-24-110 on December 3, 2003.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

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

January 8, 2004

Melodie Bankers

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-06, filed 2/7/01, effective 3/10/01)

**WAC 182-20-400 Limitations on awards.** Specific to the medical, dental, and migrant base as referenced in WAC 182-20-200 (1)(b), (2)(b), and (3)(b):

Starting July 1, 1997:

(1) Any approved contractor shall initially receive funding based on no more than a ratio of one hundred twenty-five percent of that contractor's previous year's initial allotment.

(2) Any approved contractor shall initially receive funding based on no less than a ratio of seventy-five percent of that contractor's previous year's initial allotment. In the event that funding is inadequate to provide seventy-five percent, criteria shall be established to equitably allocate the available funds.

(3) Funds in excess of the initial allocation shall be distributed in a supplemental allotment pursuant to WAC 182-20-200.

Starting July 1, 2004:

(4) Funds distributed pursuant to WAC 182-20-200 (1)(b)(i)(A) and (2)(b)(i)(A), the forty percent base, shall be limited to no more than \$30,000.

Funds distributed in excess of the \$30,000 limitation shall be added to the appropriate medical formulae in WAC 182-20-200 (1)(b)(i)(B) and (C), or dental formulae in WAC

182-20-200 (2)(b)(i)(B) and (C), productivity portions of the funding formulae.

**WSR 04-03-016**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed January 12, 2004, 9:33 a.m.]

Date of Adoption: January 6, 2004.

Purpose: Meet criteria supporting Governor Locke's Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-640.

Statutory Authority for Adoption: RCW 46.01.110.

Other Authority: RCW 46.12.020.

Adopted under notice filed as WSR 03-23-100 on November 18, 2003.

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 1, 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, 2004

Fred Stephens

Director

AMENDATORY SECTION (Amending WSR 00-06-020, filed 2/23/00, effective 3/25/00)

**WAC 308-56A-640 Odometer disclosure statement.**

(1) **When is an odometer disclosure statement required?** An odometer disclosure statement (~~((must be completed and submitted with every application for certificate))~~) is required on all transfers of ownership as required by RCW 46.12.124 and Title 49 of the Code of Federal Regulations (CFR), unless specifically exempted.

(2) ~~((May a power of attorney be used to disclose the mileage of a vehicle? The transferee and/or transferor may give a power of attorney to a disinterested third party for the purpose of odometer disclosure.~~

~~A secure power of attorney, power of attorney designated under chapter 11.94 RCW or other power of attorney approved by the department may be used with an odometer disclosure statement with the following limitations:~~

PERMANENT

(a) The transferor may not give power of attorney to the transferee of the same vehicle for the purpose of odometer disclosure;

(b) The transferee may not give a power of attorney to the transferor of the same vehicle for the purpose of odometer disclosure;

(c) A power of attorney may not be used to complete another power of attorney for the purposes of odometer disclosure.

(3)) What odometer disclosure statement forms will the department accept? The department will accept odometer disclosure statement forms ((approved by the department include, but are not limited to:

(a) An odometer disclosure statement on a certificate of ownership issued by any jurisdiction which complies with the Federal Truth in Mileage Act; or

(b) The odometer disclosure/title extension statement; or

(c) A form issued/approved by a foreign jurisdiction which satisfies the provisions of RCW 46.12.124 or the Federal Truth in Mileage Act.

(4)) that comply with the Federal Truth in Mileage Act of 1986, Title 49 CFR, and RCW 46.12.124.

Note: An odometer power of attorney used in compliance with Part 580, Title 49 of the Code of Federal Regulations (CFR) is acceptable, and will not violate the intention of this rule.

(3) When is an odometer disclosure/title extension statement used? An odometer disclosure/title extension statement is a form used:

(a) With a certificate of ownership when an odometer disclosure statement is required; and

(b) ((If the certificate of ownership is unavailable; or

(c) If all reassignments on the certificate of ownership are full.

(5) When must a vehicle dealer process an odometer disclosure statement as a transferee? A vehicle dealer must process an odometer disclosure statement as a transferee and obtain the signature of the transferor when taking a vehicle in on trade, purchase, or otherwise acquiring a vehicle.

(6) When must a vehicle dealer process an odometer disclosure statement as a transferor? The vehicle dealer must complete an odometer disclosure statement as transferor when selling a vehicle at either wholesale or retail.

(7) How is mileage disclosed when a vehicle is sold through an auction company? The seller/consignor signs as the transferor and the successful bidder/buyer signs as the transferee.

(8) How long must vehicle dealers and auction companies maintain odometer disclosure statements? The vehicle dealer or vehicle dealers doing business as an auction company must keep all odometer disclosure statement records for five years.

(9) Can one vehicle dealer representative sign as transferee and transferor for the same transaction? No. One person cannot represent both the transferor and transferee for the purposes of odometer disclosure.

(10) When are odometer statements needed for leased vehicles? Odometer statements are needed for leased vehicles when; establishing and terminating or buying out a lease. The lessor of a leased vehicle must notify the lessee in writing that the lessee is required to provide to the lessor a written

odometer disclosure statement at the termination of the lease. That notice may be given any time after execution of the lease contract and prior to the termination of the lease or transfer of ownership.

(a) When establishing a lease, the dealer or other transferor must disclose the mileage to the lessee on a written odometer statement, and the lessee must acknowledge the written odometer statement as the transferee.

(b) When terminating a lease, the lessee as the transferor must disclose the mileage to the lessor and provide the lessor with a copy of the odometer disclosure statement.

(c) The lessor shall retain each odometer disclosure statement for five years following the date they terminate a lease or transfer ownership of the leased vehicle.

(11) Who discloses the mileage on the odometer disclosure statement on a lease buyout? The lessee shall disclose the mileage on the odometer disclosure statement as transferee if the lessee purchases the vehicle at the termination of the lease. A transferor signature is not required on the odometer disclosure statement when submitted with the application for certificate of ownership.

(12) Is an odometer statement required when there is involuntary divestiture? Yes. If the interest of an owner in a vehicle passes to another through involuntary divestiture, an odometer disclosure statement must be completed under RCW 46.12.124 and the rules under 49 Code of Federal Regulations.

(13) When a vehicle is acquired by involuntary divestiture, are there any circumstances that may allow odometer disclosure statements to be completed by transferee only? Yes. Circumstances that may allow odometer disclosure statements to be completed by only the transferee include, but are not limited to:

(a) Auction sale of an abandoned vehicle by a registered tow truck operator;

(b) Chattel/landlord lien;

(c) Court order;

(d) Divorce;

(e) Estate liquidation;

(f) Repossession;

(g) Seized vehicle;

(h) Sheriff sale.)) If all reassignments on the certificate of ownership are full; or

(c) If the certificate of ownership is unavailable.

(4) What are the odometer disclosure requirements for dealer transactions? Dealers are required to obtain an odometer disclosure statement from the selling owner (transferor), and acknowledge the disclosure as transferee, when taking a vehicle in on trade, purchase, or otherwise acquiring a vehicle. Dealers must complete an odometer disclosure statement as transferor when selling a vehicle either wholesale or retail.

(5) What are the odometer disclosure requirements for vehicles sold through an auction company? The seller/consignor completes an odometer disclosure statement as transferor and the successful bidder/buyer acknowledges the disclosure as transferee.

(6) How long must dealers and auction companies maintain odometer disclosure statement records? Dealers

and auction companies must keep odometer disclosure statement records for five years.

**(7) What are the odometer disclosure requirements for leased vehicles? Odometer disclosure is required when establishing, terminating, or buying out a lease.**

**(a) When establishing a lease, the lessor must complete an odometer disclosure statement as transferor, and the lessee must acknowledge the disclosure as transferee.**

**(b) When terminating or buying out a lease, the lessee must complete an odometer disclosure statement as transferor, and the lessor must acknowledge the disclosure as transferee. Prior to the termination of the lease or any transfer of ownership, the lessor must notify the lessee in writing that the lessee must provide an odometer disclosure statement to the lessor.**

**(c) Only the former lessee needs to submit a completed odometer disclosure statement with an application for certificate of ownership following a lease buyout. The former lessee must complete the odometer disclosure statement as transferee. No transferor signature is required.**

**(8) May a power of attorney be used to complete an odometer disclosure statement? Yes, with the following restrictions:**

**(a) The transferor cannot authorize or give power of attorney to the transferee or dealer to complete the odometer disclosure statement.**

**(b) The transferee cannot authorize or give power of attorney to the transferor or dealer to complete the odometer disclosure statement.**

**(c) No person may sign an odometer disclosure statement as both the transferor and transferee in the same transaction.**

**Note:** An odometer power of attorney used in compliance with Part 580, Title 49 of the Code of Federal Regulations (CFR) is acceptable, and will not violate the intention of this rule.

**(9) Is an odometer disclosure statement required when involuntary divestiture occurs? Yes. The seller, although not the owner of record, must complete an odometer disclosure statement as transferor, and the buyer must acknowledge the disclosure as transferee. The department may approve disclosure by the transferee only in extenuating circumstances.**

**WSR 04-03-019  
PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Medical Assistance Administration)  
[Filed January 12, 2004, 3:59 p.m.]**

Date of Adoption: January 8, 2004.

Purpose: The purpose of the rule amendment is to initiate six-month reviews for family and children's medical programs and to eliminate continuous eligibility for children which was mandated by the legislature in the 2003 state supplemental budget.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015, 388-434-0005, and 388-418-0025.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.530, and State Supplemental Budget for FY 2003 (chapter 10, Laws of 2003).

Adopted under notice filed as WSR 03-19-068 on September 12, 2003.

Changes Other than Editing from Proposed to Adopted Version: Proposed WAC 388-418-0005 was withdrawn and has been repropoed as WSR 04-02-072.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

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

January 8, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 00-08-002, filed 3/22/00, effective 5/1/00)

**WAC 388-416-0015 Certification periods for categorically needy (CN) medical and children's health insurance program (CHIP).** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families((;)) ~~and children((, and SSI-related persons;))~~ the certification period is ~~((twelve))~~ six months. When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

- (a) Approved application for cash or food assistance; or
- (b) Completed eligibility review.

(5) For an SSI-related person the certification period is twelve months.

(6) When the child turns nineteen the certification period ends even if the ~~((twelve))~~ six-month period is not over. The



certification period may be extended past the end of the month the child turns nineteen when:

- (a) The child is receiving inpatient services on the last day of the month the child turns nineteen;
- (b) The inpatient stay continues into the following month or months; and
- (c) The child remains eligible except for exceeding age nineteen.

~~((6))~~ (7) A retroactive certification period can begin up to three months immediately before the month of application when:

- (a) The client would have been eligible for medical assistance if the client had applied; and
- (b) The client received covered medical services as described in WAC 388-529-0100.

~~((7))~~ (8) If the client is eligible only during the three-month retroactive period, that period is the only period of certification.

~~((8))~~ (9) Any months of a retroactive certification period are added to the designated certification periods described in this section.

~~((9))~~ (10) For a child determined eligible for CHIP medical benefits as described in chapter 388-542 WAC:

- (a) The certification periods are described in subsections (1), (4), and ~~((5))~~ (6) of this section;
- (b) There is not a retroactive eligibility period as described in subsections ~~((6), (7), and (8))~~ (7), (8), and (9); and

(c) For a child who has creditable coverage at the time of application, the certification period begins on the first of the month after the child's creditable coverage is no longer in effect, if:

- (i) All other CHIP eligibility factors are met; and
- (ii) An eligibility decision is made per WAC 388-406-0035.

**AMENDATORY SECTION** (Amending WSR 99-23-083, filed 11/16/99, effective 1/1/00)

**WAC 388-434-0005 The department reviews each client's eligibility for benefits on a regular basis.** (1) If you receive cash assistance, the department reviews your eligibility for assistance at least once every six months.

(2) When it is time for your eligibility review, the department requires you to complete a review form. We use the information you provide to determine your eligibility for all assistance programs.

(3) If you complete an interview for assistance with a department representative and sign the printed application for benefits (AFB) form, you do not have to complete a separate review form.

(4) For cash assistance, the eligibility review form or the AFB must be dated and signed by both husband and wife, or both parents of a child in common when the parents live together.

(5) If you receive medical assistance only, the eligibility review form or the AFB must be signed by at least one parent when the parents live together.

(6) We may move the date of your eligibility review if we decide your circumstances need to be reviewed sooner.

(7) At your review, we look at:

(a) All eligibility requirements under WAC 388-400-0005 through 388-400-0035, 388-503-0505 through 388-503-0515, and 388-505-0210 through 388-505-0220;

(b) Changes that happened since we last determined your eligibility; and

(c) Changes that are anticipated to happen during the next review period.

(8) If you receive medical assistance only, we set your eligibility review date in advance under WAC 388-416-0005 through 388-416-0035. We will start the review process before your benefits end.

(9) Clients are responsible for attending an interview if one is required under WAC 388-452-0005.

(10) If you do not complete the eligibility review for cash assistance, you are considered to be withdrawing your request for continuing assistance~~((:))~~, therefore:

(a) Your cash assistance benefits will end~~((:))~~; and

(b) Your medical assistance will continue for ~~((twelve))~~ six consecutive months from the last:

- (i) Application;
- (ii) Eligibility review; or
- (iii) Food assistance application or recertification.

(11) We must send you written notice under WAC 388-458-0005, 388-458-0010, and 388-450-0015 before assistance can be suspended, terminated, or a benefit error is established as a result of your eligibility review.

(12) If you are currently receiving cash or medical assistance, and you are found to no longer be eligible for benefits, we will determine if you are eligible for other medical programs. Until we decide if you are eligible for ~~((other programs))~~ another program, your medical assistance will continue under WAC 388-418-0025 ~~((even if you request that your benefits end))~~.

(13) When a client is determined to need necessary supplemental accommodation (NSA) under WAC ~~((388-200-1300))~~ 388-472-0010, we will help the client meet the requirements of this section.

**AMENDATORY SECTION** (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-418-0025 Effect of changes on medical program eligibility.** (1) ~~((A client continues))~~ You continue to be eligible for Medicaid until the department determines ~~((the client's))~~ your ineligibility or eligibility for another medical program. This applies to ~~((a client who))~~ you if, during a certification period, ~~((becomes))~~ you become ineligible for, ~~((is))~~ or are terminated from, or ~~((requests))~~ request termination from:

(a) A CN Medicaid program; or

(b) Any of the following cash grants:

(i) TANF;

(ii) SSI; or

(iii) GA-X. See WAC 388-434-0005 for changes reported during eligibility review.

(2) ~~((A child remains continuously eligible for CN Medicaid for a period of twelve months from the date of certification for medical benefits or last review, whichever is later. This applies unless the child:~~

- (a) Moves out of state;  
 (b) Loses contact with the department or the department does not know the child's whereabouts;  
 (c) Becomes an inmate of a public institution, including a correctional facility (refer to WAC 388-505-0210(5) for exceptions);  
 (d) Turns nineteen years of age;  
 (e) Dies; or  
 (f) Receives benefits under the state children's health insurance program (SCHIP) and:  
 (i) Does not pay health insurance premiums for four consecutive months; or  
 (ii) Is determined to have had creditable coverage at the time of application. Refer to chapter 388-542 WAC.

(3) When a client becomes) If you become ineligible for refugee cash assistance, refugee medical assistance can be continued ((only)) through the eight-month limit, as described in WAC 388-400-0035(4).

((4) A client receiving medical benefits with)

(3) If you receive a TANF cash grant or family medical ((program is)), you are eligible for a medical extension, as described under WAC 388-523-0100, when ((the client's)) your cash grant or family medical program is terminated as a result of:

- (a) Earned income; or  
 (b) Collection of child or spousal support.

((5)) (4) A change in income during a certification period does ((not)) affect eligibility for all medical programs except:

- (a) Pregnant women's medical programs; ((or))  
 (b) Children's medical for newborns (F05); or  
 (c) The first six months of the medical extension benefits.

((6)) (5) For a child receiving benefits under SCHIP as described in chapter 388-542 WAC, the department must redetermine eligibility for a Medicaid program when the family reports:

- (a) Family income has decreased to less than two hundred percent Federal Poverty Level (FPL);  
 (b) The child becomes pregnant;  
 (c) A change in family size; or  
 (d) The child receives SSI.

**WSR 04-03-026**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 03-321—Filed January 13, 2004, 1:37 p.m.]

Date of Adoption: August 1 [December 6], 2003.

Purpose: To amend WAC 232-28-271 Private lands wildlife management area hunting seasons, rules and boundary descriptions.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-271.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 03-21-134 on October 21, 2003.

Changes Other than Editing from Proposed to Adopted Version:

**Page 1**

Disregard private lands partnership (PLP) name change throughout the WAC to reflect current program.

Rainier Timber Company general seasons:

- Early archery season description and date adjustment from previous year. Boundary description added to provide hunter opportunity amongst various user groups without overlaps.
- Early muzzleloader season description, season dates, and boundary description. Boundary description added to provide hunter opportunity amongst various user groups without overlaps.
- Modern firearm season dates adjustment and boundary description added from previous year to avoid overlaps.
- Late archery season description, dates, special restrictions and boundary descriptions to provide additional opportunity without overlaps.
- Late muzzleloader description, season dates adjustment from previous year and boundary descriptions to avoid overlaps.

Merrill and Ring general seasons:

- Archery season date adjustment and remove split season and added special restriction and boundary description to avoid overlaps.
- Modern firearm split season dates adjustment and added special restriction and boundary description to avoid overlaps.
- Muzzleloader season dates adjustment and added special restriction and boundary description to avoid overlaps.

**Page 2**

2004 Deer Permit Seasons on Private Lands Wildlife Management Areas

- Buckrun Limited Permit Draw Hunts
  - Eliminated the word "permits" to avoid duplication and confusion.
  - Add - Hunters can expect one to three days of hunting to add more opportunity.
- Buckrun A
  - Permit numbers changed to 20 partnership permits.
  - Add 5 additional days to buck season opportunity.
  - Added "\*partnership application required" to provide more adult/youth opportunity.
  - 3 Pt. maximum or antlerless protects larger bucks and to provide more opportunities.
- Add Buckrun B (Partnership Application only)
  - Permit numbers changed to 40 partnership permits for antlerless only to provide more opportunity.
  - A permit season of Oct. 25 - Dec. 31 to provide opportunity.
- Add Buckrun C (Senior)
  - Senior hunter permits (10) to provide more opportunities.
  - A permit season of Sept. 1 - Oct. 15 and Oct. 25 - Dec. 31 to provide opportunity.

- Special restrictions - seniors only and antlerless only to provide additional opportunity.
- Added instructions on partnership application for clarity.
- Added definition of 3 Pt. maximum buck.
- Rainier Timber Company, 2004 - Blacktail deer season calendar year adjustment
  - Kapowsin North with a 50 permits season for antlerless only, for all hunter applicants in PLWMA 401A North provides more opportunity.
  - Kapowsin Central with 10 AHE permit season with calendar date adjustments (Dec. 10-12) in PLWMA 401B Central unit provides less opportunity than previously but will meet demand.
  - Kapowsin Central with 15-disabled hunter permit season with calendar date adjustments (Dec. 10-12) in PLWMA 401B Central unit provides less opportunity than previously but will meet demand.
  - Kapowsin Central with 25 youth permit season with calendar date adjustments (Dec. 10-12) in PLWMA 401B Central unit provides less opportunity during this season but more for other classes of hunters.
  - Kapowsin South with 50 senior hunters Antlerless permit season with calendar date adjustments (Dec. 10-12) in PLWMA 401C South unit provides more opportunity.
  - Kapowsin South with 50 Antlerless permits for all classes of hunters. Hunting season with calendar date adjustments (Dec. 10-12) in PLWMA 401C South unit provides more opportunity.

### Page 3

#### Access Quotas and Raffle Seasons on Private Lands

- Mule and Whitetail Deer - Buckrun Limited Area Access Quotas and Seasons:
  - All raffle permit season date adjustments to a split season for more flexibility.
  - Added 40 Buckrun raffle permits in a split season for antlerless only to provide more opportunity.
  - Added a Buckrun raffle split season (quota 2) any deer as a landowner incentive and more opportunity.
- Blacktail Deer - Rainier Timber Company Kapowsin Tree Farm - Raffle Quotas and Seasons calendar year adjustments
  - Kapowsin North/Buck permits adjusted to manage harvest levels and season calendar date adjustments.
  - Kapowsin Central/Buck permits adjusted to manage harvest levels and season calendar date adjustments.
  - Kapowsin South/Buck permits adjusted to manage harvest levels and season calendar date adjustments.
  - Kapowsin North changed to Central/Antlerless only (Draw) held from pool of fee users instead of raffle because of poor interest. Change in boundary description to distribute antlerless harvest levels and season calendar date adjustments.
- Blacktail Deer - Merrill and Ring's Pysht Tree Farm - add word Raffle to improve description of hunt and for consistency
  - Hunt name changed by deleting reference to "North" to eliminate confusion.

- No change in raffle quotas.
- Season calendar date adjustment for Archery season, and retain season dates from previous year for muzzleloader and modern firearm seasons for better hunter distribution.
- Pysht C hunt - maintain 3 Pt. Minimum antler restrictions as the previous year and changed modern firearm to any weapon for more flexibility.
- Boundary description for all hunts retained as PLWMA 600A North Unit to control harvest and hunter distribution.

### Page 4

#### 2004 ELK RAFFLE SEASONS ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS

- 2004 - Elk, Rainier Timber Company (PLWMA 401) Kapowsin Tree Farm - Raffle Quotas and Seasons
  - Kapowsin Bull North quota, season, special restrictions and boundary description ~~deleted~~ to provide WDFW permit opportunity.
  - Kapowsin Central/Bull raffle permits (4) for more opportunity, season calendar date adjustment, and reference to auction deleted to avoid confusion.
  - Kapowsin South/Bull raffle permit (4) for more opportunity, season calendar date adjustments and reference to auction deleted to avoid confusion.
- 2004 - Elk, Rainier Timber Company (PLWMA 401) Kapowsin Tree Farm - Permit Draw Elk Hunts. Added a statement that an access fee will be charged for this hunt.
  - Kapowsin North/Bull hunt permit (1) season added and season date of Sep. 17 - Oct. 3 and boundary description to provide more elk opportunity through WDFW draw process.
  - Delete Kapowsin Bull Central and South hunts.
- 2004 - Elk, Merrill and Ring PLWMA 600 Pysht Tree Farm - Raffle Quota and Seasons
  - Pysht C hunt, raffle season change to Oct. 6-15 to avoid overlaps.
  - Special restrictions changed from any elk to any bull elk to control harvest.
  - Pysht C hunt is a Muzzleloader hunt to give this group opportunity.
- 2004 - Spring Black Bear - Rainier Timber Company Kapowsin Tree Farm (Fee Access) recommendation deleted at this time. Additional time needed to prepare proposal, obtain more public input and data analysis.
- Add 2004 Elk - Merrill and Ring PLWMA 600 Pysht Tree Farm - Permit draw elk permits (1), with a Nov. 1-7 season without overlap, will provide additional bull elk opportunity under WDFW draw process.

### Page 5-8

#### Area Descriptions - Private Lands Wildlife Management Areas

- PLWMA 401 Delete old description and provide new one.
- PLWMA 401 - New Rainier Timber Company PLWMA description for accuracy and conformity.

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

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

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

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

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

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

January 9, 2004

Susan Yeager

for Will Roehl, Chairman  
Fish and Wildlife Commission

**AMENDATORY SECTION** (Amending Order 03-03, filed 1/7/03, effective 2/7/03)

**WAC 232-28-271 Private lands wildlife management area hunting seasons, rules and boundary descriptions.**

**DEER GENERAL SEASONS ON PRIVATE LANDS  
WILDLIFE MANAGEMENT AREAS**

<b>Rainier Timber Company (PLWMA 401) Kapowsin Tree Farm</b>			
Hunting Method	<del>((2003))</del> 2004 Dates	Special Restrictions	Boundary Description
Early Archery	<del>((Aug. 22-Sept. 8))</del> Aug. 27-Sept. 12	Any Buck	PLWMA 401 B & C (Central & South)
Early Muzzleloader	<del>((Sept. 29-Oct. 5))</del> Aug. 27-Sept. 12	<del>((2 Pt. Min. or Antlerless))</del> Any Buck	PLWMA 401A (North)
Modern Firearm	<del>((Oct. 10-26))</del> Oct. 8-24	2 Pt. Min.	PLWMA 401 (All)
Late Archery	Nov. 19-Dec. 5	2 Pt. Min. or Antlerless	PLWMA 401A (North)
Late Muzzleloader	<del>((Nov. 21-Dec. 7))</del> Nov. 19-Dec. 5	2 Pt. Min. or Antlerless	PLWMA 401 B & C (Central & South)

<b>Merrill and Ring (PLWMA 600) Pysht Tree Farm (South Unit)</b>			
Hunting Method	<del>((2003))</del> 2004 Dates	Special Restrictions	Boundary Description
Archery	<del>((Sept. 1-14 and Nov. 25-Dec. 31))</del> Nov. 26-Dec. 31	2 Pt. Min.	<del>((Any Buck))</del> South Unit (600B)
Modern Firearm	<del>((Oct. 11-31 and Nov. 13-16))</del> Oct. 16-31 and Nov. 18-21	2 Pt. Min.	<del>((Any Buck))</del> South Unit (600B)
Muzzleloader	<del>((Oct. 1-9))</del> Oct. 1-10	2 Pt. Min.	<del>((Any Buck))</del> South Unit (600B)

**~~((2003))~~ 2004 DEER PERMIT SEASONS ON  
PRIVATE LANDS WILDLIFE MANAGEMENT AREAS**

<b><del>((2003))</del> 2004 - Mule and Whitetail Deer</b>				
<b>Buckrun Limited Permit Draw (<del>((Permits))</del> Hunts. Hunters apply to Washington Department of Fish and Wildlife (<del>((WDFW permit draw process))</del>). Only hunters possessing a modern firearm deer tag are eligible for Buckrun Limited draw hunts. Hunters can expect one (<del>((day))</del> to three days of hunting during the permit season with written authorization from the PLWMA manager. All hunters must check in and out on hunt day.</b>				
Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Buckrun A	<del>((35))</del> 20	<del>((Sept. 1-Oct. 10))</del> Sept. 1-Oct. 15	<del>((*Youth hunters;))</del> *Partnership application required; **3 Pt. Maximum or Antlerless deer	PLWMA 201

PERMANENT

**((2003)) 2004 - Mule and Whitetail Deer**

**Buckrun Limited Permit Draw ((Permits)) Hunts.** 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 can expect one ((day)) to three days 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 B	((35)) 40	((Oct. 21-Nov. 15)) Oct. 25-Dec. 31	((Disabled hunters,)) *Partnership application required; Antlerless deer	PLWMA 201
Buckrun C	10	Sept. 1-Oct. 15 and Oct. 25-Dec. 31	Senior hunters only, Antlerless deer	PLWMA 201

**\*\*((Youth hunters on Buckrun must be 12-15 years of age and must be accompanied by an adult during the hunt.)) To apply for Buckrun A or B, you must submit a partnership application. One partner must be an adult and the other a youth between the ages 12 and 15. Successful partnership applicants will each be able to harvest one deer.**

**\*\*3 Pt. maximum - A legal deer must have no more than 3 antler points on either antler (i.e. 1x1, 1x2, 1x3, 1x4, 1x5, 1x6, etc.; 2x2, 2x3, 2x4, 2x5, 2x6, etc.; 3x3, 3x4, 3x5, 3x6, etc. . . . are legal). All antler points must be at least one inch long. Antler points exclude eye guards.**

Hunts are scheduled by the manager 509-345-2577. All other hunting regulations apply.

PERMANENT

**((2003)) 2004 - 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 North	50	Dec. 10-12	Antlerless Only, All Hunters	PLWMA 401A North
Kapowsin Central	((30)) 10	((Dec. 12-14)) Dec. 10-12	Antlerless Only, ((Age 65 and older)) AHE Hunters	PLWMA 401B Central
	((20)) 15	((Dec. 12-14)) Dec. 10-12	Antlerless Only, ((AHE)) Disabled Hunters	PLWMA 401B Central
	((50)) 25	((Dec. 12-14)) Dec. 10-12	Antlerless Only, Youth Hunters	PLWMA 401B Central
Kapowsin South	50	((Dec. 12-14)) Dec. 10-12	Antlerless Only, ((Youth)) Hunters 65 & Older	PLWMA 401C South
	50	((Dec. 12-14)) Dec. 10-12	Antlerless Only, ((Disabled)) All Hunters	PLWMA 401C South

**ACCESS QUOTAS AND RAFFLE SEASONS  
ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS**

**((2003)) 2004 - 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.

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Buckrun	70	((Oct. 1-Dec. 7)) Oct. 1- Oct. 15 and Oct. 25-Dec. 31	Any Deer	PLWMA 201
	40	Oct. 1-Oct. 15 and Oct. 25-Dec. 31	Antlerless Only	PLWMA 201
Buckrun Raffle	2	Oct. 1-Oct. 15 and Oct. 25-Dec. 31	Raffle - Any Deer	PLWMA 201

PERMANENT

**((2003)) 2004 - 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 ((2003)) 2004 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)) 2	((Oct. 31-Nov. 16)) Oct. 29-Nov. 14	Buck Only (Raffle)	PLWMA 401A North
Kapowsin Central/Buck	((29)) 21	((Oct. 31-Nov. 16)) Oct. 29-Nov. 14	Buck Only (Raffle)	PLWMA 401B Central
Kapowsin South/Buck	((14)) 21	((Oct. 31-Nov. 16)) Oct. 29-Nov. 14	Buck Only (Raffle)	PLWMA 401C South
Kapowsin ((North)) Central	50	((Dec. 12-14)) Dec. 10-12	Antlerless Only ((Raffle)) (Draw)	PLWMA 401((A-North)) B Central

**((2003)) 2004 - Blacktail Deer**  
**Merrill and Ring's Pysht Tree Farm - Raffle Quotas and Seasons**  
**An access fee will be charged by the landowner for hunting on the Pysht Tree Farm. The following hunts are raffle hunts offered by Merrill and Ring. Hunters must possess a valid deer tag when participating in these hunts. Hunters drawing a Merrill and Ring deer raffle permit may purchase a second deer tag for the hunt. 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)) Nov. 26- Dec. 31	Raffle, Archery, 3 pt. minimum	PLWMA (600((A))) North Unit
Pysht ((North)) B	20	Oct. 1-10	Raffle, Muzzleloader, 3 pt. minimum	PLWMA (600((A))) North Unit
Pysht ((North)) C	30	Nov. 8-23	Raffle, <u>Any Weapon</u> , 3 pt. ((min-)) <u>minimum</u>	PLWMA (600((A))) North Unit
Pysht ((North)) D	5	Nov. 8-23	Restricted, 3 pt. minimum	PLWMA (600 ((A))) North Unit

**((2003)) 2004 ELK RAFFLE SEASONS ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS**

**((2003)) 2004 - Elk**  
**Rainier Timber Company (PLWMA 401) Kapowsin Tree Farm - Raffle Quotas and Seasons**  
**Only hunters possessing a valid ((2003)) 2004 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	((3)) 4	((Sept. 13-29)) Sept. 17-Oct. 3	((Auction))Raffle Any Bull, Any Tag	PLWMA 401B Central
Kapowsin Bull South	((3)) 4	((Sept. 13-29)) Sept. 17-Oct. 3	((Auction))Raffle Any Bull, Any Tag	PLWMA 401C South

**2004 - Elk**

**Rainier Timber Company (PLWMA 401) Kapowsin Tree Farm - Permit Draw Elk Hunts.**  
**Hunters apply to WDFW in WDFW permit draw process. An access fee will be charged for this hunt.**

<u>Hunt Name</u>	<u>Permit Number</u>	<u>Raffle Season</u>	<u>Special Restrictions</u>	<u>Boundary Descriptions</u>
Kapowsin Bull North	1	Sept. 17-Oct. 3	Any Bull, Any Elk Tag	PLWMA 401A North

**((2003)) 2004 - Elk**

**Merrill and Ring PLWMA 600 Pysht Tree Farm - Raffle Quota and Season**  
**Hunter must contact Merrill and Ring for raffle hunt opportunity. Hunters drawing a Merrill and Ring elk raffle permit may purchase a second elk tag for the hunt. 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.**

<u>Hunt Name</u>	<u>Quota</u>	<u>Raffle Season</u>	<u>Special Restrictions</u>	<u>Boundary Descriptions</u>
Pysht A	((3)) 4	Sept. 15-30	Any Bull Elk, Any Weapon	PLWMA 600
Pysht B	1	Sept. 1-14	Any Bull Elk, Archery	PLWMA 600
Pysht C	1	((Oct. 1-10)) Oct. 6-15	Any Bull Elk, ((Muzzle Loader)) Muzzleloader	PLWMA 600

**2004 - Elk**

**Merrill and Ring PLWMA 600 Pysht Tree Farm - Permit draw elk hunt. Hunters apply to WDFW in WDFW permit draw process. An access fee will be charged for this hunt.**

<u>Hunt Name</u>	<u>Harvest Quota</u>	<u>Permit Season</u>	<u>Special Restrictions</u>	<u>Boundary Descriptions</u>
Pysht	1	Nov. 1-7	Any Bull	PLWMA 600

**AREA DESCRIPTIONS - PRIVATE LANDS WILDLIFE MANAGEMENT AREAS**

**PLWMA 201 - Buckrun Limited (Grant County):**  
**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).

**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;~~

PERMANENT

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 401 - Rainier Timber Company (Pierce County):**

**Kapowsin North:**

**T19N R06E** all of section 24; section 12 SWSE; section 13 except private holdings in W 1/2; section 14 N of S Prairie Ck except NW and except private holdings in SW; section 25 N of S Prairie Ck;

**T19N R07E** all of sections 14, 15, 18, 19, 20, 21, 22, 27, 28, 29; sections 6, 7, 8, 10, 11 S of White River except private holdings; section 9 E 1/2 S of White River except private holdings; except private holdings section 16 except NWNW and NWNENW; section 17 S of White River except N 1/2 NE; section 30 E 1/2 N of S Prairie Ck; sections 31, 32 N of S Prairie Ck; section 33 except S 1/2 SWSE; section 34 W 1/2;

**T18N R07E** section 3 N of E Fork S Prairie Ck; section 5 E 1/2 N of S Prairie Ck;

**Kapowsin Central:**

**T19N R05E** section 34 SE S of Patterson Road;

**T19N R06E** section 32 S of Carbon River;

**T18N R05E** all of sections 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 34, 35, 36; section 1 E 1/2 except SWSE and W 1/2 SESE; section 2 S 1/2 except private holdings in SE; section 3 N of Coplar Ck except NWNW; section 9 SE except SWSE; section 10 except NW and E 1/2 SW; section 15 except private holdings in SW; section 16 except W 1/2 NW and except private holdings in E 1/2 NW; section 21 NE and E 1/2 SE and NENW; section 28 E 1/2 and S 1/2 SW; section 29 N of Puyallup River except private holdings in E 1/2 and NW; section 32 N of Puyallup River or E of 1 Road; section 33 except private holdings in S 1/2 of S 1/2;

**T18N R06E** all of sections 7, 8, 17, 18, 19, 20, 29, 30, 32; sections 4, 5, 9 S of Carbon River; section 6 except private holdings in SWSW; section 16 W 1/2; section 21 W 1/2; section 28 except E 1/2 of E 1/2; section 31 except private holdings in NWNW; section 33, 34 S of Highway 165;

**T17N R05E** all of sections 1, 2; sections 3, 10, 11, 12 N of Puyallup River;

**T17N R06E** all of sections 3, 4, 5, 6, 8, 9, 10, 15, 16, 22, 23, 24, 25, 26, 27, 35, 36; sections 2, 11, 13, 14 S of Highway 165; sections 7, 17, 18, 20, 21, 28, 33, 34 N of Puyallup River;

**T17N R07E** sections 32, 33; section 29 except N 1/2 of N 1/2;

**T16N R06E** all of section 1; sections 2, 3, 11, 12 N of Puyallup River;

**T16N R07E** all of sections 4, 5, 6, 7, 8, 16; sections 17, 18, 20, 21, 33 N of S Fork Puyallup River; section 28 N of S Fork Puyallup River except E 1/2 NE;

**Kapowsin South:**

**T17N R04E** all of section 36; sections 23, 24 E of Ohop Creek except private holdings; section 25 N 1/2 except private holdings; section 26 NE E of Ohop Creek except private holdings; section 35 E of Orville Road and E of Ohop Lake;

**T17N R05E** all of sections 9, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36; section 3 SWSW except private holdings; section 4 SW and SWNW except private holdings; section 5 S of Kapowsin Lake except NENE and except private holdings in S 1/2 sections 7, 18 S of Kapowsin Lake; section 8 except private holdings in N 1/2 section 10 except private holdings in N 1/2; section 11 SW S of Flume and S 1/2 SE S of Flume; section 13 S of Flume except NENE; section 19 except SWSW; sections 20 except private holdings in NE; section 21 except private holdings in NW; section 30 except W 1/2 NW and NWSW;

**T17N R06E** all of sections 19, 30, 32; section 18 SW S of Flume; section 20 S of Flume except private holdings in N 1/2; section 29 S of Flume except N 1/2 SE and SWNE; section 31 except W 1/2 NE; section 33 S of Flume except private holdings;

**T16N R05E** section 2 NW; section 6 N 1/2 except private holdings; section 36 E of Busywild Creek;



**T16N R06E** all of sections 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36; sections 2, 11, 12 S of Puyallup River; section 3 except private holdings in NW;

**T16N R07E** all of sections 19, 30, 31; sections 17, 18, 20, 21, 28, 33 S of S Fork Puyallup River;

**T15N R06E** all of sections 1, 2, 3, 4, 5, 11, 12, 13, 14, 15, 22; sections 6, 8, 9, 10 N of Busywild Creek; section 23 except SW; section 24 except E 1/2 SE.

**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 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, 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 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.

**WSR 04-03-050**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)  
 [Filed January 15, 2004, 4:14 p.m.]

Date of Adoption: January 8, 2004.

Purpose: The amended rule is to correct an error by changing the reference listed in subsection (2)(d) from WAC 388-08-413 to chapter 388-02 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 388-426-0005.

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

Adopted under notice filed as WSR 03-23-110 on November 18, 2003.

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: Thirty-one days after filing.

January 8, 2004

Brian H. Lindgren, Manager  
 Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 99-17-025, filed 8/10/99, effective 10/1/99)

**WAC 388-426-0005 Client complaints.** (1) Clients who believe they have been discriminated against by the department for reason of race, color, creed, political affiliation, national origin, religion, age, gender, disability, or birthplace have the right to file a complaint. Clients can file discrimination complaints with the:

(a) DSHS, Division of Access and Equal Opportunity, PO Box 45012, Olympia, WA, 98504;

(b) Administrator, Food and Nutrition Services, 3101 Park Center Drive, Alexandria, VA, 22302; or

(c) Secretary of Agriculture, U.S. Department of Agriculture, Washington D.C., 20250.

(2) Clients with a complaint about a department decision or action have the right to present their complaint, in writing, to a supervisor.

(a) Within ten days of the receipt of the complaint:

(i) A decision will be made on the client's complaint; and

(ii) The client will be sent written notice of the decision, including information about the right to further review by the local office administrator.

(b) Clients not satisfied with the decision of a supervisor have the right to present a written complaint to the local office administrator. Within ten days of the receipt of the complaint:

(i) A decision will be made on the complaint, and

(ii) The client will be sent written notice of the decision.

(c) Written notice of the administrator's decision concludes the complaint procedure.

(d) The filing of a written complaint does not prevent a client from requesting a fair hearing under ((WAC 388-08-413)) chapter 388-02 WAC.

(e) Clients have the right to speak to a worker's supervisor or have a decision or action reviewed by the supervisor, whether or not a formal complaint has been filed.

**WSR 04-03-051**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed January 15, 2004, 4:16 p.m.]

Date of Adoption: January 8, 2004.

Purpose: This change is necessary because the dependent care maximum deductions were listed under the wrong age group in error. The deduction for children two years of age and under is more than the deduction for children over two years of age. This rule is to correct this error.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0170.

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

Adopted under notice filed as WSR 03-23-111 on November 18, 2003.

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: Thirty-one days after filing.

January 8, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-450-0170 TANF/SFA earned income incentive and deduction.** This section applies to TANF/SFA, RCA, and medical programs for children, pregnant women, and families except as specified under WAC 388-450-0210.

(1) If a client works, the department only counts some of the income to determine eligibility and benefit level.

(2) We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

(3) If you pay for care before we approve your benefits, we subtract the amount you pay for those dependent children or incapacitated adults who get cash assistance with you.

(a) The amount we subtract is:

(i) Prorated according to the date you are eligible for benefits;

(ii) Cannot be more than your gross monthly income; and

(iii) Cannot exceed the following for each dependent child or incapacitated adult:

**Dependent Care Maximum Deductions**

Hours Worked Per Month	Child (( <del>Under</del> ) & Under Two Years of Age	Child Over Two Years of Age or Incapacitated Adult
0 - 40	\$ (( <del>43.75</del> ) <u>50.00</u> )	\$ (( <del>50.00</del> ) <u>43.75</u> )
41 - 80	\$ (( <del>87.50</del> ) <u>100.00</u> )	\$ (( <del>100.00</del> ) <u>87.50</u> )
81 - 120	\$ (( <del>131.25</del> ) <u>150.00</u> )	\$ (( <del>150.00</del> ) <u>131.25</u> )
121 or More	\$ (( <del>175.00</del> ) <u>200.00</u> )	\$ (( <del>200.00</del> ) <u>175.00</u> )

(b) In order to get this deduction:

(i) The person providing the care must be someone other than the parent or stepparent of the child or incapacitated adult; and

(ii) You must verify the expense.

**WSR 04-03-081**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 20, 2004, 11:35 a.m., effective May 1, 2004]

Date of Adoption: January 20, 2004.

Purpose: Chapter 296-809 WAC, Confined spaces and chapter 296-62 WAC, Part M, confined spaces. The confined spaces rule was rewritten and reorganized for clarity and ease of use for employers and employees. We eliminated unnecessary requirements and outdated terminology.

Citation of Existing Rules Affected by this Order: Amending WAC 296-62-141, confined space.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Adopted under notice filed as WSR 03-19-106 on September 16, 2003.

Changes Other than Editing from Proposed to Adopted Version: The department has made some corrections and clarifying changes to the rule. As a result of written and oral

PERMANENT

comments received, the following sections are being changed as indicated below:

### **Chapter 296-809 WAC, Confined spaces.**

#### **WAC 296-809-100 Scope.**

- Reworded and reformatted Table 1 for clarity.
- Added titles to the WAC sections of the "list of other rules that apply to your workplace," and moved this list to the resources section of the rule.

#### **WAC 296-809-20002 Identify permit-required confined spaces.**

- Added WAC titles to WAC numbers in first paragraph of "important" section.
- Correction in first paragraph of the "important" section: "See the scope section" was corrected to "see the resources section."
- Reworded the second bullet for clarity.
- Changed definition of "permit required confined space" for clarity.

#### **WAC 296-809-20004 Inform employees and control entry to permit-required confined spaces.**

- Changed wording in note under subsection (1) "other similar language" was changed to "other similar wording."

#### **WAC 296-809-20006 Follow these requirements when you contract with another employer to enter your confined space.**

- Reworded the "important" statement for clarity.
- Changed first bullet "involves entry of..." was changed to "involves entry into..."
- Changed wording in subbullet "debrief..." was changed to "discuss entry operations with..."

#### **WAC 296-809-300.**

- Corrected the title of this section to be consistent with the rule requirements: "Permit space entry program" was changed to "permit-required confined space program."

#### **WAC 296-809-30002 Develop a written permit-required confined space entry program.**

- Reworded the "important:" section for clarity.
- Rearranged the bulleting order of the requirements under the first "you must" statement, to be consistent with the layout of the rule requirements.
- Reworded the "note" for clarity.
- Reworded the "link" to indicate the guide will be located in the resource section as well as the website.

#### **WAC 296-809-50002 Implement procedures for entry permits.**

- Reworded the fourth main bullet by making it into a first and second level bullet.
- Reworded last bullet in this section for clarity.

#### **WAC 296-809-50004 Use an entry permit that contains all required information.**

- Reworded the first bullet for clarity.
- Reworded subbullet "rescue and emergency services available..." for clarity.

#### **WAC 296-809-50006 Keep and review your entry permits.**

- Added "you must" above the first requirement.
- Added a note for clarity under the first subbullet provide "examples of circumstances requiring review of programs."
- Added a "you must" after the note.

#### **WAC 296-809-50008 Prevent unauthorized entry.**

- Added wording to first bullet for clarity.

#### **WAC 296-809-50012 Evaluate and control hazards for safe entry.**

- Changed wording in the first subbullet for clarity.
- Deleted "or" after wording "subsequent testing," as it was not needed.
- The department inadvertently left out one of the requirements and added it back in for clarity. The requirement is: "Continuously monitor conditions in areas where entrants are working, when isolation of the space is not feasible. Examples would be a large space or space that is part of a continuous system, such as a sewer."
- Eliminated the note in Table 3 for clarity.

#### **WAC 296-809-50014 Make sure you have adequate rescue and emergency services available.**

- Moved subbullet wording "make sure that at least one member of the rescue team..." from subsection (2) to subsection (1), for better organization.
- Corrected reference in note: Chapter 296-841 WAC, Respiratory hazards, was changed to chapter 296-842 WAC, Respirators.

#### **WAC 296-809-50018 Make sure entry supervisors perform their responsibilities and duties.**

- Added "the" to the last bullet in the note for clarity.

#### **WAC 296-809-50020.**

- Edited the second bullet in the "important" section for clarity.
- Added "you must" as needed before the first requirement.

#### **WAC 296-809-50022.**

- Deleted "or" after "solvents," as it is not needed.

#### **WAC 296-809-600 Alternate entry procedures.**

- On summary page:
  - Reworded the "Your responsibility" statement for clarity.
  - Corrected the WAC 296-809-300 title.

**WAC 296-809-60002 Make sure the following conditions are met if using alternate entry procedures.**

- Added wording and reformatted first bullet for clarity.

**WAC 296-809-700 Nonpermit confined space requirements.**

- On summary page reworded title for WAC 296-809-70004: "Reclassify nonpermit confined spaces if conditions change" was changed to "Reevaluate nonpermit confined spaces if hazards develop."

**WAC 296-809-70002 Follow these requirements when classifying a confined space as a nonpermit confined space.**

- In first bullet "...reclassified as nonpermit" was changed to "...classified as nonpermit confined spaces."
- Changed wording in note for clarity:
  - Added a bullet for clarification: "Use of lock out/tag out, as found in WAC 296-24-110, needs to be evaluated to determine if it fully eliminates the hazard."
  - Reworded and corrected the WAC title in the third bullet.
- Added "you must" after the note.

**WAC 296-809-70004 Reclassify nonpermit confined spaces if conditions change.**

- The WAC section title was changed for clarity: "Reclassify nonpermit confined spaces if conditions change" was changed to: "Reevaluate nonpermit confined spaces if hazards develop."

**WAC 296-809-800 Definitions.**

- Reworded the definition of permit-required confined spaces for clarity and to be consistent with changes in WAC 296-809-20002.
- The definition of hazardous atmosphere was edited to reflect the correct chapter references.

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 31, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 31, 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 31, Amended 1, Repealed 0.

Effective Date of Rule: May 1, 2004.

January 20, 2004

Paul Trause

Director

**AMENDATORY SECTION** (Amending WSR 99-22-046, filed 10/29/99, effective 2/1/00)

**WAC 296-62-141 Permit-required confined spaces.**

**Note:** The requirements in WAC 296-62-141 through 296-62-14176 apply only to agriculture. The requirements for all other industries relating to confined spaces have been moved to chapter 296-809 WAC. Confined spaces.

**Chapter 296-809 WAC**

**CONFINED SPACES**

**NEW SECTION**

**WAC 296-809-100 Scope.** This chapter applies to all confined spaces and provides requirements to protect employees from the hazards of entering and working in confined spaces. This chapter applies in any of the following circumstances:

- You have confined spaces in your workplace.
- Your employees will enter another employer's confined spaces.
- A contractor will enter your confined spaces.
- You provide confined space rescue services.

You can use Table 1 to help you decide which requirements to follow for confined spaces.

**Table 1  
Requirements for Confined Spaces**

For confined spaces that are	The requirements in the following sections apply					
	200	300	400	500	600	700
Permit-required confined spaces	X	X	X	X	X	X
Entered by a contractor	X	X	X	X	X	X
Nonpermit confined spaces	X					X
Never entered	X					
<b>If you only:</b>						
Use alternate entry procedures	X	X	X		X	
Have a contractor enter your space	X					
Are a rescue service provider		X	X	X		

PERMANENT

**Definition:**

A **confined space** is a space that is ALL of the following:

- Large enough and arranged so an employee could fully enter the space and work.
- Has limited or restricted entry or exit. Examples of spaces with limited or restricted entry are tanks, vessels, silos, storage bins, hoppers, vaults, excavations, and pits.
- Not primarily designed for human occupancy.

Rules in other chapters that cover confined spaces may also apply to your work. You can find a list of these rules in the resources section of this chapter.

- Note:**
- Requirements in other chapters may apply to your work. You will find some safety and health requirements are addressed on a broad level in this chapter, while being addressed for a specific application in another rule. When this happens, both requirements apply and should not conflict. When a conflict does occur, you need to follow the more specific requirement.
  - If you are uncertain which requirements to follow, contact your local labor and industries (L&I) office.
  - For a complete list of local L&I offices, see the resources section of the safety and health core rules, chapter 296-800 WAC.

**NEW SECTION**

**WAC 296-809-200 Summary. Identifying and controlling permit-required confined spaces.**

**Your responsibility:**

To identify your permit-required confined spaces and control employee entry.

**You must:**

Identify permit-required confined spaces.

**WAC 296-809-20002**

Inform employees and control entry to permit-required confined spaces.

**WAC 296-809-20004**

Follow these requirements when you contract with another employer to enter your confined space.

**WAC 296-809-20006****NEW SECTION**

**WAC 296-809-20002 Identify permit-required confined spaces. IMPORTANT:**

If your workplace contains only nonpermit confined spaces and your employees do not enter another employer's confined space, you may follow only the requirements in:

- WAC 296-809-200, Identifying and controlling permit-required confined spaces; and
- WAC 296-809-700, Nonpermit confined space requirements.

- See the resources section for other chapters covering confined spaces that may apply to your work.

**You must:**

- Identify all permit-required confined spaces in your workplace.
- Assume any confined space is a permit-required confined space, unless you determine the space to be a nonpermit confined space.

- If you enter the space to determine the hazards, follow the requirements in WAC 296-809-500, Permit entry procedures.

- If you evaluate the confined space and there are no potential or actual hazards, you can consider it to be a nonpermit confined space.

- Document your determination that the space is nonpermit, as required by WAC 296-809-700.

**Definitions:**

A **permit-required confined space or permit space** is a confined space that has one or more of the following characteristics capable of causing death or serious physical harm:

- Contains or has a potential to contain a hazardous atmosphere.
- Contains a material with the potential for engulfing someone who enters the space.
- Has an internal configuration that could allow someone entering to be trapped or asphyxiated by inwardly converging walls or by a floor, which slopes downward and tapers to a smaller cross-section.
- Contains any physical hazard. This includes any recognized health or safety hazards including engulfment in solid or liquid material, electrical shock, or moving parts.
- Contains any other recognized safety or health hazard that could either:

- Impair the ability to self rescue;

**OR**

- Result in a situation that presents an immediate danger to life or health.

A **nonpermit confined space** is a confined space that does NOT contain actual hazards or potential hazards capable of causing death or serious physical harm.

**NEW SECTION**

**WAC 296-809-20004 Inform employees and control entry to permit-required confined spaces.**

**You must:**

(1) Provide information about confined spaces as follows:

- Make available to affected employees and their authorized representatives all information and documents required by this chapter.
- Inform affected employees about the existence, location, and danger of any permit-required confined spaces in your workplace by:
  - Posting danger signs; or
  - Using any other equally effective means to inform employees.

**Note:** A sign reading "Danger-Permit Required Confined Space, DO NOT ENTER" or using pictures or other similar wording employees can understand would satisfy the requirement for a sign.

**You must:**

(2) Take effective measures to prevent unauthorized employees from entering permit-required confined spaces.

**Note:** Examples of measures to prevent employee entry include padlocks, bolted covers, special tools to remove covers, and providing employee training.

NEW SECTION

**WAC 296-809-20006 Follow these requirements when you contract with another employer to enter your confined space.**

**IMPORTANT:**

The contractor is responsible for following all confined space requirements in this chapter and in other rules that apply. For a list of other rules that may apply, see the resources section of this chapter.

**You must:**

- Do all of the following if you arrange to have another employer (contractor) perform work that involves entry into your permit-required confined space:

- Inform the contractor:

- That the workplace contains permit-required confined spaces and entry is allowed only if the applicable requirements of this chapter are met.

- Of the identified hazards and your experience with each permit-required confined space.

- Of any precautions or procedures you require for the protection of employees in or near spaces where the contractor will be working.

- Coordinate entry operations with the contractor, when either employees or employers from the different companies will be working in or near permit-required confined spaces.

- Discuss entry operations with the contractor when they are complete. Include the following in your discussion:

- The program followed during confined space entry; and

- Any hazards confronted or created.

**PERMIT-REQUIRED CONFINED SPACE PROGRAM**NEW SECTION

**WAC 296-809-300 Summary.**

**Your responsibility:**

- To develop your permit-required confined space program and practices.

**IMPORTANT:**

This section applies if employees will enter a permit-required confined space.

**You must:**

- Develop a written permit-required confined space program.

**WAC 296-809-30002**

- Meet these additional requirements if your employees enter another employer's confined space.

**WAC 296-809-30004**

NEW SECTION

**WAC 296-809-30002 Develop a written permit-required confined space program.**

**IMPORTANT:**

- Identify and evaluate the hazards of permit-required confined spaces and the work performed, to assist you in developing your entry program.

**You must:**

- Develop a written program, before employees enter, that describes the means, procedures, and practices you use for the safe entry of permit-required confined spaces as required by this chapter. Include the following when applicable to your confined space entry program:

- Documentation of permit entry procedures.

- Documentation used for alternate entry procedures.

- How to reclassify permit-required confined spaces to nonpermit spaces.

- Designation of employee roles, such as entrants, attendants, entry supervisors, rescuers, or those who test or monitor the atmosphere in a permit-required space.

- Identification of designated employee duties.

- Training employees on their designated roles.

- How to identify and evaluate hazards.

- Use and maintenance of equipment.

- How to prevent unauthorized entry.

- How to coordinate entry with another employer.

- How to rescue entrants.

**Note:** For alternate entry, your written program only needs to meet the requirements of WAC 296-809-400, Employee training, and WAC 296-809-600, Alternate entry procedures, of this chapter.

**You must:**

- Consult with affected employees and their authorized representatives when developing and implementing all aspects of your permit-required confined space program.

- Make the written program available to employees and their authorized representatives.

- Update your written program as necessary.

**Link:** You can find a sample permit-required confined space entry program in the user guide located in the resources section of this chapter or by visiting the labor and industries website at <http://www.lni.wa.gov/wisha/publications/App>.

NEW SECTION

**WAC 296-809-30004 Meet these additional requirements if your employees enter another employer's confined space.**

**You must:**

- Obtain any available information about permit-required confined space hazards and entry operations from the host employer.

- Coordinate entry operations with any other employers whose employees will be working in or near the permit-required confined space.

- Inform the host employer, either through a debriefing or during entry operations, about:

- The entry program you will follow; and

- Any hazards you confronted or created in the space during entry operations.

**EMPLOYEE TRAINING**NEW SECTION

**WAC 296-809-400 Summary.**

**Your responsibility:**

**To make sure employees are trained to perform their designated roles safely.**

**You must:**

Provide employee training.

**WAC 296-809-40002**

Certify employee proficiency.

**WAC 296-809-40004**

**NEW SECTION**

**WAC 296-809-40002 Provide employee training.**

**You must:**

- Provide training to each employee involved in permit-required confined space activities, so they acquire the understanding, knowledge and skills necessary to safely perform assigned duties.

- Establish employee proficiency in their confined space duties.

- Introduce new or revised procedures as necessary.

**Note:** Employers can determine employee proficiency by:

- Observing employee performance during training exercises that simulate actual confined space conditions.
- A comprehensive written examination; or
- Any other method that is effective for the employer.

**You must:**

- Provide training at the following times:

- Before an employee is first assigned to duties covered by this chapter.

- Before there is a change in an employee's assigned duties.

- When there is a permit-required confined space hazard for which the employee has not already been trained.

- If you have reason to believe that there are either:

- Deviations from your procedures for permit-required confined space entry; or

- Employee knowledge or use of your procedures is inadequate.

**NEW SECTION**

**WAC 296-809-40004 Certify employee proficiency.**

**You must:**

- Certify employee proficiency in their assigned duties.

- Make sure the certification:

- Contains each employee's name, the trainer's written or electronic signature or initials, and the dates of training.

- Is available for inspection by employees and their authorized representatives.

**PERMIT ENTRY PROCEDURES**

**NEW SECTION**

**WAC 296-809-500 Summary.**

**Your responsibility:**

To establish procedures for the safe permit-required entry of confined spaces.

Implement procedures for entry permits.

**WAC 296-809-50002**

Use an entry permit that contains all required information.

**WAC 296-809-50004**

Keep and review your entry permits.

**WAC 296-809-50006**

Prevent unauthorized entry.

**WAC 296-809-50008**

Provide, maintain, and use proper equipment.

**WAC 296-809-50010**

Evaluate and control hazards for safe entry.

**WAC 296-809-50012**

Make sure you have adequate rescue and emergency services available.

**WAC 296-809-50014**

Use nonentry rescue systems or methods whenever possible.

**WAC 296-809-50016**

Make sure entry supervisors perform their responsibilities and duties.

**WAC 296-800-50018**

Provide an attendant outside the permit-required confined space.

**WAC 296-809-50020**

Make sure entrants know the hazardous conditions and their duties.

**WAC 296-809-50022**

Implement procedures for ending entry.

**WAC 296-809-50024**

**NEW SECTION**

**WAC 296-809-50002 Implement procedures for entry permits.**

**You must:**

- Identify and evaluate, before employees enter, potential hazards from:

- The permit-required confined space; and

- The work to be performed.

- Complete an entry permit before entry is authorized, documenting that you have completed the means, procedures and practices necessary for safe entry and work.

- Make sure that entrants or their representatives have an opportunity to observe any monitoring or testing, or any actions to eliminate or control hazards, performed to complete the permit.

- Identify the entry supervisor.

- Make sure the entry supervisor signs the entry permit, authorizing entry, before the space is entered.

- Make the completed permit available to entrants or their authorized representatives at the time of entry.

- Do this by either posting the completed permit at the entry location, or by any other equally effective means.

- Make sure the duration of the permit does not exceed the time required to complete the assigned task or job identified on the permit.

- Note any problems encountered during an entry operation on the permit. Use the information to make appropriate revisions to your program, entry operations, means, systems, procedures and practices.

NEW SECTION

**WAC 296-809-50004 Use an entry permit that contains all required information.**

**You must:**

• Make sure your entry permit identifies **all** of the following that apply to your entry operation:

- The space to be entered.
- Purpose of the entry.
- Date and the authorized duration of the entry permit.
- Hazards of the space to be entered.
- Acceptable entry conditions.
- Results of initial and periodic tests performed to evaluate and identify the hazards and conditions of the space, accompanied by the names or initials of the testers and by an indication of when the tests were performed.

- Appropriate measures used before entry to isolate the space, and eliminate or control hazards.

■ Examples of appropriate measures include the lock-out or tagging of equipment and procedures for purging, inerting, ventilating, and flushing permit-required confined spaces.

- Names of entrants and current attendants:

■ Other means include the use of rosters or tracking systems as long as the attendant can determine quickly and accurately, for the duration of the permit, which entrants are inside the space.

- The current entry supervisor.
- A space for the signature or initials of the original supervisor authorizing entry.
- Communication procedures for entrants and attendants to maintain contact during the entry.

- Equipment provided for safe entry, such as:

- Personal protective equipment (PPE).
- Testing equipment.
- Communications equipment.
- Alarm systems.
- Rescue equipment.

- Rescue and emergency services available, and how to contact them. Include equipment to use, and names and contact information.

- Other information needed for safety in the particular confined space.

- Additional permits issued for work in the space, such as for hot work.

NEW SECTION

**WAC 296-809-50006 Keep and review your entry permits.**

**You must:**

- Keep entry permits for at least one year.
- Keep entry permits or other atmospheric monitoring records that show the actual atmosphere an employee entered or worked in, as employee exposure records.

• Review your permit-required confined space entry program as follows:

- Conduct a review when you have any reason to believe your entry program may not protect employees, and revise your program before allowing subsequent entries.

**Note:** Examples of circumstances requiring the review of your program include the following:

- There is unauthorized entry of a permit space.
- A permit space hazard not covered by the permit is found.
- A condition prohibited by the permit occurs.
- An injury or near-miss occurs during entry.
- There is a change in the use or configuration of a permit space.
- An employee complains about the effectiveness of the program.

**You must:**

- Review canceled entry permits within one year following each entry to evaluate:

- Your permit-required confined space program.
- The protection provided to employees entering permit-required confined spaces.

- Update your written permit-required confined space entry program as necessary.

**Note:** Employers may perform a single annual review covering all entries performed during a twelve-month period. If no entry is performed during a twelve-month period, no review is necessary.

**Reference:** Keep employee exposure records according to chapter 296-62 WAC, Part B, Access to records.

NEW SECTION

**WAC 296-809-50008 Prevent unauthorized entry.**

**You must:**

• Implement measures necessary to prevent unauthorized entry into permit-required confined spaces, when conducting authorized entry.

**Note:** • When removing entrance covers to open the confined space, protect entrants and those outside the confined space from hazards.

• Examples of measures to prevent unauthorized entry are signs, barricades, warning tape, and an attendant.

NEW SECTION

**WAC 296-809-50010 Provide, maintain, and use proper equipment.**

**You must:**

• Provide the equipment in Table 2, when needed and at no cost to employees.

• Make sure that employees use provided equipment properly.

• Maintain the provided equipment.

**Table 2  
Equipment Provided to Employees at No Cost**

Type of equipment	For
Testing and monitoring equipment	Evaluating permit-required confined space conditions
Ventilating equipment	Obtaining and maintaining acceptable entry conditions
Communication equipment	Effective communication between the attendant and the entrants and to initiate rescue when required

PERMANENT



**Table 2**  
**Equipment Provided to Employees at No Cost**

Type of equipment	For
Personal protective equipment (PPE)	Protecting employees from hazards of the space or the work performed
Lighting equipment	Employees to see well enough to work safely and to exit the space quickly in an emergency
Barriers or shields, such as pedestrian, vehicle or other barriers	Protecting employees from hazards outside of the space
Ladders	Safe entry and exit by entrants
Rescue and emergency equipment, except for equipment provided by the rescue service provider	Safe and effective rescue
Any other equipment	Safe entry into and rescue from permit-required confined spaces

**NEW SECTION**

**WAC 296-809-50012 Evaluate and control hazards for safe entry.**

- Evaluate and control hazards for safe entry into permit-required confined spaces by doing all the following:
  - Test for atmospheric hazards, in this order:
    - Oxygen.
    - Combustible gases and vapors.
    - Toxic gases and vapors.
  - Provide each entrant or their authorized representative an opportunity to observe any of the following:
    - Preentry testing.
    - Subsequent testing.
    - Monitoring of permit-required spaces.
  - Reevaluate the permit-required space in the presence of any entrant, or their authorized representative, who requests this to be done because they have reason to believe that the evaluation of that space may not have been adequate.
  - Upon request, immediately provide each entrant or their authorized representative, with the results of any testing required by this rule.
  - Continuously monitor conditions in areas where entrants are working, when isolation of the space is not feasible.
- Examples would be a large space or space that is part of a continuous system, such as a sewer.
- Evaluate space conditions during entry as follows:

**Table 3**  
**Evaluating Space Conditions**

You must:	In order to
Test conditions before entry	Determine that acceptable entry conditions exist before entry is authorized by the entry supervisor
Test or evaluate space conditions during entry	Determine that acceptable entry conditions are being maintained during entry operations
Evaluate entry operations	Make sure entrants of more than one employer working at the same time in or around a permit-required confined space, do not endanger each other

**IMPORTANT:**

- This section applies to both:
- Employers whose employees use permit entry procedures; and
  - Employers who provide rescue services.

**NEW SECTION**

**WAC 296-809-50014 Make sure you have adequate rescue and emergency services available.**

**You must:**

- (1) Make sure you have adequate rescue and emergency services available during your permit-required confined space entry operations.
  - Evaluate and select rescue teams or services who can:
    - Respond to a rescue call in a timely manner. Timeliness is based on the identified hazards. Rescuers must have the capability to reach potential victims within an appropriate time frame based on the identified permit space hazards.
    - Proficiently rescue employees from a permit-required confined space in your workplace. Rescuers must have the appropriate equipment for the type of rescue.
  - Make sure that at least one member of the rescue team or service holds a current certification in first aid and cardiopulmonary resuscitation (CPR).
    - Inform each rescue team or service about the hazards they may confront when called to perform rescue.
    - Provide the rescue team or service with access to all permit spaces from which rescue may be necessary.
    - This will allow them to develop appropriate rescue plans and to practice rescue operations.

**Note:**

What will be considered timely will vary according to the specific hazards involved in each entry. For example, chapter 296-842 WAC, Respirators, requires that employers provide a standby person or persons capable of immediate action to rescue employee(s) for work areas considered to contain an IDLH atmosphere.

**You must:**

- (2) Provide employees, assigned to provide permit-required confined space rescue and emergency services, with:
  - Personal protective equipment (PPE) needed for safe entry.
  - Other equipment required to conduct rescues safely.

PERMANENT

- Training so they are:
  - Proficient in the use of the PPE and other equipment.
  - Proficient as an entrant of permit-required confined spaces.
  - Able to safely perform assigned rescue and emergency duties.
  - Knowledgeable in basic first aid and cardiopulmonary resuscitation (CPR).
- Practice sessions for permit-required confined space rescues **at least** once every twelve months where dummies, manikins, or actual persons are removed from either:
  - The actual permit spaces; or
  - Representative permit spaces that simulate the opening size, configuration, and accessibility, of permit spaces where rescue will be performed.
- (3) Establish procedures for:
  - Contacting rescue and emergency services.
  - Rescuing entrants from permit-required confined spaces.
  - Providing necessary emergency services to rescued entrants.
  - Preventing unauthorized persons from attempting a rescue.

**NEW SECTION**

**WAC 296-809-50016 Use nonentry rescue systems or methods whenever possible.**

**You must:**

- Use nonentry retrieval systems or methods to rescue entrants in a permit-required confined space unless this:
  - Would increase the overall risk of injury to entrants; or
  - Would not contribute to the rescue of the entrant.
- Make sure each entrant uses a chest or full-body harness, with a retrieval line attached to the harness at one of the following locations:
  - At the center of the employee's back, near shoulder level.
  - Above the employee's head.
  - At another point which presents a profile small enough for the successful removal of the employee.
- Attach the retrieval line to a mechanical device or fixed point outside the space, so rescue can begin as soon as necessary.
- Make sure a mechanical device is available to retrieve entrants from vertical spaces more than five feet (1.52 m) deep.

**Note:** When you can demonstrate that the use of a chest or full-body harness is not feasible or creates a greater hazard, then you may use wristlets or another method shown to be the safest and most effective alternative.

**NEW SECTION**

**WAC 296-809-50018 Make sure entry supervisors perform their responsibilities and duties.**

**You must:**

- Make sure that an entry supervisor:
  - Authorizes the entry into a permit-required confined space by signing the entry permit.
  - Oversees entry operations.

- Knows about the hazards that may be faced during entry, including the mode, signs or symptoms, and consequences of the exposure.
- Verifies and checks **all** of the following:
  - The appropriate entries have been made on the permit.
  - All tests specified by the permit have been conducted.
  - All procedures and equipment specified by the permit are in place before approving the permit and allowing entry to the space.
- Terminates the entry and cancels the permit when:
  - The assigned task or job has been completed.
  - A condition in the space that is not covered by the entry permit is discovered.
- Verifies that rescue services are available and that there is a way to contact them.
- Removes unauthorized individuals who enter or attempt to enter the permit-required confined space during entry operations.
- Determines that entry operations remain consistent with the terms of the entry permit and acceptable entry conditions are maintained:
  - Whenever responsibility for a permit-required space entry operation is transferred; and
  - At regular intervals dictated by the hazards and operations performed within the space.

- Note:**
- Make sure entry supervisors have the required knowledge and proficiency to perform the job duties and responsibilities required by this chapter.
  - The entry supervisor may also perform other duties under this chapter, such as attendant or entrant, if they are trained and proficient in those duties.
  - The responsibility of the entry supervisor may be passed from one supervisor to another during an entry operation.

**NEW SECTION**

**WAC 296-809-50020 Provide an attendant outside the permit-required confined space.**

**IMPORTANT:**

- The number of attendants assigned should be tailored to the requirements of the space and the work performed.
- You need to assess if it is appropriate or possible to have multiple permit spaces monitored by a single attendant, or have an attendant stationed at a location outside each space. Video cameras and radios are examples of tools that may assist an attendant monitoring more than one space.
- Attendants may be stationed at any location outside the permit-required confined space if the duties described in this section can be effectively performed for each space that is monitored.

**You must:**

- Provide at least one attendant outside the permit-required confined space during entry operations.
- Make sure each permit-required confined space attendant:
  - Understands the hazards that may be faced during entry, including the mode, signs or symptoms, and results of exposure to the hazards.

PERMANENT

- Is aware of the behavioral effects of exposure to the hazard.
- Continuously maintains an accurate count of entrants in the space.
- Maintains an accurate record of who is in the permit-required confined space.
- Communicates with entrants as necessary to monitor their status or alert them of the need to evacuate the space.
- Monitors activities inside and outside the space to determine if it is safe for entrants to remain in the space.
- Orders entrants to evacuate the space immediately if **any** of the following conditions occur:
  - A prohibited condition.
  - The behavioral effects of hazardous exposure in an entrant.
  - A situation outside the space that could endanger entrants.
  - The attendant cannot effectively and safely perform all the duties required in this chapter.
- Takes the following actions when unauthorized persons approach or enter a space:
  - Warn unauthorized persons to stay away from the space.
  - Tells the unauthorized persons to exit immediately if they have entered the space.
  - Informs entrants and the entry supervisor if unauthorized persons have entered the space.
- Performs nonentry rescues as specified by your rescue procedure.
- Has the means to respond to an emergency affecting one or more of the permit spaces being monitored without preventing performance of the attendant's duties to the other spaces being monitored.
- Carries out no duties that might interfere with their primary duty to monitor and protect the entrants.
- Calls for rescue and other emergency services as soon as entrants may need assistance to escape from the space.
- Monitors entry operations until relieved by another attendant or all entrants are out of the space.

#### NEW SECTION

#### **WAC 296-809-50022 Make sure entrants know the hazardous conditions and their duties.**

##### **You must:**

- Make sure that all entrants:
  - Know the hazards they may face during entry, including the mode, signs or symptoms, and results of exposure to the hazards.
  - Use equipment properly.
  - Communicate with the attendant as necessary so the attendant can:
    - Monitor entrant status.
    - Alert entrants of the need to evacuate.
  - Alert the attendant whenever either of these situations exist:
    - A warning sign or symptom of exposure to a dangerous situation such as, behavioral changes, euphoria, giddiness potentially from lack of oxygen or exposure to solvents.
    - A prohibited condition.

- Exit from the permit-required confined space as quickly as possible when one of the following occurs:

- The attendant or entry supervisor gives an order to evacuate.
- The entrant recognizes any warning sign or symptom of exposure to a dangerous situation.
- The entrant detects a prohibited condition.
- An evacuation alarm is activated.

#### NEW SECTION

#### **WAC 296-809-50024 Implement procedures for ending entry.**

##### **You must:**

- Make sure you terminate the entry when entry operations are completed, including securing an entrance cover and canceling the permit.

#### NEW SECTION

#### **WAC 296-809-600 Alternat entry procedures.**

##### **Summary:**

##### **Your responsibility:**

**To choose alternate entry procedures for spaces where the only hazard is a hazardous atmosphere.**

##### **IMPORTANT:**

In addition to this section, you also need to meet the requirements in the following sections of this chapter:

- WAC 296-809-200, Identifying and controlling permit-required confined spaces.
- WAC 296-809-300, Permit-required confined space program.
- WAC 296-809-400, Employee training.

##### **You must:**

Make sure the following conditions are met if using alternate entry procedures.

##### **WAC 296-809-60002**

Follow these alternate entry procedures for permit-required confined spaces.

##### **WAC 296-809-60004**

#### NEW SECTION

#### **WAC 296-809-60002 Make sure the following conditions are met if using alternate entry procedures.**

##### **You must:**

- Make sure, when using alternate entry procedures, instead of permit entry procedures, that you have monitoring and inspection data that supports the following:
  - That the only hazard of the permit-required confined space is an actual or potentially hazardous atmosphere.
  - That continuous forced air ventilation alone is all that is needed to maintain the permit-required confined space for safe entry.
- Make sure an entry to obtain monitoring and inspection data or to eliminate hazards is performed according to WAC 296-809-500, Permit entry procedures.
- Make sure all documentation produced is available to each affected employee and their authorized representative.

NEW SECTION

**WAC 296-809-60004 Follow these alternate entry procedures for permit-required confined spaces.**

**You must:**

- Use the following alternate entry procedures:
  - Eliminate any unsafe conditions before removing an entrance cover.
    - When entrance covers are removed, promptly guard the opening with a railing, temporary cover, or other temporary barrier to prevent accidental falls through the opening and protect entrants from objects falling into the space.
    - Certify that preentry measures have been taken (such as safe removal of the cover and having protection needed to gather preentry data), with the date, location of the space, and signature of the person certifying.
    - Make the preentry certification available before entry to each entrant.
      - Before an employee enters the confined space, test the internal atmosphere with a calibrated, direct-reading instrument for all of the following, in this order:
        - Oxygen content.
        - Flammable gases and vapors.
        - Potential toxic air contaminants.
      - Provide entrants, or their authorized representatives, with an opportunity to observe the preentry and periodic testing.
      - Make sure the atmosphere within the space is not hazardous when entrants are present.
      - Use continuous forced air ventilation, as follows:
        - Wait until the forced air ventilation has removed any hazardous atmosphere before allowing entrants into the space.
        - Direct forced air ventilation toward the immediate areas where employees are, or will be, and continue ventilation until all employees have left the space.
        - Provide the air supply from a clean source and make sure it does not increase hazards in the space.
          - Test the atmosphere within the space as needed to make sure hazards do not accumulate.
          - If a hazardous atmosphere is detected during entry, do all of the following:
            - Evacuate employees from the space immediately.
            - Evaluate the space to determine how the hazardous atmosphere developed.
            - Implement measures to protect employees from the hazardous atmosphere before continuing the entry operation.
            - Verify the space is safe for entry before continuing the entry operation.

NEW SECTION

**WAC 296-809-700 Nonpermit confined spaces requirements.**

**Summary:**

**Your responsibility:**

To make sure any space you classify as nonpermit, does not have the potential to contain serious health or safety hazards.

**You must:**

Follow these requirements when classifying a confined space as a nonpermit confined space.

**WAC 296-809-70002**

Reevaluate nonpermit confined spaces if hazards develop.

**WAC 296-809-70004**

**IMPORTANT:**

A confined space may be classified as a nonpermit confined space for as long as the hazards remain eliminated. Once a hazard is present, you must follow all requirements of this chapter that apply.

NEW SECTION

**WAC 296-809-70002 Follow these requirements when classifying a confined space as a nonpermit confined space.**

**You must:**

- Make sure the confined space meets these conditions to be classified as nonpermit confined spaces:
  - The confined space does not contain an actual or potential hazardous atmosphere.
  - The confined space does not contain hazards capable of causing death or serious physical harm. This includes any recognized health or safety hazards including engulfment in solid or liquid material, electrical shock, or moving parts.
  - If you must enter to remove hazards, the space must be treated as a permit-required confined space until hazards have been eliminated.

**Note:**

- Controlling atmospheric hazards through forced air ventilation does not eliminate the hazards.
- You should evaluate the use of lockout-tagout, as covered in WAC 296-24-110, to determine if using it fully eliminates the hazard.
- You are allowed to use alternate entry procedures covered in WAC 296-809-600, if you can demonstrate that forced air ventilation alone will control all hazards in the space.

**You must:**

- Document how you determined the confined space contained no permit-required confined space hazards. Certify this documentation with the following:
  - Date.
  - Location of the space.
  - Signature of the person making the determination.
- Make the certification available to each entrant, or their authorized representative.

**Note:**

This certification must be completed every time a permit-required confined space is reclassified as a nonpermit space.

NEW SECTION

**WAC 296-809-70004 Reevaluate nonpermit confined spaces if hazards develop.**

**You must:**

- Reclassify a nonpermit confined space to a permit-required confined space, if necessary, when changes in the use or configuration of the space increase the hazards to entrants.
- Make sure all employees exit the space if hazards develop. You must then reevaluate the space and determine

PERMANENT

whether it must be reclassified as a permit-required confined space.

## NEW SECTION

### **WAC 296-809-800 Definitions.**

#### **Acceptable entry conditions:**

The conditions that must exist in a permit-required confined space to allow safe entry and work.

#### **Attendant:**

An individual stationed outside one or more permit-required confined spaces to monitor the entrants.

#### **Blanking or blinding:**

The absolute closure of a pipe, line, or duct by fastening a solid plate (such as a spectacle blind or a skillet blind) that completely covers the bore. It is capable of withstanding the maximum pressure of the pipe, line, or duct with no leakage beyond the plate.

#### **Confined space:**

A space that is **all** of the following:

- Large enough and arranged so an employee could fully enter the space and work.
- Has limited or restricted entry or exit. Examples of spaces with limited or restricted entry are tanks, vessels, silos, storage bins, hoppers, vaults, excavations, and pits.
- Not primarily designed for human occupancy.

#### **Double block and bleed:**

The closure of a line, duct, or pipe by closing and locking or tagging two in-line valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves.

#### **Emergency:**

Any occurrence (including any failure of hazard control or monitoring equipment) or event internal or external to the permit-required confined space that could endanger authorized entrants.

#### **Engulfment:**

The surrounding capture of a person by a liquid or finely divided (flowable) solid substance that can be inhaled to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, or crushing.

#### **Enter (entry):**

The action by which a person passes through an opening into a permit-required confined space and includes work activities in that space. Entry is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

**Note:** If the opening is large enough for the worker to fully enter the space, a permit is required even for partial body entry. Permits are not required for partial body entry where the opening is not large enough for full entry, although other rules such as lockout-tagout, WAC 296-24-110 or respiratory hazards, chapter 296-841 WAC may apply.

#### **Entrant:**

An employee who is authorized by the employer to enter a permit-required confined space.

#### **Entry permit (permit):**

The written or printed document that is provided by you to allow and control entry into a permit-required confined

space and that contains the information required in WAC 296-809-500, Permit entry procedures.

#### **Entry supervisor:**

The person (such as the employer, crew leader, or crew chief) responsible for:

- Determining if acceptable entry conditions are present at a permit-required confined space where entry is planned;
- Authorizing entry and overseeing entry operations; and
- Terminating entry as required.

#### **Hazardous atmosphere:**

An atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit-required confined space), injury, or acute illness caused by one or more of the following:

- Flammable gas, vapor, or mist in excess of ten percent of its lower flammable limit (LFL).
- Airborne combustible dust at a concentration that meets or exceeds its LFL.

**Note:** This concentration may be approximated as a condition in which the dust obscures vision at a distance of five feet (1.52 m) or less.

– Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent.

– Atmospheric concentration of any substance which may exceed a permissible exposure limit. For additional information about atmospheric concentration, see chapter 296-62 WAC, Parts F, G, and I, General occupational health standards and chapter 296-841 WAC, Respiratory hazards.

**Note:** An airborne concentration of a substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this definition.

– Any other atmospheric condition that is immediately dangerous to life or health.

**Note:** You can find guidance on establishing acceptable atmospheric conditions for air contaminants, which have no WISHA-determined doses or permissible exposure limits using other sources of information, such as:

- Material safety data sheets required by WAC 296-800-170, Employer chemical hazard communication.
- Published information.
- Internal documents.

#### **Hot work permit:**

A written authorization to perform operations, for example, riveting, welding, cutting, burning, and heating, that can provide a source of ignition.

#### **Immediately dangerous to life or health (IDLH):**

Any of the following conditions:

- An immediate or delayed threat to life.
- Anything that would cause irreversible adverse health effects.
- Anything that would interfere with an individual's ability to escape unaided from a permit-required confined space.

**Note:** Some materials - hydrogen fluoride gas and cadmium vapor, for example - may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse twelve to seventy-two hours after exposure. The victim "feels normal" after recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be "immediately" dangerous to life or health (IDLH).

**Inerting:**

The displacement of the atmosphere in a permit-required confined space by a noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible.

**Note:** This procedure produces an IDLH oxygen-deficient atmosphere.

**Isolation:**

The process by which a permit-required confined space is removed from service and completely protected against the release of energy and material into the space by such means as: Blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages.

**Line breaking:**

The intentional opening of a pipe, line, or duct that is or has been carrying flammable, corrosive, or toxic material, an inert gas, or any fluid at a volume, pressure, or temperature capable of causing injury.

**Nonpermit confined space:**

A confined space that does NOT contain actual hazards or potential hazards capable of causing death or serious physical harm.

**Oxygen deficient atmosphere:**

An atmosphere containing less than 19.5 percent oxygen by volume.

**Oxygen enriched atmosphere:**

An atmosphere containing more than 23.5 percent oxygen by volume.

**Permit-required confined space or permit space:**

A confined space that has one or more of the following characteristics capable of causing death or serious physical harm:

- Contains or has a potential to contain a hazardous atmosphere.
- Contains a material with the potential for engulfing someone who enters.
- Has an internal configuration that could allow someone entering to be trapped or asphyxiated by inwardly converging walls or by a floor, which slopes downward and tapers to a smaller cross section.
- Contains any physical hazard. This includes any recognized health or safety hazards including engulfment in solid or liquid material, electrical shock, or moving parts.
- Contains any other recognized serious safety or health hazard that could either:
  - Impair the ability to self-rescue; or
  - Result in a situation that presents an immediate danger to life or health.

**Permit-required confined space program:**

An overall program for:

- Controlling and appropriately protecting employees from permit-required confined space hazards; and
- Regulating employee entry into permit-required confined spaces.

**Prohibited condition:**

Any condition in a permit-required confined space that is not allowed by the permit during the authorized entry period.

**Rescue service:**

The personnel designated to rescue employees from permit-required confined spaces.

**Retrieval system:**

The equipment used for nonentry rescue of persons from permit-required confined spaces, such as a retrieval line, full-body harness or wristlets, and a lifting device or anchor.

**Testing:**

The process of identifying and evaluating the hazards that entrants may be exposed to in a permit-required confined space. Testing includes specifying the tests that are to be performed in the permit-required confined space.

**Note:** Testing allows employers to devise and implement adequate controls to protect entrants during entry, and to determine if acceptable entry conditions are present.

**WSR 04-03-114****PERMANENT RULES****STATE INVESTMENT BOARD**

(Filed January 21, 2004, 10:46 a.m.)

Date of Adoption: January 15, 2004.

Purpose: To change address to reflect new office, meeting room, and address location of Washington State Investment Board.

Citation of Existing Rules Affected by this Order: Amending WAC 287-02-030, 287-02-130, and 287-01-130.

Statutory Authority for Adoption: RCW 43.33A.010 - [43.33A.]230.

Adopted under notice filed as WSR 03-22-082 on November 5, 2003.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 15, 2004

Liz Mendizabal

Communications and  
Legislative Coordinator

**AMENDATORY SECTION** (Amending WSR 95-15-080, filed 7/18/95, effective 8/18/95)

**WAC 287-01-030 Regular board meetings.** The regular meetings of the state investment board are held on the third Thursday of each month, beginning at 9:30 a.m. at the

board's offices at (~~2424 Heritage Court~~) 2100 Evergreen Park Drive S.W., Olympia, Washington 98504-0916.

AMENDATORY SECTION (Amending Order 81-1, filed 11/10/81)

**WAC 287-02-030 Description of central and field organization of the state investment board.** The state investment board is a state agency empowered to perform all duties prescribed by law with respect to the investment of trust and public funds. The administrative offices of the state investment board and its staff are located at (~~314 Insurance Building~~) 2100 Evergreen Park Drive S.W., Olympia, Washington.

AMENDATORY SECTION (Amending Order 81-1, filed 11/10/81)

**WAC 287-02-130 State investment board address.** All communications with the board including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.17 RCW and these rules, requests for copies of the board's decisions and other matters, shall be addressed as follows: State Investment Board, c/o Public Records Officer, (~~314 Insurance Building~~) 2100 Evergreen Park Drive S.W., P.O. Box 40916, Olympia, Washington 98504-0916.

PERMANENT





**WSR 04-03-010A**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 04-01—Filed January 9, 2004, 4:09 p.m.]

Date of Adoption: January 9, 2004.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 220-56-350 and 220-56-380.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to protect the limited clam resource at West Dewatto and to compensate for overharvest in 2003. The oyster changes are needed to make oyster seasons coincide with clam seasons for better enforcement. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

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

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

Effective Date of Rule: Immediately.

January 9, 2004

J. P. Koenings

Director

**NEW SECTION**

**WAC 220-56-35000Q Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) West Dewatto (DNR 44-A): Closed

**NEW SECTION**

**WAC 220-56-38000G Oysters—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to harvest

or possess oysters for personal use from the following public tidelands:

- (1) Hope Island State Park: Closed through March 31, 2004

- (2) Potlatch DNR Tidelands: Closed through March 31, 2004

- (3) Sequim Bay State Park: Closed until through April 30, 2004

- (4) South Indian Island County Park: Closed through March 31, 2004

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 04-03-010B**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 04-02—Filed January 9, 2004, 4:12 p.m.]

Date of Adoption: January 9, 2004.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-52-07300J; 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. Specifically expressing the boundary between Sea Urchin Districts 3 and 4, in terms of geographic longitudinal position, aids in the enforceability of harvest openings and assures that proper catch allocation occurs for each of the districts harvest quotas. 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, 2004

J. P. Koenings  
Director

**WSR 04-03-010C**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 04-05—Filed January 9, 2004, 4:15 p.m.]

Date of Adoption: January 9, 2004.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-44-05000Z; and amending WAC 220-44-050.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottom fish, while reserving brood stock for future fisheries. 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, 2004

J. P. Koenings  
Director

**NEW SECTION**

**WAC 220-52-07300K Sea urchins.** Notwithstanding the provisions of WAC 220-52-073 and WAC 220-20-051, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Sea urchin districts:

(a) Sea Urchin District 3 (Port Angeles) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C east of a line projected true north from Low Point along the 123° 49.500' (123° 49' 30") longitude line, and Area 23D.

(b) Sea Urchin District 4 (Sekiu) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from Low Point along the 123° 49.500' (123° 49' 30") longitude line and those waters of Area 29 east of a line projected true north from the mouth of Rasmussen Creek (3.1 miles south-east of Sail Rock).

(2) Green sea urchins: Sea Urchin Districts 1 and 2 are open only on January 11, 12 and 13, 2004. Sea Urchin Districts 3, 4, 6 and 7 are open only on Mondays through Fridays of each week. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(3) 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 January 12, 13 and 14, 2004. Sea Urchin District 4 is open only on January 12, 2004. The maximum daily landing of red sea urchins allowed in Sea Urchin Districts 3 and 4 is 2,000 pounds per commercial sea urchin license on a valid designated harvest vessel. It is unlawful to harvest red sea urchins smaller or larger than the following size (size in largest test diameter exclusive of spines).

(a) District 1 and 2 - 4.0 minimum to 5.5 maximum inches.

(b) District 3 and 4 - 3.25 minimum to 5.0 maximum inches.

(4) It is unlawful to dive for any purpose from a commercially licensed sea urchin or sea cucumber fishing vessel within the following sea urchin Districts on the following days.

(a) Districts 1 and 2 - January 10, 2004 and thenceforth Saturdays and Sundays of each week.

(b) Districts 3, 4, 6 and 7 - Saturdays and Sundays of each week.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300J Sea urchins. (03-319)

**NEW SECTION**

**WAC 220-44-05000A Coastal bottom fish catch limits.** Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port bottom fish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63 in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 69, No. 5, published January 8, 2004. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is

EMERGENCY

extended to include Washington State waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Evan Jacoby at (360) 902-2930.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000Z Coastal bottomfish catch limits. (03-297)

**WSR 04-03-010D**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Children's Administration)

[Filed January 9, 2004, 4:26 p.m.]

Date of Adoption: January 5, 2004.

Purpose: The purpose of the proposed emergency rules for group receiving centers (GRC), chapter 388-140 WAC, is to establish licensing standards for facilities providing out-of-home receiving or emergency care to children for up to thirty days. Licensing standards do not currently exist for GRCs. The emergency rules would provide protection for children placed in facilities in emergency situations. Currently, the one group receiving center in operation is licensed under standards that do not accurately or adequately address the program.

Statutory Authority for Adoption: RCW 74.15.030(2), 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; 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: Children's Administration has licensed a facility as a group care program with several waivers as there are no current licensing standards for a group receiving center. After consulting with the state Attorney General's Office and representatives of the federal IV-E program, we have learned that the approval of waivers jeopardizes federal funds received by Children's Administration to support services to children. A stakeholder work group has been involved in preparation of these emergency rules and the rules being drafted for permanent adoption. The emergency rules are needed to protect the health and safety of children placed in these facilities until permanent rules are adopted. Children's Administration is amending licensing standards (chapter 388-148 WAC) for group care facilities and plans to incorporate these group receiving center rules into chapter 388-148 WAC. Stakeholders have reviewed the draft of revised chapter 388-148 WAC. Children's Administration will be filing the proposed rules in late January 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 125, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

EMERGENCY

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 125, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

January 5, 2004

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 04-05 issue of the Register.

**WSR 04-03-010E**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed January 9, 2004, 4:29 p.m.]

Date of Adoption: January 9, 2004.

Purpose: To implement a change in RCW 74.04.005 (6)(g) that places the burden of proof for continuing general assistance benefits based on incapacity from the department to the recipient.

The rule replaces the emergency rule filed as WSR 04-02-051 on January 5, 2004, which contained incorrect language in amended WAC 388-448-0160.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-448-0170 and 388-448-0190; and amending WAC 388-448-0160.

Statutory Authority for Adoption: Chapter 10, Laws of 2003 1st sp.s., RCW 74.08.090.

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: ESSB [ESHB] 2252 (as chapter 10, Laws of 2003 1st sp.s.) took effect on September 9, 2003, which required rules to be in place sooner than is possible under the regular adoption process. There has been extensive department and public review while preparing these rules for permanent adoption. The proposed rule has been filed as WSR 04-02-048, and a public hearing is scheduled for February 10, 2002 [2004]. The emergency rule changes need to remain in place while the permanent adoption process is completed.

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 2.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 2.

Effective Date of Rule: Immediately.

January 9, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 00-16-113, filed 8/2/00, effective 9/1/00)

WAC 388-448-0160 ((Review of your incapacity,))  
When do my general assistance benefits end? (1) ((In order to review your incapacity, we must have sufficient written medical information based on an examination within the last sixty days. We may also require information about your progress with required treatment or agency referrals according to WAC 388-448-0130.

(2) We cannot extend GAU eligibility beyond the current eligibility end date if we do not receive current medical evidence that we decide is enough to show that you continue to be incapacitated)) The maximum period of eligibility for general assistance is twelve months before we must review additional medical evidence. We use medical evidence and the expected length of time before you are capable of gainful employment to decide when your benefits will end.

(2) Your benefits stop at the end of your incapacity period unless you provide additional medical evidence that demonstrates during your current incapacity period that there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the progressive evaluation process criteria in WAC 388-448-0010 through 388-448-0110, excluding the requirement that your impairment prevents employment for ninety days.

(3) Additional medical evidence must meet all of the criteria defined in WAC 388-448-0030.

(4) We use additional medical evidence received after your incapacity period had ended when:

(a) The delay was not due to your failure to cooperate; and

(b) We receive the evidence within thirty days of the end of your incapacity period; and

(c) The evidence meets the progressive evaluation process criteria in WAC 388-448-0010 through 388-448-0110.

(5) You must provide information about your cooperation and progress with treatment or agency referrals we required according to WAC 388-448-0130.

(6) You are not eligible for general assistance when incapacity was previously determined based on:

(a) Faulty or insufficient information; or  
(b) We made a procedural error in one of our previous determinations based on a rule in effect at the time.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-448-0170 Termination requirement—  
How we determine you are no longer incapacitated.

EMERGENCY

WAC 388-448-0190 Reinstating your eligibility after termination due to lack of medical evidence.

**WSR 04-03-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Children's Administration)  
 [Filed January 12, 2004, 3:56 p.m.]

Date of Adoption: January 8, 2004.

**Purpose:** The department must amend and repeal the following rules in compliance with the directives of ESSB 6387 (section 202(8), chapter 371, Laws of 2002) to control rate and reimbursement decisions with families adopting special needs children. The only method of compliance available to the department in seeking to secure permanent families for special needs children and assist those families in accessing needed social services is to maximize use of federal funds. Amendment and repeal of current WACs brings the department in compliance with federal rules and allows federal funds to be captured.

**Citation of Existing Rules Affected by this Order:** Repealing WAC 388-27-0225, 388-27-0235, 388-27-0240, 388-27-0245 and 388-27-0270; and amending WAC 388-27-0120, 388-27-0130, 388-27-0135, 388-27-0155, 388-27-0160, 388-27-0165, 388-27-0175, 388-27-0190, 388-27-0195, 388-27-0200, 388-27-0210, 388-27-0215, 388-27-0220, and 388-27-0230.

**Statutory Authority for Adoption:** RCW 74.13.109 and 74.13.031.

**Other Authority:** ESSB 6387 (section 202(8), chapter 371, Laws of 2002); 42 U.S.C. 671-675.

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:** ESSB 6387 (section 202(8), chapter 371, Laws of 2002) directed the department to control rate and reimbursement decisions with families adopting special needs children. Immediate amendment and repeal of the following rules are necessary to make the state eligible to capture federal funds in compliance with chapter 42, U.S.C. 671-675 and maximize the department's ability to assist families in accessing social services for difficult to place children. The department has filed notice of intent to adopt permanent rules, WSR 04-01-088 and a public hearing is scheduled for January 27, 2004.

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 0, Amended 4, Repealed 1; **Federal Rules or Standards:** New 0, Amended 10, Repealed 4; 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 14, Repealed 5.

**Effective Date of Rule:** Immediately.

January 8, 2004

Brian H. Lindgren, Manager  
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0120 What is the legal basis of the department's adoption support program?** The legal authorities for the program are:

(1) Revised Code of Washington (RCW) 74.13.100 through 74.13.159;

(2) Chapter 42 United States Code (U.S.C.) ((673)) 671-675; and

(3) The U.S. Department of Health and Human Services (DHHS) policy ((~~announcement ACFY-CB-PA-01-01 (issued January 23, 2001) establishing~~)) guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance (contained in DHHS Policy Manual).

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0130 What definitions apply to the adoption support program?** The following definitions apply to this chapter:

"**Adoption**" means the granting of an adoption decree consistent with chapter 26.33 RCW.

"**Adoption support agreement**" means a written contract between the adoptive parent(s) and the department that identifies the specific support available to the adoptive ((~~parents(s))~~) parent(s) and other terms and conditions of the agreement.

"**Adoption support cash payment**" means ((~~basic~~)) negotiated monthly cash payments paid pursuant to an agreement between the adoptive parent(s) ((~~by~~)) and the department after the child's adoption.

((~~"Adoption support special rate" means monthly cash payments in addition to the basic adoption support rate. The department may authorize payment of these funds only to meet documented exceptional expenses necessary to address the special needs condition of the child.~~))

~~"Adoption support supplemental cash payment" means cash payments in addition to the adoption support basic monthly cash payments and the adoption support special rate. These supplemental payments enable the special~~

~~needs child to receive services not funded by the monthly cash support payment or other resources. Note: Only children adopted on or after July 1, 1996 are eligible for supplemental cash payments.)~~

"**Applicant**" means a person or couple applying for adoption support on behalf of a child the person or couple plans to adopt.

"**Child placing agency**" means a private nonprofit agency licensed by the department under chapter 74.15 RCW to place children for adoption or foster care.

"**Department**" means the department of social and health services.

"**Extenuating circumstances**" means a finding by an administrative law judge or a review judge that one or more certain qualifying conditions or events prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.

"**Medical services**" means services covered by Medicaid (and administered by the medical assistance administration) unless defined differently in the adoption support agreement.

"**Negotiation**" means the process of working toward an agreement between the department and the adoptive parent on the terms of the adoption support agreement, including any amount of monthly cash payment.

"**Nonrecurring costs**" means reasonable, necessary, and directly related adoption fees, court costs, attorney fees, and other expenses the adoptive parent incurs when finalizing the adoption of a special needs child. Total reimbursement from the department may not exceed one thousand five hundred dollars.

"**Placing agency**" means the agency that has the legal authority to place the child for adoption. This may be the department or a private nonprofit child placing agency.

"**Program**" means the department's adoption support program.

"**Reconsideration**" means the limited state-funded support available to an eligible child whose adoption was finalized without a valid adoption support agreement in place.

"**Resident state**" (for purposes of the child's Medicaid eligibility) means the state in which the child physically resides. In some cases this may be different from the state of the parent's legal residence.

"**Special needs**" means the specific factors or conditions that apply to the child and that may prevent the child from being adopted unless the department provides adoption support services. See WAC 388-27-0140 for a detailed description of the factors or conditions.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0135 What are the eligibility criteria for the adoption support program?** For a child to be eligible for participation in the adoption support program, the department must first determine that adoption is the most appropriate plan for the child. If the department determines that adoption is in the child's best interest, the child must:

(1) Be less than eighteen years old when the department and the adoptive parents sign the adoption support agreement;

(2) Be legally free for adoption;

(3) Have a "special needs" factor or condition according to the definition in this rule (see WAC 388-27-0140); and

(4) Meet at least one of the following criteria:

(a) Is in state-funded foster care or child caring institution or was determined by the department to be eligible for and likely to be so placed (For a child to be considered "eligible for and likely to be placed in foster care" the department must have opened a case and determined that removal from the home was in the child's best interest.); or

(b) Is eligible for federally funded adoption assistance as defined in Title IV-E of the Social Security Act, the Code of Federal Regulations, the U.S. Department of Health and Human Services (~~(policy announcement, ACFY-CB-PA-01-01 (issued January 23, 2001))~~) establishing guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance (~~(, and any policy issuances of the Department of Health and Human Services)~~).

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0155 Are there other factors affecting a child's eligibility for adoption support?** (1) A child is not eligible for adoption support program services and payments if the adopting parent is the birth parent or stepparent of the child.

(2) The department must not use the adoptive parents' income as a basis for determining the child's eligibility for the adoption support program((-

~~3))~~, however, the department must consider income and other financial circumstances of the adopting family as one factor in determining the amount of any adoption support cash payments to be made. (See WAC 388-27-0230(~~, 388-27-0235, and 388-27-0240 for details~~)).)

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0160 How does a prospective adoptive parent apply for adoption support services?** There are two ways a prospective adoptive parent (applicant) may apply for adoption support services:

(1) An applicant may apply through the social worker of the child to be adopted. The social worker must:

(a) Register the child with the adoption support program; and

(b) Submit the applicant's completed program application along with a completed worksheet used to assist the family and the department in determining services and amount of monthly cash payment, if needed, based on the needs of the child and family circumstances.

(2) An applicant may also apply directly to the adoption support program for adoption support services if:

(a) The child does not have an assigned social worker; or

(b) The applicant and the social worker have a dispute regarding the content of the program application.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0165 What requirements apply to an application for ongoing adoption support?** (1) The application must include a copy of the child's medical and family background report signed by the adoptive parent(s) (DSHS 13-041 minus the attachments). It must also include copies of medical and/or therapist reports that document the child's physical, mental, developmental, cognitive or emotional disability or risk of any such disability.

(2) If the applicant is requesting a cash payment, the applicant and the department must mutually determine both the type and amount according to the requirements of WAC 388-27-0230 (~~and 388-27-0235~~).

~~(3) (If the applicant is requesting a supplemental cash payment, the applicant and the department must mutually determine the services for which the payment will be used and the expected duration of those services according to the requirements of WAC 388-27-820.~~

~~(4))~~ (4) If the applicant is requesting reimbursement of non-recurring costs, the applicant must include this request in the application. (See WAC 388-27-0380 and 388-27-0385 for the type and amount of expenses the department may reimburse.)

~~((5))~~ (4) The applicant must furnish a copy of the applicant's most recently filed federal income tax return. If the applicant is not required to file a federal income tax return, the applicant must submit a financial statement with the applicant's adoption support application.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0175 What must be included in an adoption support agreement?** The adoption support agreement must:

(1) State the amount of cash payments (if any) the department must make to the adoptive parent(s) on behalf of the child;

(2) Include an itemized list of the additional services (including Title XIX Medicaid and Title XX social services) for which the child is eligible;

(3) Contain statements that:

(a) Assure that participation in the adoption support program must continue, as long as the child is eligible, regardless of where the adoptive family resides;

(b) Inform the adoptive parent(s) (~~that the agreement must be reviewed (and may be revised) at least once every five years; and~~) of specific circumstances that may warrant further renegotiation and adjustment of the payment as agreed to by the adoptive parents and the department;

(c) Inform the adoptive parent(s) that the agreement must be reviewed every five years. Terms of the agreement may be modified according to WAC 388-27-0200;

(d) Inform the adoptive (~~parents(s))~~ parent(s) that the department may suspend a child from the program within thirty days of any changes in circumstances (of the child or family) that affect the child's eligibility for program payments if the adoptive parent has failed to notify the department of the changes(-

~~(d))~~; and

(e) Define the circumstances under which the agreement may be terminated.

(4) Be signed by all relevant parties before the final adoption decree is issued (45 C.F.R. Sec. 1356.40).

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0190 If the department implements adoption support services prior to the adoption, may the adoptive parent(s) continue to receive department-funded foster care payments while also receiving adoption support payments?** (1) The adoptive parent(s) may not continue to receive department-funded foster care payments for a child while also receiving adoption support payments for the same child.

(2) If the adoptive parent(s) receives department-funded foster care for the child to be adopted, the department's social worker assigned to the child must terminate that coverage on the last day of the month preceding the month in which the adoption support becomes effective.

(3) Foster care payments are paid after the month of service. Adoption Support payments are paid prior to the month (~~of service~~).

(4) The adoptive parent(s) may not receive foster care payments and adoption support cash (~~or supplemental~~) payments for the same child for the same month (~~of service~~).

(5) If the adoptive parent is adopting a relative child and has been receiving a nonneedy relative grant the adoptive parent must notify the community services office financial services specialist that the adoption has been finalized. The adoptive parent may not receive both the grant and adoption support payments for the same month for the same child.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0195 May the adoptive parent(s) change the benefits contained in the adoption support program?** The adoptive parent may submit a written request asking that the department (~~reexamine~~) renegotiate the benefits offered in the adoption support agreement whenever either the family's economic circumstances or the condition of the child changes.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0200 When may the department modify the terms of the adoption support agreement?** The department's adoption support program may modify the terms of an adoption support agreement:

(1) At the request of the adoptive parent(s);

(2) When specific circumstances warrant renegotiation and adjustment of monthly cash payment as agreed to by the adoptive parents and the department;

(3) When the department loses contact with the adoptive parent(s);

~~((3))~~ (4) When the child is placed outside of the adoptive parents' home at department expense;

~~((4))~~ (5) If the adoptive parent is no longer providing for the child's daily care and living expenses; or

~~((5))~~ (6) If the adoptive parent fails to notify the department's adoption support program within thirty days of a change of circumstance which affects the adopted child's continuing eligibility for adoption support program cash payments or services.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0210 Under what circumstances would the adoption support agreement be terminated?** The adoption support agreement is terminated according to the terms of the agreement or if any one of the following events occurs:

(1) The child reaches eighteen years of age; (If a child is at least eighteen but less than twenty-one years old and is a full-time high school student or working full time toward the completion of a GED (high school equivalency) certificate and continues to receive financial support from the adoptive parent(s), the department may extend the terms of the adoption support agreement until the child completes high school or achieves a GED. Under no circumstances may the department extend the agreement beyond the child's twenty first birthday.) Adoption support benefits will automatically stop on the child's eighteenth birthday unless the parent(s) requests continuation per this rule and have provided documentation of the child's continuation in school. To prevent disruption in services the parent should contact the adoption support program at least ninety days prior to the child's eighteenth birthday if continued services are to be requested.

~~((2))~~ ~~((The adoptive parents request termination of the agreement;~~

~~((3))~~ The adoptive parents no longer have legal responsibility for the child;

~~((4))~~ (3) The adoptive parents are no longer providing financial support for the child;

~~((5))~~ (4) The child dies; or

~~((6))~~ (5) The adoptive parents die. (A child who met federal Title IV-E eligibility criteria for adoption assistance will be eligible for adoption assistance in a subsequent adoption.)

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0215 What benefits may the adoptive parent or child receive from the adoption support program?** The adoption support program may provide one or more of the following benefits:

(1) Reimbursement for nonrecurring adoption finalization costs;

(2) Cash payments;

(3) ~~((Supplemental cash payments (only for adoptions finalized on or after July 1, 1996);~~

~~((4))~~ Payment for counseling services as pre-authorized (see WAC 388-27-0255 for conditions and terms)(;

~~((5))~~; or

(4) Medical services through the department's Medicaid program(;

~~((6) Child care as pre-authorized per WAC 388-27-0270 (for children adopted on or after July 1, 1996)).~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0220 What factors affect the amount of adoption support benefits a child receives?** The department bases the amount of support it provides on the child's needs and the family's circumstances, but limits ~~((the amount to the rates set by these rules, federal laws and rules, and the state legislature))~~ the cash payment to an amount that does not exceed the foster care maintenance rate the child would receive if the child was in a foster family home. Specific circumstances as agreed to by the adoptive parent and the department in the agreement, may warrant future renegotiation and adjustment of the payment determined in an assessment of the child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0230 How does the department evaluate a request for ~~((basic))~~ adoption support monthly cash payments?** (1) ~~((To determine the amount of basic monthly cash payment to be made, the department considers the child's physical, mental, developmental, cognitive and emotional condition and expenses as well as the adoptive family's))~~ The amount of the adoption support monthly cash payment is determined through the discussion and negotiation process between the adoptive parents and representatives of the department based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

(2) Family circumstances to be considered include:

(a) Size, including the adopted child;

(b) Normal living expenses, including education and childcare expenses;

(c) Exceptional circumstances of any family member;

(d) Income;

(e) Resources and savings plans;

(f) Medical care and hospitalization needs;

(g) Ability to purchase or otherwise obtain medical care; and

(h) Additional miscellaneous expenses related to the adopted child.

~~((2))~~ (3) The department and the adoptive parents will jointly determine the level of adoption support cash payments needed to meet the basic needs of the child without creating a hardship on the family.

~~((3))~~ (4) Under no circumstances may the amount of the ~~((basic))~~ adoption support monthly ~~((rate))~~ cash payment the department pays for the child exceed the ~~((adoption support rate established by the legislature for a child of that age))~~ amount of foster care maintenance payment that would be paid if the child were in a foster family home.



**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 388-27-0225      What are the current maximum rates available for basic adoption support monthly cash payments and special rate?
- WAC 388-27-0235      How does the department evaluate a request for adoption support special rate cash payments?
- WAC 388-27-0240      How does the department evaluate a request for adoption support supplemental cash payments?
- WAC 388-27-0245      What specific department requirements apply to supplemental cash payments?
- WAC 388-27-0270      What department requirements apply to child care services?

**WSR 04-03-031**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 04-03—Filed January 13, 2004, 4:43 p.m., effective January 19, 2004, 6:00 a.m.]

Date of Adoption: January 13, 2004.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber 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 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 19, 2004, 6:00 a.m.

January 13, 2004

J. P. Koenings

Director

**NEW SECTION**

**WAC 220-52-07100D Sea cucumbers.** Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Effective 6:00 a.m. January 19, 2004 until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 2 on Monday, Tuesday and Wednesday of each week. Effective 6:00 a.m. January 19, 2004 until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 3, 4 and 5 on Monday and Tuesday of each week.

(2) It is unlawful to dive for any purpose from a commercially licensed sea cucumber or sea urchin fishing vessel on Saturdays and Sundays of each week.

**WSR 04-03-047**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 04-07—Filed January 15, 2004, 3:40 p.m., effective January 21, 2004, 12:01 a.m.]

Date of Adoption: January 15, 2004.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900G; 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. The closure is 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 21, 2004, 12:01 a.m.

January 15, 2004

J. P. Koenings

Director

#### NEW SECTION

**WAC 232-28-61900G Exceptions to statewide rules—Cascade River, Skykomish River, Snoqualmie River, Wallace River and Tokul Creek.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. January 21, 2004 through February 29, 2004 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) Skykomish River (Snohomish County) from 1,500 feet upstream to 1,000 feet downstream of Reiter Ponds outlet.

(3) 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.

(4) Wallace River (Snohomish County) from the railroad trestle (downstream of Highway 2 bridge) upstream to the mouth of Olney Creek.

(5) Tokul Creek (King County) from its mouth to the posted cable boundary marker (approximately 700 feet upstream of the mouth).

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 1, 2004:

WAC 232-28-61900G	Exceptions to statewide rules—Cascade River, Skykomish River, Snoqualmie River, Wallace River and Tokul Creek
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**WSR 04-03-048  
EMERGENCY RULES  
DEPARTMENT OF FISH  
AND WILDLIFE**

[Order 04-06—Filed January 15, 2004, 3:43 p.m., effective January 18, 2004, 12:01 p.m.]

Date of Adoption: January 14, 2004.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000W; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington Department of Health has certified clams from these beaches to be safe for human consumption.

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 18, 2004, 12:01 p.m.

January 14, 2004

J. P. Koenings

Director

#### NEW SECTION

**WAC 220-56-36000W Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. January 18 through 11:59 p.m. January 20, 2004, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day.

2. Effective 12:01 p.m. January 18 through 11:59 p.m. January 19, 2004, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Copalis River (Grays Harbor County) and the southern boundary of the

Quinault Indian Reservation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day.

3. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 21, 2004:

WAC 220-56-3600W Razor clams.

**WSR 04-03-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 04-08—Filed January 15, 2004, 3:45 p.m., effective January 19, 2004, 8:00 a.m.]

Date of Adoption: January 14, 2004.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600D; and amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The state may not authorize commercial shellfish harvest absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes, which have been entered as required by the court order. 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 19, 2004, 8:00 a.m.

January 14, 2004

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-52-04600G Coastal crab fishery—Special management area.** Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful for non-Indian commercial fishers to fish for or take crab for commercial purposes, or place gear, in the following areas during the periods indicated:

(1) The following areas are closed until further notice:

(a) Coastal waters between 47°40.50'N and 47°58.00'N, and east of a line described by the following points:

Southern point (Destruction Island): 47°40.50'N 124°40.00'W

Northern point (Cape Johnson): 47°58.00'N 124°49.00'W

(2) Effective immediately the following area is closed through March 9, 2004:

(a) Coastal waters between 48°07.50'N and 48°22.86'N, and east of a line described by the following points:

Southwest point: 48°07.50'N 124°51.50'W

Northwest point: 48°20.00'N 124°50.00'W

Cape Flattery: 48°22.86'N 124°43.83'W

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. January 19, 2004:

WAC 220-52-04600D Coastal crab fishery—Special management area. (03-298)

**WSR 04-03-074**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 04-09—Filed January 16, 2004, 3:03 p.m.]

Date of Adoption: January 16, 2004.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300K; 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 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. Specifically expressing the western boundary of Sea Urchin District 3, in terms of geographic longitudinal

position, aids in the enforceability of harvest. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Effective Date of Rule: Immediately.

January 16, 2004

J. P. Koenings

Director

#### NEW SECTION

**WAC 220-52-07300L Sea urchins.** Notwithstanding the provisions of WAC 220-52-073 and WAC 220-20-051, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Sea urchin districts:

Sea Urchin District 3 (Port Angeles) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C east of a line projected true north from Low Point along the 123° 49.500' (123° 49' 30") longitude line, and Area 23D.

(2) Green sea urchins: Sea Urchin Districts 3, 4, 6 and 7 are open only on Mondays through Fridays of each week. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(3) 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 January 22, 2004. The maximum daily landing of red sea urchins allowed in Sea Urchin District 3 is 2,000 pounds per commercial sea urchin license on a valid designated harvest vessel. It is unlawful to harvest red sea urchins smaller or larger than the following size (size in largest test diameter exclusive of 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.

(4) It is unlawful to dive for any purpose from a commercially licensed sea urchin or sea cucumber fishing vessel on Saturdays and Sundays of each week.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300K Sea urchins. (04-02)

#### **WSR 04-03-075**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Order 04-04—Filed January 16, 2004, 3:06 p.m., effective February 2, 2004, 12:00 p.m.]

Date of Adoption: January 15, 2004.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100P; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation sets winter season. Sturgeon management goals will be determined at a Sturgeon Management Task Force meeting in mid-January. Fisheries are consistent with the interim management agreement and the biological opinion. Rule is consistent with action of the Columbia River compact on December 19, 2003. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Effective Date of Rule: February 2, 2004, 12:00 p.m.

January 15, 2004

Evan Jacoby

for Jeff Koenings

Director

**NEW SECTION**

**WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, shad, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, or sturgeon under the following provisions:

Open Periods: 12:00 p.m. February 2, 2004 through 12:00 p.m. March 21, 2004.

Open Areas: SMCRA 1F, 1G, 1H

Gear: No mesh restriction on gillnets. Hoop nets, dip bag nets, and rod and reel with hook and line.

Allowable sale: salmon, steelhead, walleye, shad, carp, and sturgeon. Sturgeon between 4 feet and 5 feet in length may be sold.

Miscellaneous: Sale of platform or hook and line caught fish is allowed during open commercial season.

Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

f) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad

tunnel approximately 1/8 miles downstream from the west bank.

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

8) Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. March 21, 2004:

WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam.

**WSR 04-03-097**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed January 20, 2004, 3:56 p.m.]

Date of Adoption: January 15, 2004.

Purpose: The Division of Employment and Assistance Programs is amending the Washington telephone assistance program (WTAP) rules to:

1. Establish WTAP payment limits for reimbursable services while streamlining the billing process; and

2. Add community service voice mail as a WTAP benefit as provided for by 2003 legislative session (chapter 134, Laws of 2003) effective July 1, 2003.

Citation of Existing Rules Affected by this Order: Amending WAC 388-273-0025, 388-273-0030, 388-273-0035.

Statutory Authority for Adoption: RCW 74.08.090, 80.36.440, chapter 134, Laws of 2003.

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 extent of reimbursement to telephone companies must be limited for services provided on and after June 1, 2003, in order to ensure the WTAP fund remains within budget. Without this change, more than 120,000 households now using the program may lose telephone services as it would be unaffordable - restricting their ability to contact emergency services, doctors, social workers, employers and others. Community service voice mail has been added as a WTAP benefit by 2003 legislative session, chapter 134, Laws of 2003, effective July 1, 2003. The department is in the process of amending these rules by regular adoption but cannot complete this process before the existing emergency rules expire. A small business economic impact statement is nearing completion and will be filed along with the CR-102, but the rule needs to be extended until the final rule is adopted permanently.

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 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 3, Repealed 0.

Effective Date of Rule: January 22, 2004.

January 15, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 02-18-106, filed 9/3/02, effective 10/4/02)

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

(a) Discount on local telephone flat rate services, when the flat rate is more than the WTAP assistance rate;

(b) Waiver of deposit requirements on local telephone service; ~~(and)~~

(c) Fifty percent discount on service connection fees through June 30, 2003. Effective July 1, 2003, fifty percent discount for the first connection; and for a second or subsequent connection when you ask for service at a new address. Any connection fee discounts available from other programs are added to the WTAP discount, to pay part or all of the remaining fifty percent; or

(d) Effective July 1, 2003, a community service voice mail box offered by a community agency that has been contracted with the department of community, trade and economic development to provide the service.

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

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

~~(4))~~ Your benefits begin the date you are approved for WTAP assistance and continue through the next June 30, except if you qualified for telephone assistance through using the community services voice mail programs, you will receive one additional service year of benefits ~~(:~~

~~(5))~~. "Service year" means the period beginning July 1 and ending June 30 of the following calendar year.

(4) WTAP benefits do not include charges for line extension, optional extended area service, optional mileage, customer premises equipment, applicable taxes or delinquent balances owed to the telephone company.

**AMENDATORY SECTION** (Amending WSR 01-09-023, filed 4/9/01, effective 6/1/01)

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

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

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

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

(4) Effective July 1, 2003, you can apply for community service voice mail by contacting your local community service voice mail provider.

**AMENDATORY SECTION** (Amending WSR 01-09-023, filed 4/9/01, effective 6/1/01)

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

(a) Program services provided to eligible households June 1, 2003 and beyond, and after eligibility for WTAP is verified;

(i) Monthly flat rate service.

We reimburse the local telephone company an amount equal to the monthly flat rate of the incumbent local exchange carrier providing service in the customer's exchange area, minus the WTAP assistance rate set by the commission, and minus the amount of federal lifeline program reimbursement

EMERGENCY

available to an eligible telecommunications carrier. An "incumbent local exchange carrier" is a telephone company in the U.S. that was providing local service when the Telecommunications Act of 1996 was enacted, and is required to file tariffs with the commission. For all exchange areas, the WTAP reimbursement shall be limited to not more than nineteen dollars for each eligible household.

(ii) Connection fee.

We reimburse the local telephone company an amount equal to one-half the connection fee rate or twenty-two dollars, whichever is less.

(iii) Waiver of local deposit.

We reimburse the local telephone company an amount up to two times the WTAP assistance rate.

(b) Correct, verifiable billing items;

(c) ~~((Invoices))~~ One monthly invoice and supporting documentation submitted (~~within ninety days~~) and received by WTAP by the fifteenth day following the month the expense occurred;

(d) Items charged in error that have been corrected within ~~((sixty))~~ thirty days from the date we return the report of invoicing error to the local phone company;

(e) Salaries and benefits for time required to implement and maintain WTAP, with the exception that time required for the correction of billing, case number and client identification errors is not an allowable expense;

(f) Travel expenses for attending hearings, meetings, or training pertaining to WTAP;

(g) Expenses for supplies and materials for implementing and maintaining WTAP;

(h) Postage and handling for delivery of WTAP material;

(i) Administrative charge for change of service orders specified by tariffs; and

(j) Pre-approved documented indirect costs associated with implementing and maintaining WTAP.

**WSR 04-03-098**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed January 20, 2004, 3:59 p.m., effective January 22, 2004]

Date of Adoption: January 15, 2004.

Purpose: In order to limit expenditures under the additional requirements for emergent needs (AREN) program, we must reduce the maximum payment from \$1,500 to \$750 per month.

Citation of Existing Rules Affected by this Order: Amending WAC 388-436-0002.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.510.

Other Authority: RCW 74.08A.340.

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: This change is necessary to save federal TANF funds that are currently being overexpended. If we overexpended federal TANF funds, we must use general state funds to make up the overexpenditure. We do not have the authority to do this because funds have not been appropriated for this purpose per RCW 74.08A.340. We have filed the CR-102 for the proposed rule change (WSR 04-02-049) on January 5, 2004, and the hearing is scheduled for February 10, 2004. However, an extension of the current emergency filing is necessary as we complete the permanent rule adoption process.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 22, 2004.

January 15, 2004

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 00-22-064, filed 10/27/00, effective 12/1/00)

**WAC 388-436-0002 If my family has an emergency, can I get help from DSHS to get or keep our housing or utilities?** DSHS has a program called additional requirements for emergent needs (AREN). If your family has an emergency and you need a one-time cash payment to get or keep safe housing or utilities, you may be eligible. The special AREN payment is in addition to the regular monthly cash grant your family may already get.

(1) To get AREN, you must:

(a) Be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), or refugee cash assistance (RCA);

(b) Have an emergency housing or utility need; and

(c) Have a good reason that you do not have enough money to pay your housing or utility costs.

(2) To get AREN, you must be eligible for TANF, SFA, or RCA. This means you must:

(a) Get benefits through TANF, SFA, or RCA. For RCA you must also be pregnant or have an eligible child; or

(b) Apply for TANF, SFA, and RCA, and meet all eligibility criteria including:

(i) The maximum earned income limit under WAC 388-478-0035;

(ii) The requirement that your unearned income not exceed the grant payment standard;

(iii) The requirement that your countable income as defined under WAC 388-450-0162 must be below the payment standard in WAC 388-478-0020 when you have both earned income and unearned income;

(iv) The resource limits under chapter 388-470 WAC;

(v) The program summary rules for either TANF (WAC 388-400-0005); SFA (WAC 388-400-0010); or RCA (WAC 388-400-0030); and

(vi) The requirement that you must be pregnant or have an eligible child.

(3) If you do not get or do not want to get TANF, SFA or RCA, you cannot get AREN to help with one-time housing or utility costs. We will look to see if you are eligible for diversion cash assistance (DCA) under WAC 388-432-0005.

(4) To get AREN, you must have an emergency housing or utility need. You may get AREN to help pay to:

(a) Prevent eviction or foreclosure;

(b) Get housing if you are homeless or need to leave your home because of domestic violence;

(c) Hook up or prevent a shut off of utilities related to your health and safety. We consider the following utilities to be needed for health and safety:

(i) Electricity or fuel for heating, lighting, or cooking;

(ii) Water;

(iii) Sewer; and

(iv) Basic local telephone service if it is necessary for your basic health and safety.

(d) Repair damage or defect to your home when it causes a risk to your health or safety:

(i) If you own the home, we may approve AREN for the least expensive method of ending the risk to your health or safety;

(ii) If you do not own the home, you must ask the landlord in writing to fix the damage according to the Residential Landlord-Tenant Act at chapter 59.18 RCW. If the landlord refuses to fix the damage or defect, we may pay for the repair or pay to move you to a different place whichever cost is lower.

(e) If you receive TANF or SFA, WorkFirst support services under WAC 388-310-0800 may be used to help you relocate to new housing to get a job, keep a job, or participate in WorkFirst activities. Nonhousing expenses, that are not covered under AREN, may be paid under WorkFirst support services. This includes expenses such as car repair, diapers, or clothing.

(5) To get AREN, you must have a good reason for not having enough money to pay for your housing or utility costs. You must prove that you:

(a) Did not have money available that you normally use to pay your rent and utilities due to an emergency situation that reduced your income (such as a long-term illness or injury);

(b) Had to use your money to pay for necessary or emergency expenses. Examples of necessary or emergency expenses include:

(i) Basic health and safety needs for shelter, food and clothing;

(ii) Medical care;

(iii) Dental care needed to get a job or because of pain;

(iv) Emergency child care;

(v) Emergency expenses due to a natural disaster, accident, or injury; and

(vi) Other reasonable and necessary expenses.

(c) Are currently homeless; or

(d) Had your family's cash grant reduced or suspended when we budgeted your expected income for the month, but the income will not be available to pay for the need when the payment is due. You must make attempts to negotiate later payments with your landlord or utility company before you can get AREN.

(6) In addition to having a good reason for not having enough money to pay for your costs, you must also explain how you will afford to pay for the on-going need in the future. We may deny AREN if your expenses exceed your income (if you are living beyond your means). We may approve AREN to help you get into housing you can afford.

(7) If you meet the above requirements, we decide the amount we will pay based on the following criteria.

(a) AREN payments may be made up to a maximum of ~~((fifteen))~~ seven hundred fifty dollars.

(b) We can make the payment all at once or as separate payments over a thirty-day period. The thirty-day period starts with the date of the first payment.

(c) The amount of AREN is in addition to the amount of your monthly TANF, SFA, or RCA cash grant.

(d) We will decide the lowest amount we must pay to end your housing or utility emergency. We will contact your landlord, utility company, or other vendor for information to make this decision. We may take any of the following steps when deciding the lowest amount to pay:

(i) We may ask you to arrange a payment plan with your landlord or utility company. This could include us making a partial payment, and you setting up a plan for you to repay the remaining amount you owe over a period of time.

(ii) We may have you use some of the money you have available in cash, checking, or savings to help pay for the expense. We will look at the money you have available as well as your bills when we decide how much we will pay.

(iii) We may consider income that is excluded or disregarded for cash assistance benefit calculations, such as SSI, as available to meet your emergency housing need.

(iv) We may consider money other individuals such as family or friends voluntarily give you. We will not count loans of money that you must repay to friends or family members.

(v) We may consider money from a nonneedy caretaker relative that lives in the home.

(vi) We may look at what other community resources you currently have to help you with your need.

(8) Starting August 1, 2000, your family can get AREN for your emergency housing or utility needs for one thirty-day period every twelve months:

(a) The thirty-day period starts on the date we issue your first AREN payment and lasts thirty consecutive days.

(b) The twelve-month period starts the month we issued your first AREN payment. The next time you could be eligible for AREN is the first day of the twelfth month after we issued the first AREN payment. For example, if we issued you AREN on January 15th, you could be eligible again on the first of January the next year.



(c) The limit of one thirty-day period every twelve months applies to the following people even if they leave the assistance unit:

(i) Adults; and

(ii) Minor parents that get AREN when no adults are in the assistance unit.

(d) We do not look at AREN benefits you received before August 1, 2000 when we look to see if you received AREN in the last twelve months.

(9) We pay AREN:

(a) Directly to the landlord, mortgage company, utility, or other vendor whenever we can.

(b) If we cannot pay AREN directly to the landlord or other vendor, we will issue the AREN as a part of your TANF, SFA, or RCA cash grant. If we issue the AREN as a part of your grant, you must use it for your emergency need.

(10) We may assign you a protective payee for your monthly grant under WAC 388-265-1250.

EMERGENCY



**WSR 04-03-007**  
**NOTICE OF PUBLIC MEETINGS**  
**CONSERVATION COMMISSION**

[Memorandum—January 5, 2004]

WAC 135-04-020 provides that the Washington State Conservation Commission shall hold regular bimonthly meetings on the third Thursday of the month at various locations in the state of Washington. The schedule for 2004 was adopted by the Conservation Commission at its September 19, 2003, meeting held in Okanogan, Washington.

Conservation Commission meetings are held on the third Thursday of every other month. The regular format for these meetings is as follows:

Wednesday	1-5 p.m.	Field tour
	6-8 p.m.	Work session (interactive dinner)
Thursday	8:30 a.m.- 4 p.m.	Business meeting

The 2004 meeting schedule for the Conservation Commission will be:

January 14, 2004	1-5 p.m. Work session 6-8 p.m. Work session	Squaxin Island Tribal Museum 70 S.E. Squaxin Lane Shelton, WA
January 15, 2004	8:30 a.m.-4:30 p.m. CC Business meeting	Squaxin Island Tribal Museum 70 S.E. Squaxin Lane Shelton, WA
March 17, 2004	1-5 p.m. Field tour 6-8 p.m. Work session	Puyallup River Basin
March 18, 2004	8:30 a.m.-4:30 p.m. CC Business meeting	Puyallup, Washington
May 18, 2004	1-5 p.m. Field tour 6-8 p.m. Work session	Pasco - two day planning meeting
May 19, 2004	8:30 a.m.-4:30 p.m. CC Planning meeting	Red Lion Hotel 2525 North 20th Avenue Pasco, WA 99301
May 20, 2004	8:30 a.m.-4:30 p.m. CC Business meeting	Red Lion Hotel 2525 North 20th Avenue Pasco, WA 99301
July 14, 2004	1-5 p.m. Field tour 6-8 p.m. Work session	Skagit/Samish Watershed Mount Vernon, Washington
July 15, 2004	8:30 a.m.-4:30 p.m. CC Business meeting	WACD Plant Materials Center 16564 Bradley Road Bow, WA
September 15, 2004	1-5 p.m. Field tour 6-8 p.m. Work session	Sunnyside Area Snipes Mountain Restaurant
September 16, 2004	8:30 a.m.-4:30 p.m. CC Business meeting	Roadway Inn 3209 Picard Place Sunnyside, WA
December 1, 2004	12:30 a.m. [p.m.] - 4:30 p.m. CC Business meeting	Sheraton Hotel 1320 Broadway Plaza Tacoma, WA

Locations may change, please contact the Conservation Commission prior to the scheduled meeting at (360) 407-6200.

**WSR 04-03-008**  
**NOTICE OF PUBLIC MEETINGS**  
**DAIRY PRODUCTS COMMISSION**

[Memorandum—January 8, 2004]

**Meeting Schedule**  
**January-December 2004**

Date	Location	Time
January	No commission meeting	
February 4	Washington Dairy Center 4201 198th Street S.W. Suite 101 Lynnwood, WA 98036	9:30
March 10	Washington Dairy Center	9:30
April 14	Hotel to be determined Denver, Colorado	To be determined
May 19	Washington Dairy Center	9:30
June 25	Embassy Suites Hotel 20610 44th Avenue West Lynnwood, WA 98036	9:30
July	No commission meeting	
August 4	Washington Dairy Center	9:30
September 29-30	Location to be determined	To be determined
October	No commission meeting	
November 8	Washington Dairy Center	9:30
December 8-9	Washington Dairy Center	9:30

The above meetings are subject to change. Please confirm all meetings with Celeste Piette at (425) 672-0687 to verify date, time, and location. In addition, some meeting times and locations are still to be determined.

**WSR 04-03-009**  
**NOTICE OF PUBLIC MEETINGS**  
**GREEN RIVER**  
**COMMUNITY COLLEGE**

[Memorandum—December 31, 2003]

Following is a copy of GRCC Resolution 2003-2004/1, which was adopted by the Green River Community College board of trustees at its December 18, 2003, meeting.

The resolution includes the schedule of the regular board meeting dates to be held during the calendar year 2004.

MISC.

GREEN RIVER COMMUNITY COLLEGE  
COMMUNITY COLLEGE DISTRICT NO. 10  
RESOLUTION NO 2003-2004/1

RESOLUTION SETTING SCHEDULE OF REGULAR MEETINGS -  
2004

WHEREAS, the Legislature enacted a requirement (Section 12, Chapter 240, Laws of 1977, 1st Exec. Session, Second Substitute Senate Bill No. 3067) in the Washington State Register Act of 1977, that state agencies holding regular meetings file with the Code Reviser "a schedule of the time and place of such meetings on or before January 1st of each year for publication in the Washington State Register," and

WHEREAS, the Board of Trustees of Green River Community College will meet the third Thursday of each month as follows:

January 15	July 15
February 19	August 19
March 18	September 16
April 15	October 21
May 20	November 18
June 17	December 16

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees of Community College District No. 10 does hereby set the regular meeting dates for the Board of Trustees on the third Thursday of each month, commencing at 4:00 p.m., in the Board Room of the Administration Building, Green River Community College, 12401 S.E. 320th Street, Auburn, WA 98092. Notice of any change from such meeting schedule shall be published in the state registered for distribution at least twenty days prior to the rescheduled meeting date.

ADOPTED this 18th day of December, 2003.

BOARD OF TRUSTEES  
GREEN RIVER COMMUNITY COLLEGE  
COMMUNITY COLLEGE DISTRICT NO. 10

**WSR 04-03-010G**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 9, 2004, 4:31 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-100 MAA.

Subject: Update for psychological testing certification requirements.

Effective Date: January 1, 2004.

Document Description: Retroactive to dates of service on and after July 1, 2003, MAA no longer requires providers who bill for neuropsychological testing to be board-certified; however, providers must be able to furnish credentials that demonstrate their expertise to MAA upon request.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assis-

tance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

December 31, 2003

E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-010H**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 9, 2004, 4:32 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-101 MAA.

Subject: Year 2004 changes and additions to CPT™ and HCPCS\* codes.

Effective Date: January 1, 2004.

Document Description: Effective for dates of service on and after January 1, 2004, the Medical Assistance Administration (MAA) will begin using the Year 2004 CPT™ and HCPCS Level II code additions as discussed in this memorandum. Maximum allowable fees for the Year 2004 additions and 2004 base anesthesia units (BAU) are also included.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

December 31, 2003

E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-010I**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 9, 2004, 4:33 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-102 MAA.

Subject: Early periodic screening, diagnosis and treatment (EPSDT) updates.

Effective Date: January 1, 2004.

Document Description: Effective for dates of service on or after January 1, 2004, the Medical Assistance Administration

MISC.

tion (MAA) will implement the technical changes and updates discussed in this memorandum.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

December 31, 2003  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-010J**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 9, 2004, 4:34 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-103 MAA.

Subject: Year 2004 additions and deletions to CPT™ and HCPCS\* codes allowed in ambulatory surgery centers.

Effective Date: January 1, 2004.

Document Description: **Effective for dates of service on and after January 1, 2004**, the Medical Assistance Administration (MAA) will adopt the 2004 Medicare fee schedule database (MFSDB) ambulatory surgery centers (ASC) groupers for the new January 1, 2004, CPT™ procedures. MAA has adopted the additions and deletions that the Centers for Medicare and Medicaid Services (CMS) made to this database effective January 1, 2004.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

December 31, 2003  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-010K**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 9, 2004, 4:35 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 04-01 MAA.  
Subject: Prescription drug program - EPA codes and criteria changes.

Effective Date: January 1, 2004.

Document Description: **Effective for the week of February 1, 2004, and after**, the Medical Assistance Administration (MAA) will implement changes to the expedited prior authorization (EPA) codes and criteria for MAA's prescription drug program. These changes can be found in this memorandum.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 2, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-010L**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 9, 2004, 4:36 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-104 MAA.

Subject: Outpatient hospitals updates: Year 2004 CPT and HCPCS\* updates, fee schedule additions, and revenue code grid corrections.

Effective Date: January 1, 2004.

Document Description: **Effective for dates of service on and after January 1, 2004**, the Medical Assistance Administration (MAA) will begin using the Year 2004 CPT™ and HCPCS Level II code updates as discussed in this memorandum. Maximum allowable fees for the Year 2004 new codes are added to the fee schedule. In addition, this memorandum serves to notify providers of corrections to the revenue code grid in accordance with WAC 388-550-6000.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/pub->

licationsfees.htm (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 2, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-012**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF AGRICULTURE**  
(Hop Commission)  
[Memorandum—January 8, 2004]

The Washington Hop Commission has adopted a schedule for 2004 regular and annual meetings. Per WAC 16-532-020 (11)(a) we are required to hold four regular and one annual meeting each year. We file the following information, as required by RCW 42.30.075:

Thursday	February 19	Moxee
Thursday	April 15	Moxee
Thursday	June 10	Prosser
Thursday	October 14	Mabton
Thursday and Friday	December 9-10	Yakima (annual meeting)

Interested parties may call the Washington Hop Commission at (509) 453-4749 for the time and site of each meeting.

**WSR 04-03-013**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF AGRICULTURE**  
(Barley Commission)  
[Memorandum—January 9, 2004]

To keep in compliance with the Open Public Meetings Act the Washington Barley Commission is filing the following schedule of the times, dates, and locations of our 2004 scheduled meetings:

Meeting Type	Date	Time
Regular Meeting	March 24, 2004	9:00 a.m.
Annual Meeting	June 30, 2004	9:00 a.m.
Regular Meeting	September 30, 2004	9:00 a.m.
Regular Meeting	December 3, 2004	9:00 a.m.

All of the meetings will be held in the Washington Wheat Commission's Conference Room, West 907 Riverside Avenue, Spokane, WA.

If you have any questions, please call our office at (509) 456-4400.

**WSR 04-03-014**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF**  
**GENERAL ADMINISTRATION**  
(State Capitol Committee)  
[Memorandum—December 29, 2003]

Please record the following 2004 quarterly State Capitol Committee (SCC) meeting dates, time and location in the Washington State Register:

Thursday	March 25, 10:00 a.m. to 12:00 p.m.
Thursday	June 24, 10:00 a.m. to 12:00 p.m.
Thursday	October 28, 10:00 a.m. to 12:00 p.m.
Thursday	December 9, 10:00 a.m. to 12:00 p.m.

The SCC meetings will be held in Room 207 on the Second Floor of the General Administration Building, 210 11th Avenue S.W., Olympia, WA.

If you have any questions, please contact Kim Buccarelli at 902-0955.

**WSR 04-03-015**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF**  
**GENERAL ADMINISTRATION**  
(Capitol Campus Design Advisory Committee)  
[Memorandum—December 30, 2003]

This is to confirm that the quarterly Capitol Campus Design Advisory Committee (CCDAC) meetings for the 2004 calendar year are scheduled for:

Thursday	February 26, 10:00 a.m. to 2:00 p.m.
Thursday	May 13, 10:00 a.m. to 2:00 p.m.
Thursday	September 2, 10:00 a.m. to 2:00 p.m.
Thursday	November 18, 10:00 a.m. to 2:00 p.m.

The CCDAC meetings will be held in Room 207 on the Second Floor of the General Administration Building, 210 11th Avenue S.W., Olympia, WA.

If you have any questions, please contact Kim Buccarelli at 902-0955.

**WSR 04-03-017**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
[Filed January 12, 2004, 3:55 p.m.]

**DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT**

Document Title: PCM 03-007.  
Subject: Assessing fines for employer noncompliance.  
Effective Date: December 22, 2003.  
Document Description: This PCM details how to assess fines to noncomplying employers.

MISC.

To receive a copy of the interpretive or policy statement, contact Beth Heston, Division of Child Support, Mailstop 45860, P.O. Box 11520, Tacoma, WA 98411-5220, phone (360) 664-5278, TDD (360) 753-9122, fax (360) 586-3274, e-mail eheston@dshs.wa.gov.

January 9, 2004

Beth A. Heston

## WSR 04-03-020

### DEPARTMENT OF ECOLOGY

[Filed January 12, 2004, 4:07 p.m.]

#### Meeting Notice

You are invited to comment on Washington's Water Quality Assessment, including the updated "Polluted Waters" list. The comment period ends March 15, 2004.

**What is the Water Quality Assessment?** The Department of Ecology (ecology) has prepared a preliminary assessment of water quality in Washington. This assessment meets requirements of the Clean Water Act. Assessed waters include all the rivers, lakes, and marine waters in the state where data were available. The assessed waters are listed in five categories that describe the status of water quality.

Category 5, the polluted waters category, is also known as the "303(d) list." Ecology will use the list of polluted waters to develop water cleanup plans, also known as total maximum daily loads (TMDLs).

The last polluted waters list was done in 1998. Following guidance from the United States Environmental Protection Agency (EPA), the current listing process includes a much more comprehensive assessment of Washington's waters.

#### What can the public comment on during this review?

Ecology encourages you to review waters with which you are familiar and provide comments where you see problems or disagree with the assessment results. If you disagree with the assessment results, please explain why and submit additional data, if available.

**What if no data were submitted?** During this review, ecology will also accept new data that were not submitted during the 2002 call for data. This information will be reviewed and incorporated into the final assessment as appropriate. See the webpage for details on how to submit data.

**What happens after the public review?** Ecology will review all comments and make changes to the preliminary assessment of waters as appropriate. We will also assess any new data we receive and update the assessment results based on the additional data. If there are a large number of changes due to new data, ecology will go out again for public review and comment on the new data.

The final assessment of waters in the various categories will be formally submitted to the EA for review and approval.

**How do I learn more?** To learn more about the preliminary assessment of Washington's waters, attend one of the five workshops scheduled in February 2004. These workshops are designed to provide general information about Washington's water quality assessment.

Ecology will not be able to answer questions about every specific listing at the workshops. If you cannot attend a workshop, or have comments or questions about specific listings, contact Ken Koch at (360) 407-6782, or visit our website at <http://www.ecy.wa.gov/programs/wq/303d/2002/2002-index.html>.

Since this is a large database with over 40,000 records, we are making it available on ecology's website. If you need this in an alternate format, please contact us.

**Where may I submit comments?** Ken Koch, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail 303d@ecy.wa.gov.

**Workshops:** **Spokane on Tuesday, February 3, at 6:30 p.m. to 9:00 p.m.,** Spokane Falls Community College, Student Union Building, #17, Lounge A and B, 3419 West Fort George Wright Drive; **at Yakima, on Wednesday, February 4, at 6:30 p.m. to 9:00 p.m.,** Yakima Arboretum, 1401 Arboretum Drive; **at Everett on Tuesday, February 10, at 6:30 p.m. to 9:00 p.m.,** Walter E. Hall Golf Course, 1226 West Casino Road; **at Longview, on Wednesday, February 11, at 6:30 p.m. to 9:00 p.m.,** Cowlitz PUD, 961 12th Avenue; and **at Olympia, on Thursday, February 12, at 1:30 p.m. to 4:00 p.m.,** Ecology HQ Auditorium, 300 Desmond Drive.

#### Agenda:

- Overview of federal Clean Water Act requirements to develop this list.
- Directions on how to review and comment on the list assessments.
- Information on how the data was reviewed.
- Ecology's process and schedule for submitting the list to EPA.

## WSR 04-03-021

### AGENDA

### DEPARTMENT OF ECOLOGY

[Filed January 12, 2004, 4:09 p.m.]

Pursuant to RCW 34.05.314, below is the Department of Ecology's rule agenda for January 2004 through June 2004.

If you have any questions please contact Jerry Thielen at (360) 407-6998 or e-mail at [jthi461@ecy.wa.gov](mailto:jthi461@ecy.wa.gov).

WAC Chapter	Chapter Title	Contact Person	CR-101 Filing Date	CR-102 FilingDate	CR-103 Filing Date	Scope of Changes/ Sections to Amend
<b>Air Quality</b>						
173-400, 173-405, 173-410, 173-433, 173-434 AO #99-07, 7/96	Emissions standards for solid waste incinerators; General regulation for air pollution sources; Kraft pulping mills; Sulfite pulping mills; solid fuel burning device standards	Tom Todd (360) 407-7528 ttod461@ecy.wa.gov	Mar. 1999	Jun. 2004	Dec. 2004	Hog fuel boiler RACT; define terms related to wood derived fuels; reorganize state incinerator rule.
173-400 AO #03-07	General regulation for air pollution sources	Tom Todd (360) 407-7528 ttod461@ecy.wa.gov	Aug. 2003	Oct. 2004	Mar. 2005	This rule making amends the new source review portions of chapter 173-400 WAC, General regulations for air pollution sources. We will be incorporating changes to the federal major source new source review program that were promulgated on December 31, 2002. We will be integrating the federal program with the conditions and needs state law. Other changes will be made to gain full approval of the PSD program by EPA.
173-407 AO #03-09	Greenhouse gas emissions	Melissa McEachron (360) 407-6860 mmce461@ecy.wa.gov	Oct. 2003	Mar. 2004	Aug. 2004	At the governor's direction, ecology and EFSEC will develop rules to mitigate carbon dioxide emissions from new power plants in Washington state. EFSEC will focus on a mitigation plan for larger new power plants; ecology will focus on one for smaller new power plants that fall outside of EFSEC's jurisdiction (less than 350 MW) and supply the public with electricity.
173-434 AO #02-05 3/02	Solid waste incinerator facilities	Steve Cross (360) 407-6875 stcr461@ecy.wa.gov	Mar. 2002	6/3/2003 Continuance filed 7/29/03 to extend the comment period	Dec. 2004	The purpose of the proposed rule change is to incorporate new federal language; add new terms to the definition section; change existing definitions; and provide alternate means of compliance demonstration with section WAC 173-434-130(3) and 173-434-160(1).
<b>Shorelands and Environmental Assistance</b>						
173-26 AO #03-02 1/03	Shoreline management	Peter Skowlund (360) 407-6522 psko461@ecy.wa.gov	Jan. 2003	Jun. 2003	Dec. 2003	New Shoreline Management Act (SMA) guidelines for development/amendment of master programs, 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.

MISC.



WAC Chapter	Chapter Title	Contact Person	CR-101 Filing Date	CR-102 FilingDate	CR-103 Filing Date	Scope of Changes/ Sections to Amend
197-11 AO #02-13 8/02	SEPA rules	Barbara Ritchie (360) 407-6922 brit461@ecy.wa.gov	Sep. 2002	Jan. 2003	Jul. 2003	The proposed amendment of the State Environmental Policy Act (SEPA) rules is in response to a recent lawsuit challenging ecology's authority to adopt criteria that would override exemptions established by the legislature. The legislature exempted Class I, II, and III forest practices from SEPA environmental review. The Court of Appeals has ruled that because the legislative exemption is included in Part Nine of the SEPA Rules, Class I, II, and III forest practices are subject to the limitations in WAC 197-11-305 and may require SEPA review. Ecology has determined that we do not have authority to override legislative exemptions and that the SEPA rules need to be revised to clarify that legislatively exempt actions do not require SEPA review.
<b>Spill Prevention, Preparedness and Response</b>						
317-10, 173-181 AO #00-03 7/99	Oil spill contingency plans and response contractor standards	Linda Pilkey-Jarvis (360) 407-7447 jpil461@ecy.wa.gov	Feb. 2000	May 2004	Nov. 2004	Update plan requirements, mandate incident command systems, incorporate planning standards, and update primary response contractor standards.
<b>Hazardous Waste and Toxic Reduction</b>						
173-303 AO #03-10 10/03	Dangerous waste regulations	Chipper Hervieux (360) 407-6756 pher461@ecy.wa.gov	Jan. 2004	Jun. 2004	Dec. 2004	This rule making will incorporate new federal requirements, make changes for consistency and clarification, and propose changes to implement recommendations of the hazardous waste facility initiative to improve financial responsibility.
<b>Water Quality</b>						
173-98 AO #02-15 10/02	Uses and limitations of the water pollution control state revolving fund	Dan Filip (360) 407-6509 dfil461@ecy.wa.gov	Nov. 2002	Jan. 2007	Jan. 2007	The Washington State Department of Ecology is initiating a "pilot rule-making process" to propose to amend chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund, to allow public bodies to use the "design/build" concept for completion of wastewater facilities. The concept allows for a contract between local public bodies and firms to be awarded for the design and construction of portions of the facility largely independent of other design and construction efforts elsewhere at the facility. The scope of the pilot rule-making process will be limited to new design/build (D/B) provisions.
173-224 AO #03-11 10/03	Wastewater discharge permit fees	Bev Poston (360) 407-6425 bpos461@ecy.wa.gov	Dec. 2003	May 2004	Nov. 2004	The proposed rule amendment will increase fees for all permit holders to meet the fiscal growth factors for both FY2005 and FY2006. New fee categories for concentrated animal feeding operations and municipal stormwater Phase 2 permittees will be created.

MISC.

WAC Chapter	Chapter Title	Contact Person	CR-101 Filing Date	CR-102 FilingDate	CR-103 Filing Date	Scope of Changes/ Sections to Amend
173-218, 216, 226 AO #01-10 5/01	Underground injection control program	Mary Shaleen-Hansen (360) 407-6143 maha461@ecy.wa.gov	Dec. 2001	May 2004	Nov. 2004	The rule amendments will: (1) Bring it current with new federal rule changes; (2) create consistency between the rules that govern UIC wells; and (3) clarify the language of the rule.
<b>Water Resources</b>						
173-563 and 531A AO #01-05 7/01	Columbia River Main Stem and John Day-McNary Pools	Gerry O'Keefe (360) 407-6640 goke461@ecy.wa.gov	Oct. 2002	Jul. 2004	Nov. 2004	Amend and/or partial repeal of rules to adopt a rule that governs an integrated state water management program for the river's water resources.
173-175 AO #03-08 9/03	Dam safety regulations	Dave Cummings (360) 407-6620 dcum461@ecy.wa.gov	Oct. 2003	Feb. 2004	Jul. 2004	This rule making will amend chapter 173-175 WAC, Dam safety regulations; adopted in 1992, amended in 1995. The following two changes will be made: (1) Increasing fees for existing plan review and construction inspection; and (2) resumes collection of a fee for ecology's periodic inspection of existing dams. Some updating of language and minor revisions will also take place.
173-503 AO #03-05 4/03	Instream resources protection program - Lower and Upper Skagit Water Resources Inventory Area (WRIA 3 and 4)	Dan Swenson (425) 649-7270 dswe461@ecy.wa.gov	Apr. 2003	Jun. 2004	Dec. 2004	This rule making will amend chapter 173-503 WAC, Skagit River instream flow rule. As a result of an interim memorandum of agreement recently signed by the Department of Ecology, City of Anacortes, PUD No. 1 of Skagit County, Skagit County, the Sauk-Suiattle Indian Tribe, the Upper Skagit Indian Tribe and the Swinomish Indian Tribal Community, ecology has agreed to initiate and conduct, and the other parties agree to support, rule making to amend chapter 173-503 WAC solely for the purpose of allowing exempt wells to be used in the Upper Skagit Basin when mitigation is provided under an ecology approved mitigation plan.
173-505 AO #02-17 11/02	Instream resources protection program Stillaguamish River basin - WRIA 5	Steve Hirschey (425) 649-7066 shir461@ecy.wa.gov and Kathleen Enseat (360) 407-6780 kspa461@ecy.wa.gov	Nov. 2002	May 2004	Nov. 2004	The Washington State Department of Ecology's (ecology) water resources program (program) is proposing to develop an instream resource protection program (IRPP) setting instream flows for certain streams and river segments and, in some cases, stream closures within the Stillaguamish River Basin.

MISC.

**WSR 04-03-022**  
**NOTICE OF PUBLIC MEETINGS**  
**OFFICE OF THE GOVERNOR**  
 (Clemency and Pardons Board)  
 [Memorandum—January 9, 2004]

The Washington State Clemency and Pardons Board hereby files with the code reviser the following schedule of its regular meetings for 2004:

The April 23, June 11, September 10, and December 10, 2004, meetings of the Clemency and Pardons Board will be held in the John A. Cherberg Building, Senate Hearing Room 4, Olympia, Washington, starting at 10:00 a.m.

**WSR 04-03-023**  
**NOTICE OF PUBLIC MEETINGS**  
**OFFICE OF THE GOVERNOR**  
 (Clemency and Pardons Board)  
 [Memorandum—January 9, 2004]

The Washington State Clemency and Pardons Board hereby files with the code reviser the following notice of a special meeting:

A special meeting of the board has been set for February 20, 2004, at the Department of Natural Resources, 1111 Washington Street S.E., Olympia, WA, starting at 10:00 a.m. The purpose of the meeting is to address the case of Susan Cummings.

**WSR 04-03-024**  
**INTERPRETIVE AND POLICY STATEMENT**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed January 13, 2004, 10:42 a.m.]

In accordance with RCW 34.05.230(12), enclose is a list of Policy and Interpretive Statements issued by the department for December 2003.

If you have any questions or need additional information, please call Carmen Moore at (360) 902-4206.

**POLICY AND INTERPRETIVE STATEMENTS**

**Specialty Compliance Services Division**

**Questions and Answers About Salary Basis ES.A.9.1**

This administrative policy clarifies the salary basis rule, WAC 296-128-532 and 296-128-533, adopted February 21, 2003, with the circumstances under which deductions may or not be made from salary wages and/or leave banks for employees working in an executive, administrative or professional exemptions under the minimum wage and overtime law, chapter 49.46 RCW. This policy was issued December 2, 2003.

Contact Janis Kerns, Mailstop P.O. Box 44510, Olympia, WA 98504-4510, phone (360) 902-5552.

**WISHA Services Division**

**WISHA Regional Directive (WRD) 10.05 "Ergonomics Activity Following Repeal of Rule"**

WISHA Regional Directive (WRD) 10.05, "Ergonomics Activity Following Repeal of Rule" provides guidance to WISHA enforcement and consultation staff whenever they must address issues involving WMSD (work-related musculoskeletal disorder) hazards and potential ergonomics solutions. It replaces previous versions of WRD 10.05, issued July 7, 2000, and revised July 5, 2002. It will remain in effect until replaced. This policy was amended December 4, 2003.

Contact Marcia Benn, Mailstop 44648, phone (360) 902-5503.

Carmen Moore  
 Rules Coordinator  
 Legislative and Governmental  
 Affairs Office

**WSR 04-03-025**  
**AGENDA**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed January 13, 2004, 10:43 a.m.]

Following, in accordance with RCW 34.05.314, is the Department of Labor and Industries' Semi-Annual Rules Development Agenda for January 1, 2004 - July 31, 2004.

Please contact Carmen Moore at (360) 902-4206 or e-mail moog235@lni.wa.gov, if you have any questions.

Carmen Moore  
 Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 04-04 issue of the Register.

**WSR 04-03-027**  
**ATTORNEY GENERAL'S OFFICE**  
 [Filed January 13, 2004, 4:10 p.m.]

**NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION**  
**WASHINGTON ATTORNEY GENERAL**

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the Attorney General's Office of your interest by February 11, 2004. This is not the "due date" by which comments must be received. However, if you do not notify the Attorney General's Office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been

received. You may notify the Attorney General's Office of your intention to comment by calling (360) 664-3027, or by writing to the Solicitor General, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you will be provided with a copy of the opinion request in which you are interested, information about the Attorney General's Opinion process, information on how to submit your comments, and a due date by which your comments must be received to ensure that they are fully considered.

The Attorney General's Office seeks public input on the following opinion request(s):

**03-12-03 Request by Tim Sheldon  
Senator, 35th Legislative District**

**Is it unlawful for public school teachers and other public certificated instructional employees to participate in a concerted strike, work slowdown, or stoppage, or other concerted activity resulting in unauthorized absence from the workplace and/or nonparticipation of job duties?**

**WSR 04-03-028  
NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF AGRICULTURE  
(Beef Commission)  
[Memorandum—January 6, 2004]**

**Washington State Beef Commission Board  
Meeting Dates for 2004**

Following are the board meeting dates for the Washington State Beef Commission:

February 10, 2004	Board Meeting	Ellensburg
April 6, 2004	Budget Meeting	Ellensburg
May 25, 2004	Annual Meeting	Ellensburg
August 24, 2004	Board Meeting	In conjunction with Washington Cattle Feeders
October/November	Board Meeting	In conjunction with Washington Cattlemen's Association

Should you have questions, please contact Rosalee Mohny at (206) 444-2902.

**WSR 04-03-029  
NOTICE OF PUBLIC MEETINGS  
EDMONDS COMMUNITY COLLEGE  
[Memorandum—January 9, 2004]**

**PLEASE NOTE THE REVISIONS IN BOLD BELOW TO THE ORIGINAL MEETING SCHEDULE MAILED TO YOU ON DECEMBER 9, 2003.**

In compliance with RCW 42.30.075, the following board of trustees 2004 meeting schedule has been approved for Edmonds Community College. The regularly scheduled meetings will take place on the third Monday of the month

beginning at 4:30 p.m. in the Cascade Conference Room 304, Snohomish Hall, at Edmonds Community College, 20226 68th Avenue West, Lynnwood, WA 98036.

**Monday, January 26, 4:30 p.m. Special study session - CANCELLED**

**Saturday, January 31, 9:00 a.m. Special study session**

**Thursday, February 5, 4:30 p.m. Special meeting**

**Monday, March 1, 4:30 p.m. Special meeting**

**Monday, March 22, 4:30 p.m. Special meeting - CANCELLED**

Monday, April 19, 4:30 p.m.

Monday, May 17, 4:30 p.m.

Monday, June 21, 4:30 p.m.

July No meeting

August 26 and 27 Special study session

Monday, September 20, 4:30 p.m.

Monday, October 18, 4:30 p.m.

Monday, November 15, 4:30 p.m.

December No meeting

If you have any questions, please feel free to contact Patty Michajla at (425) 640-1516.

**WSR 04-03-036  
NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF LICENSING  
(Real Estate Commission)  
[Memorandum—January 15, 2004]**

Change in meeting dates for the Washington Real Estate Commission:

March 10 and March 11, 2004, combined into one meeting day, March 10, 2004.

June 10, 2004, meeting date changed to June 11, 2004.

**WSR 04-03-040  
NOTICE OF PUBLIC MEETINGS  
LAW ENFORCEMENT OFFICERS' AND  
FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD  
[Memorandum—January 13, 2004]**

The January 28, 2004, meeting of the LEOFF Plan 2 Retirement Board has been canceled.

The February 25, 2004, meeting of the LEOFF Plan 2 Retirement Board has been rescheduled to occur from 7:00 p.m. - 9:00 p.m.

Please feel free to contact Jeralyn Faulhaber at (360) 664-7767 or by e-mail at jeralyn.faulhaber@ofm.wa.gov should you have any questions.

All meetings of the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board, unless otherwise noted, will be held in the Boardroom of the Washington State

MISC.

Investment Board, 2100 Evergreen Park Drive S.W., Olympia, WA from 9:00 a.m. - 3:00 p.m.

2004 Regular Board Meeting Schedule

- Wednesday, January 28, 2004 CANCELED
- Wednesday, February 25, 2004 Rescheduled to 7:00 p.m. - 9:00 p.m (LTBD)
- Wednesday, March 24, 2004
- Wednesday, April 28, 2004
- Wednesday, May 26, 2004
- Wednesday, June 23, 2004
- Wednesday, July 28, 2004
- Wednesday, August 25, 2004
- Wednesday, September 22, 2004
- Wednesday, October 27, 2004
- Wednesday, November 10, 2004
- Thursday, December 9, 2004

**WSR 04-03-041**  
**NOTICE OF PUBLIC MEETINGS**  
**UNIVERSITY OF WASHINGTON**  
 [Memorandum—January 15, 2004]

The following list represents the regular meeting notices submitted to the Office of Public Records and Open Public Meetings for 2004.

Regular Meetings 2004

Committee	Chair
Animal Care & Use Committee	
Applied Mathematics	Ka Kit Tung
ASUW Board of Directors	
ASUW Senate	
Bioengineering	Dr. Yongmin Kim
Board of Regents	
Chemical Engineering	Eric M. Stuve
Classics	James J. Clauss
Communication	Gerald Baldasty
Comparative Medicine	Dr. Melvin B. Dennis, Jr.
Dental Public Health Sciences	Douglas S. Ramsay
Dental School, Faculty Council	Michael Martin
Drama	Arlene Hamilton
Faculty Women	
Forest Resources Faculty	Rick Gustafson
Genome Sciences	Robert H. Waterston
Geography	James Harrington
Graduate School Council	
Harborview, Board of Trustees	

History	John Findlay
Immunology	Chris Wilson
Information School	Mike Eisenberg
Law School Faculty	
Material Science and Engineering	Rajendra K. Bordia
Mathematics	Selim Tuncel
Mechanical Engineering Faculty	Bruce Adee
Medical Education & Biomedical Informatics	Fred Wolf
Medical History and Ethics	Dr. Wylie Burke
Medicine Board-UWMC Specific Committees	Dennis Okamoto
Neurological Surgery	
Nursing, Ad Hoc Committee	
Nursing, APT Committee	E. Bond
Nursing, Deans and Chairs	Nancy F. Woods
Nursing, Dept. Faculty for BNHS	M. Heitkemper
Nursing, Dept. Faculty for FCN	K. Swanson
Nursing, Dept. Faculty for PCH	B. Berkowitz
Nursing, Faculty Council	B. Belza
Nursing, Faculty Meeting	B. Belza
Nursing, Faculty Retreat	S. Elmore
Nursing, Governing Council	Nancy F. Woods
Obstetrics & Gynecology, Executive/Finance	
Obstetrics & Gynecology, Faculty Meetings	
Oceanography	Bruce Frost
Orthopaedics & Sports Medicine, Budget Council	Frederick A. Matsen III, M.D.
Orthopaedics & Sports Medicine, Exec. Sessions	Frederick A. Matsen III, M.D.
Orthopaedics & Sports Medicine, Faculty Meetings	Frederick A. Matsen III, M.D.
Pathobiology	Ken Stuart
Pathology	Nelson Fausto, M.D.
Periodontics	Murray R. Robinovitch
Pharmacy Curriculum Committee	Valerie Daggett
Pharmacy, Faculty	Danny Shen
Philosophy	Kenneth Clatterbaugh
Physics	David Boulware
Physiology and Biophysics	Stan Froehner
Portage Bay Insurance BOD Meeting	
Portage Bay Insurance Membership Meeting	

MISC.

Portage Bay Insurance Public Meetings	
Psychiatry Advisory Committee	Richard Veith
Psychology	Ana Mari Cauce
Public Health Executive Committee	Patricia Wahl
Rehab Medicine	Lawrence R. Robinson, M.D.
Scandinavian Studies	Terje Leiren
Services & Activities Fee Committee	
Statistics	Peter Guttorp
Tacoma, Building and Facility Use	Linda Schmitz
Tacoma, Business	Dr. Patricia Fandt
Tacoma, Education	Sara Contera
Tacoma, Faculty Assembly IAS	Michael C. Kalton
Tacoma, Institute of Technology	Dr. Larry Crum
Tacoma, Review and Approval Process for Programs	Jack Nelson
Tacoma, Social Work Program, Dept.	Marcie Lazzari
Tacoma, Social Work Program, Faculty	Terri Simonsen
Washington Technology Center, Board of Directors	Lee Cheatham
Women's Studies	Judith Howard

[These schedules are available for public inspection at the Office of Public Records and Open Public Meetings, 4014 University Way N.E., Seattle, WA 98105-6203, phone (206) 543-9180, fax (206) 616-6294, e-mail pubrec@u.washington.edu, campus mail Box 355502.]

**WSR 04-03-042**  
**NOTICE OF PUBLIC MEETINGS**  
**BATES TECHNICAL COLLEGE**

[Memorandum—January 14, 2004]

The board of trustees of Bates Technical College will have a special meeting on January 21, 2004, from 12:00 p.m. to approximately 3:00 p.m. in the Clyde Hupp Board Room, 1101 South Yakima Avenue, Tacoma. This special meeting will be in addition to the regularly scheduled meeting of January 21, 2004, which begins at 3:00 p.m. The board will go into executive session for the purpose of discussing personnel matters. No action will be taken during executive session.

**WSR 04-03-043**

**NOTICE OF PUBLIC MEETINGS**  
**WHATCOM COMMUNITY COLLEGE**

[Memorandum—January 14, 2004]

2004 Meeting Schedule of the Board of Trustees  
 Second Tuesday of the Month at 2:00 p.m.  
 Laidlaw Center Board Room

Whatcom Community College  
 237 West Kellogg Road  
 Bellingham, WA 98226

January 13

February 3 (first Tuesday)

March 9

April 13

May 11

June 8

July 13

August (no meeting)

September 14

October 12

November 9

December 14

**WSR 04-03-044**

**AGENDA**

**INTERAGENCY COMMITTEE**  
**FOR OUTDOOR RECREATION**

(Salmon Recovery Funding Board)

[Filed January 15, 2004, 3:09 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 of each year. Within three days of publication, IAC/SRFB will provide copies to each person so requesting, the director of OFM, 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
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. 3. Planning requirements-revise to exclude education-enforcement and maintenance applicants, in accord with the 2002 NOVA plan. 4. Advisory committee-pending the outcome of legislation now under consideration, revise the meaning of NOVA advisory committee to exclude agency representatives and include nonmotorized, motorized and NHR (sightseers, gatherers, hunters, fishers, etc.) representatives in accord with chapter 185, Laws of 2003.
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 04-03-045**

**NOTICE OF PUBLIC MEETINGS  
PUBLIC WORKS BOARD**

[Memorandum—January 15, 2004]

**Notice of Public Meeting Cancellation**

The meeting of the Washington State Public Works Board scheduled for Tuesday, January 6, 2004, at the Wyndham Garden Hotel in SeaTac, Washington, beginning at 8:30 a.m. was canceled due to inclement weather.

The next scheduled meeting of the board is Tuesday, February 3, 2004, beginning at 8:20 a.m. at the SeaTac Wyndham Garden Hotel.

If you have any questions please call (360) 586-4122.

**WSR 04-03-046  
NOTICE OF PUBLIC MEETINGS  
CONVENTION AND TRADE  
CENTER**

[Memorandum—January 14, 2004]

A regular meeting of the Washington State Convention and Trade Center board of directors will be held on Tuesday, January 20, 2004, 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 04-03-053  
INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:17 p.m.]

**DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT**

Document Title: Numbered Memorandum 03-12 MAA.

Subject: Updates to the nondurable medical supplies and equipment (MSE) billing instructions.

Effective Date: May 15, 2003.

Document Description: Effective for dates of service on and after June 1, 2003, the Medical Assistance Administration (MAA) will set age limitations for the incontinent products listed in this numbered memorandum and will include them in the nursing facility per diem rate.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 14, 2004

E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-054  
INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:18 p.m.]

**DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT**

Document Title: Numbered Memorandum 03-14 MAA.

Subject: Inpatient/outpatient revenue code grid update and hospital reporting.

Effective Date: May 19, 2003.

Document Description: **Effective for dates of service on and after June 1, 2003**, the Medical Assistance Administration (MAA) will begin using the attached updated revenue

MISC.

code list. MAA will deny outpatient hospital services when the required HCPCS or CPT codes identified in the revenue code grid are not reported.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 14, 2004

E. A. Myers, Manager  
Rules and Publications Section

#### WSR 04-03-055

#### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 15, 2004, 4:18 p.m.]

#### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-24 MAA.

Subject: Adult dental coverage changes and fee schedule updates.

Effective Date: July 3, 2003.

Document Description: **Effective for dates of service on and after August 1, 2003**, the Medical Assistance Administration (MAA) as a result of legislative action, is reducing adult dental coverage. This memorandum explains which services will continue to be reimbursed by MAA. **Children's dental coverage is not affected by the recent legislative action.**

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 14, 2004

E. A. Myers, Manager  
Rules and Publications Section

#### WSR 04-03-056

#### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 15, 2004, 4:20 p.m.]

#### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-61 MAA.

Subject: Updates to the prescription drug program.

Effective Date: August 21, 2003.

Document Description: **Effective for claims with dates of service on and after October 1, 2003**, (unless otherwise specified within this numbered memoranda), the Medical Assistance Administration (MAA) will implement the following updates to the prescription drug program:

- Additions to the preferred drug list;
- Additions and modifications to expedited prior authorization codes and criteria;
- Changes in limitations of certain drugs; and
- Removal from and changes to prior authorization requirement of certain drugs.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 14, 2004

E. A. Myers, Manager  
Rules and Publications Section

#### WSR 04-03-057

#### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 15, 2004, 4:20 p.m.]

#### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-62 MAA.

Subject: Billing changes necessary for Health Insurance Portability and Accountability Act (HIPAA) compliance.

Effective Date: September 3, 2003.

Document Description: **Effective for dates of service on and after October 16, 2003**, the following HIPAA-related changes will apply for claims submitted to the Medical Assistance Administration (MAA):

- All state-assigned procedure codes and modifiers must be discontinued or replaced;
- Two-digit place of service codes will be required on claims;
- Type of service codes will no longer be required on claims;
- Only ICD-9-CM diagnosis codes will be recognized as valid; and
- Billing comments.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year



2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-058**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:22 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-63 MAA.  
Subject: School Medical Services: Procedure code changes due to HIPAA implementation.  
Effective Date: August 28, 2003.

Document Description: This memo clarifies which procedures codes school medical services providers must use when billing the Medical Assistance Administration (MAA) for services provided to eligible clients during the 2003-2004 school year.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-059**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:22 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-66 MAA.  
Subject: Discontinued state-unique vision care procedure and diagnosis codes.

Effective Date: September 19, 2003.

Document Description: **Effective for dates of service on and after October 1, 2003**, the Medical Assistance Administration (MAA) will **discontinue** all state-unique procedure and diagnosis codes previously used in the vision care services program.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O.

**WSR 04-03-060**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:23 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-67 MAA.  
Subject: Updates to the prescription drug program - addition to preferred drug list, expedited prior authorization list, and drug changes to prior authorization.

Effective Date: October 6, 2003.

Document Description: **Effective for dates of service on and after November 1, 2003 (unless otherwise specified within the numbered memo)**, the following updates will be made to the prescription drug program:

- Additions to MAA's preferred drug list;
- Additions to expedited prior authorization (EPA) codes and criteria; and
- Drug changes to prior authorization.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-061**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:24 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-68 MAA.  
Subject: Medical nutrition program: HIPAA changes.  
Effective Date: September 18, 2003.

Document Description: **Effective for dates of service on and after October 1, 2003**, providers must use the updated replacement pages to MAA's medical nutrition billing

instructions, dated November 2000, attached to this memorandum when billing the Medical Assistance Administration (MAA) for services and supplies provided to clients.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 14, 2004

E. A. Myers, Manager  
Rules and Publications Section

#### WSR 04-03-062

#### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 15, 2004, 4:25 p.m.]

##### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-69 MAA.

Subject: Discontinued state-unique procedure codes used for FQHCs.

Effective Date: September 23, 2003.

Document Description: Effective for dates of service on and after October 1, 2003, the Medical Assistance Administration (MAA) will **discontinue** the use of all state-unique procedure codes previously used for the federally-qualified health care (FQHC) program.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 14, 2004

E. A. Myers, Manager  
Rules and Publications Section

#### WSR 04-03-063

#### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 15, 2004, 4:25 p.m.]

##### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-70 MAA.

Subject: Discontinued state-unique procedure codes used in the rural health clinic program.

Effective Date: September 23, 2003.

Document Description: Effective for dates of service on and after October 1, 2003, the Medical Assistance Administration (MAA) **discontinue** the use of all state-unique procedure codes previously used in the rural health clinic (RHC) program.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 14, 2004

E. A. Myers, Manager  
Rules and Publications Section

#### WSR 04-03-064

#### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 15, 2004, 4:26 p.m.]

##### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-71 MAA.

Subject: Nondurable medical supplies and equipment (MSE): HIPAA implementation.

Effective Date: September 19, 2003.

Document Description: Effective for dates of service on and after October 1, 2003, the Medical Assistance Administration (MAA) will **discontinue** the use of all state-unique procedure codes. Providers must attach nondurable medical supplies and equipment (MSE) billing instructions dated October 2003, when billing the MAA for services provided to MAA clients. These new billing instructions reflect changes made due to HIPAA implementation.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

January 14, 2004

E. A. Myers, Manager  
Rules and Publications Section

MISC.

**WSR 04-03-065**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:27 p.m.]

2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-72 MAA.

Subject: Wheelchairs durable medical equipment (DME) and supplies: HIPAA implementation.

Effective Date: September 22, 2003.

Document Description: Effective for dates of service on and after October 1, 2003, the Medical Assistance Administration (MAA) will discontinue the use of all state-unique procedure codes. Providers must attach the Wheelchairs durable medical equipment (DME) and supplies billing instructions dated October 2003, when billing the MAA for services provided to MAA clients. These new billing instructions reflect changes made due to HIPAA implementation.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-067**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:28 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-80A.

Subject: Neurodevelopmental centers: HIPAA changes.  
Effective Date: September 29, 2003.

Document Description: Effective for dates of service on and after October 1, 2003, the Medical Assistance Administration (MAA) will discontinue the use of all state-unique procedure code 0002M.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-066**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:28 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-79 MAA.

Subject: Physical therapy: HIPAA changes.

Effective Date: September 29, 2003.

Document Description: Effective for dates of service on and after October 1, 2003, the Medical Assistance Administration (MAA) will discontinue the use of all state-unique procedure code 0002M.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year

**WSR 04-03-068**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:29 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-82 MAA.

Subject: Involuntary Treatment Act (ITA) transportation: HIPAA implementation.

Effective Date: September 29, 2003.

Document Description: Effective for dates of service on and after October 1, 2003, the Medical Assistance Administration (MAA) will discontinue the use of all state-unique codes used in the ITA transportation program. Replacement codes are listed in this memorandum.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website [MISC.](http://maa.dshs.wa.gov/download/pub-</a></p></div>
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January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-069**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:30 p.m.]

## DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-89 MAA.  
Subject: Prosthetic and orthotic devices: Change in rate for procedure code L0486.

Effective Date: October 30, 2003.

Document Description: Retroactive to dates of service on and after July 1, 2003, the Medical Assistance Administration (MAA) revised the fee schedule for prosthetic and orthotic devices to match Medicare changes. These revisions are listed in this numbered memorandum.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-070**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:31 p.m.]

## DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-94 MAA.  
Subject: Maximum allowable cost list update - effective January 1, 2004.

Effective Date: December 19, 2003.

Document Description: Effective for dates of service on and after January 1, 2004, the Medical Assistance Administration (MAA) will implement the following changes to the prescription drug program:

1. New addition to the maximum allowable cost (MAC) list; and
2. Adjustments to the existing MAC list.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-071**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed January 15, 2004, 4:32 p.m.]

## DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 04-03 MAA.  
Subject: Prescription drug program—Dispensing fee payments and pharmacy services Washington Administrative Code (WAC) update.

Effective Date: February 1, 2004.

Document Description: **Effective for dates of service on and after February 1, 2004**, the Medical Assistance Administration (MAA) will no longer reimburse pharmacies a dispensing fee for non-drug items, devices, or supplies. Also included with this memorandum is a notice to pharmacy providers of an update to MAA's Pharmacy services WAC regarding "least costly dosage form."

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 14, 2004  
E. A. Myers, Manager  
Rules and Publications Section

**WSR 04-03-072**

**NOTICE OF PUBLIC MEETINGS  
SKAGIT VALLEY COLLEGE**

[Memorandum—January 14, 2004]

Change in meeting date of regular February 2004, board of trustees meeting for Skagit Valley College, Community College District 4.

At the January 13, 2004, board meeting, the SVC board of trustees voted to change the meeting date of the regularly scheduled February 2004, board of trustees meeting from

Tuesday, February 10, 4:30 p.m., to Tuesday, February 17, 4:30 p.m., Mount Vernon Campus Board Room.

**WSR 04-03-076**  
**NOTICE OF PUBLIC MEETINGS**  
**WORKFORCE TRAINING AND**  
**EDUCATION COORDINATING BOARD**

[Memorandum—January 15, 2004]

Revised 2004 Meeting Schedule

Following is the revised 2004 meeting schedule for the Washington State Workforce Training and Education Coordinating Board. The only change is a dinner on January 28th.

Please give Mary Reister a call at 753-5660 if you have any questions.

Wednesday, January 28, 2004 - Dinner

Thursday, January 29, 2004 - Meeting  
Olympia

Thursday, March 25, 2004 - Meeting  
Olympia

Wednesday, May 12, 2004 - Dinner

Thursday, May 13, 2004 - Meeting  
Port Angeles

Tuesday, June 29, 2004 - Dinner

Wednesday, June 30, 2004 - Meeting  
Spokane

Wednesday, August 4, 2004 - Retreat

Thursday, August 5, 2004 - Retreat  
Ocean Shores

Wednesday, September 29, 2004 - Dinner

Thursday, September 30, 2004 - Meeting  
Yakima

Wednesday, November 17, 2004 - Dinner

Thursday, November 18, 2004 - Meeting  
Renton

The Workforce Training and Education Coordinating Board will hold an informal dinner on January 28, 2004, at 6:00 p.m. at South Puget Sound Community College, Percival Room, 2011 Mottman Road S.W., Olympia, WA, (360) 754-7711. No action will be taken.

The Workforce Training and Education Coordinating Board will hold a board meeting on January 29, 2004, from 8:30 a.m. to 3:00 p.m. in Conference Room, 101/102 at the Olympia Center, 222 North Columbia, Olympia, WA 98501, (360) 753-8380. Governor Gary Locke will join the board at 11:15 a.m.

The board will learn of results from a comprehensive survey of employer's training needs and practices, discuss the impact of the decision to site assembly of the Boeing 7E7 in Everett, and will learn of the state's annual performance results for WIA Title IB and Vocational-Technical education. The board will act on advice to the governor on membership criteria for local workforce development councils and will set targets for local area performance on Workforce Investment

Act measures for years 4 and 5. The board will also provide guidance on the biennial state strategic plan for workforce development and will review results of last year's eligible training provider list standards and policy and learn of options for action in March.

People needing special accommodations can contact Mary Reister at least seven days in advance at (360) 753-5660, e-mail mreister@wtb.wa.gov.

**WSR 04-03-077**  
**NOTICE OF PUBLIC MEETINGS**  
**WASHINGTON STATE UNIVERSITY**

[Memorandum—January 15, 2004]

The board of regents of Washington State University will hold its next board meeting on Friday, January 23, 2004, commencing at 2:00 p.m. in the Large Conference Room of WSU West, 520 Pike Street, Suite 1101, Seattle, WA. The regents will consider all matters included on the agenda, plus any items that may normally come before them. In addition, the regents will hold committee meetings and activities according to the schedule below:

**Friday, January 23, 2004**

*All committee meetings held at WSU West, 520 Pike Street, Seattle, WA.*

9:00 -	Executive, Planning Budget, and Athletics Committee	Location: 11th Floor, Large Conference Room, Suite 1101
11:30 a.m. -	Academic, Faculty, and Student Affairs Committee	Location: 12th Floor, Small Conference Room, Suite 1201
11:30 a.m. -	Business Affairs and Information Technology Committee	Location: 12th Floor, Large Conference Room, Suite 1201
11:30 a.m. -	University Development	Location: 11th Floor, Small Conference Room, Suite 1101
1:30 p.m. -	University Relations	Location: 11th Floor, Small Conference Room, Suite 1101
2:00 -	Board of Regents Meeting	Location: 11th Floor, Large Conference Room, Suite 1101
5:00 p.m.		

This notice is being sent by direction of the president of the board of regents pursuant to the requirements of the Open [Public] Meeting[s] Act of 1971 (chapter 250, Laws of 1971 1st ex. sess.), as amended.

**WSR 04-03-078**  
**NOTICE OF PUBLIC MEETINGS**  
**EASTERN WASHINGTON UNIVERSITY**

[Memorandum—January 20, 2004]

BOARD OF TRUSTEES

January 23, 2004

Executive Session at 12:00 p.m.

Open Public Session at 1:00 p.m.

TAW 215

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 04-03-079**  
**NOTICE OF PUBLIC MEETINGS**  
**ECONOMIC DEVELOPMENT**  
**FINANCE AUTHORITY**  
[Memorandum—January 16, 2004]

The Washington Economic Development Finance Authority (WEDFA) is an independent agency (#106) within the executive branch of the state government. The authority has four regular board meetings each year, one per quarter. The authority's meetings are open to the public, and access for persons with disabilities is provided at all meetings of the authority. We would like to have the board meeting schedule for 2004 published in the next issue of the State Register.

The meeting schedule for 2004 is March 10, 10:00 a.m., at the Seattle SeaTac Marriott Hotel, 3201 South 176th Street, Seattle, WA; June 9, 10 a.m., in the 12 Floor Conference Room, 428 West Riverside, Spokane, WA; September 22, 10 a.m., at the Lake Quinalt Lodge, Quinalt, Washington; and December 8, 10 a.m., at the Seattle SeaTac Marriott Hotel, 3201 South 176th Street, Seattle, WA.

Please call Jonathan A. Hayes at (206) 587-5634 if you have any questions.

**WSR 04-03-086**  
**AGENDA**  
**PUBLIC EMPLOYMENT**  
**RELATIONS COMMISSION**  
[Filed January 20, 2004, 12:22 p.m.]

**RULES DEVELOPMENT AGENDA**  
**January 12, 2004**

This agenda is prepared pursuant to RCW 34.05.314. The commission has not adopted or repealed any rules in the past six months. The commission's last adoption process was detailed in the July 3, 2003, agenda which has been provided to you.

The commission is not in the process of making any changes to its existing rules, nor is any change anticipated at the time of this filing.

Please contact Kenneth J. Latsch, Rules Coordinator, at (360) 570-7320, if you have any questions concerning this matter.

**WSR 04-03-088**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
[Filed January 20, 2004, 3:43 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: PCM 04-001.

Subject: How DCS notifies CPs and NCPs when adding to the "Most Wanted" Website.

Effective Date: January 15, 2004.

Document Description: This PCM explains the process for notifying CPs and NCPs and receiving permission from CPs before posting NCPs to the "Most Wanted" website.

To receive a copy of the interpretive or policy statement, contact: Beth Heston, Division of Child Support, P.O. Box 9162, Mailstop 45860, Olympia, WA 98507-9162, phone (360) 664-5278, TDD (360) 753-9122, fax (360) 586-3274, e-mail eheston@dshs.wa.gov.

January 16, 2004  
Beth Heston

**WSR 04-03-099**  
**DEPARTMENT OF ECOLOGY**  
[Filed January 20, 2004, 4:04 p.m.]

NOTICE OF PUBLIC HEARING

Including Spokane County Air Pollution Control Authority Regulations in Washington's State Implementation Plan

Local air pollution control agencies periodically submit air quality regulations to the Department of Ecology (ecology) for inclusion in Washington's state implementation plan (SIP). The SIP is a statewide plan for meeting federal health-based standards for certain air pollutants. Ecology will hold a public hearing to receive comments on including Spokane County Air Pollution Control Authority (SCAPCA) regulations in the SIP.

Chapter 173-400 WAC, General regulations for air pollution sources, applies to sources statewide unless a local air quality agency or the Energy Facility Site Evaluation Council (EFSEC) has adopted its own new source review rule applicable within its jurisdiction. Local air quality agencies may have supplemental rules as long as they are as stringent as the WAC. For this reason, ecology will receive comments on including in the SIP various SCAPCA general source-related provisions.

The proposed changes are necessary to achieve alignment of state and federal air quality rules for stationary sources. Moreover, they clarify requirements for existing and new stationary sources of air pollution by eliminating conflicts with chapter 70.94 RCW and 40 C.F.R. Part 51. When incorporated into the SIP, the rules reduce the number of duplicative applicable state and local regulations.

Ecology will also receive comments on various administrative changes to SCAPCA regulations in the SIP. These

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include editorial changes and removing sections no longer applicable.

Ecology will receive comments on adopting, amending and removing the following SCAPCA regulations in the SIP: Adding Regulation I, Article I, Regulation I, Article II, Regulation I, Article IV, including Exhibit "R," Regulation I, Article V, Regulation I, Article VI, Sections 6.02, Regulation I, Article VI, Section 6.05; removing Regulation II, Article IV, Section 4.01.

The hearing is scheduled as follows: Thursday, March 4, 2004, 8:30 a.m., Spokane County Public Works Building, Lower Level Hearing Room, West 1026 Broadway, Spokane, WA 99201.

For a SIP hearing, only comments on whether or not to include the changes in the SIP are considered. Written comments must be postmarked no later than March 25, 2004, and should be sent to Brett Rude, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

For more information about the updates or the SIP process prior to the hearing, please contact Melissa McEachron, (360) 407-6860, or Brett Rude, (360) 407-6847.

If you need special accommodations, please contact Barbara Nelson at (509) 477-4727, ext. 116, by February 23, 2004.

#### WSR 04-03-100

#### DEPARTMENT OF ECOLOGY

[Filed January 20, 2004, 4:05 p.m.]

#### CANCELLATION AND RESCHEDULING OF HEARING

State Implementation Plan Revision to Include and Remove Southwest Clean Air Agency Regulations in the State Implementation Plan

Due to severe weather conditions, the Washington State Department of Ecology (ecology) canceled the public hearing on this issue previously scheduled to be conducted at 3:00 p.m. on January 8, 2004. The hearing is rescheduled for February 26, 2004.

Local air pollution control agencies periodically submit air quality regulations to the Department of Ecology (ecology) for inclusion in Washington's state implementation plan (SIP). The SIP is a statewide plan for meeting federal health-based standards for certain air pollutants.

Ecology will hold a public hearing to receive comments on: (1) Adding new and revised Southwest Clean Air Agency (SWCAA) regulations to the SIP; and (2) removing certain regulations from the SIP that are not required by Title I of the Clean Air Act, or that were previously repealed by SWCAA's board of directors. The amendments are as follows:

- Revise: Rule 400, Sections 107, 116, 161, 210, 220, 240, 260, 280 and Appendix A.
- Remove: Rule 400, Section 010.

The purpose of these amendments is to:

- Clarify terminology, improve consistency with the Air Operating Permit program, and provide more

specific reporting requirements for excess emissions.

- Incorporate changes in terminology and clarification of required corrective action.
- Update provisions for preconstruction permit requirements.
- Establish an official test method for opacity.
- Incorporate various administrative changes necessary for general SIP implementation.

The hearing is scheduled as follows: Thursday, February 26, 2004, 2:00 p.m., Southwest Clean Air Agency, 11815 N.E. 99th, Suite 1294, Vancouver, WA 98682-2454.

For a SIP hearing, only comments related to including and/or removing the SWCAA regulations in the SIP can be considered. Written comments must be postmarked no later than March 4, 2004, and should be sent to Brett Rude, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

For more information about the content of the regulations, prior to the hearing, please contact Paul Mairose, Southwest Clean Air Agency, at (360) 574-3058, ext. 30.

If you need special accommodations, please contact Mary Allen at (360) 574-3058, ext. 10, by February 16, 2004.

#### WSR 04-03-103

#### POLICY STATEMENT

#### DEPARTMENT OF HEALTH

[Filed January 21, 2004, 8:18 a.m.]

#### NOTICE OF ADOPTION OF POLICY STATEMENT

Title: Treating partners of patients with sexually transmitted chlamydia and gonorrhea.

Issuing Entity: Medical Quality Assurance Commission.

Subject Matter: Treating partners of patients with sexually transmitted disease.

Effective Date: November 21, 2003.

Contact Person: Beverly A. Thomas, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504, (360) 236-4788.

#### WSR 04-03-110

#### POLICY STATEMENT

#### DEPARTMENT OF ECOLOGY

[Filed January 21, 2004, 10:02 a.m.]

#### POLICY STATEMENT

Purpose: In order to comply with RCW 34.05.230(4) of the Administrative Procedure Act, the Department of Ecology submits the following:

Document Title: Policy 1021 - PRIORITY PROCESSING—WATER BUDGET NEUTRAL PROJECTS.

Subject: Clarifying the type of projects that may be considered nonconsumptive uses of water for the purpose of implementing chapter 173-152 WAC.

MISC.

**Document Description:** This policy clarifies that the following types of projects qualify as being nonconsumptive for the purpose of implementing chapter 173-152 WAC:

1. A project entailing the issuance of a nonconsumptive water right permit (i.e., where there is no diversion or diminishment of the source).
2. A project where the direct use of waters of the state is proposed in exchange for discharge of at least an equivalent amount of reclaimed water under a chapter 90.46 RCW permit.
3. A water budget neutral project (e.g., a project which includes a consumptive water use component that is offset by some other commensurate reduction in water use so that the project, as a whole, causes no diminishment of the source).

Effective Date: January 21, 2004.

To receive a copy of the policy statement contact Jeff Marti, Water Resources, Department of Ecology, P.O. Box 47600, [Olympia, WA] 98504-7600, phone (360) 407-6636, fax (360) 407-6574, e-mail jema461@ecy.wa.gov. If you have special accommodation needs or require this document in an alternate format, please contact Water Resources reception at (360) 407-6600 (voice) or 711 (TTY) or 1-800-833-6388 (TTY).

January 16, 2004  
 Joe Stohr, Program Manager  
 Water Resources Program

**WSR 04-03-115**  
**NOTICE OF PUBLIC MEETINGS**  
**HIGHLINE COMMUNITY COLLEGE**

[Memorandum—January 16, 2004]

Following is a revised meeting schedule for 2004 for the board of trustees of Community College District 9 sent to you in December approved by the board at their December 11, 2003, meeting. At their meeting on January 15, the board approved changing the June meeting from June 10 to June 9. All meetings are held in Building 25 and begin with a study session followed by the regular meeting.

DATE	STUDY SESSION	MEETING
January 15, 2004	8:00 a.m.	10:00 a.m.
February 5, 2004	8:00 a.m.	10:00 a.m.
March 11, 2004	8:00 a.m.	10:00 a.m.
April 8, 2004	8:00 a.m.	10:00 a.m.
May 12, 2004	8:00 a.m.	10:00 a.m.
June 9, 2004	8:00 a.m.	10:00 a.m.
July 8, 2004	8:00 a.m.	10:00 a.m.
August 2004 - NO MEETING		
September 9, 2004	8:00 a.m.	10:00 a.m.
October 14, 2004	8:00 a.m.	10:00 a.m.
November 18, 2004	8:00 a.m.	10:00 a.m.
December 8, 2004	8:00 a.m.	10:00 a.m.

**DEPARTMENT OF ECOLOGY**

[Filed January 21, 2004, 11:56 a.m.]

**Mid-Columbia River and Lake Roosevelt Total Dissolved Gas TMDL**

**Public Comment is Invited on TMDL or Water Cleanup Plan:** The Washington State Department of Ecology (ecology) invites you to provide comment on the proposed Mid-Columbia River and Lake Roosevelt total maximum daily load (TMDL) and implementation plan for controlling total dissolved gas (TDG). You can review the draft TMDL and implementation plan on ecology's website: [www.ecy.wa.gov/biblio/0403002/html](http://www.ecy.wa.gov/biblio/0403002/html) or to obtain a copy call Ann Butler at (360) 407-6480, e-mail [anbu461@ecy.wa.gov](mailto:anbu461@ecy.wa.gov). **The public comment period on the plan goes until March 18, 2004.**

**Background:** The Mid-Columbia River and Lake Roosevelt total dissolved gas TMDL is based on the federal Clean Water Act, state and tribal water quality standards, the National Marine Fisheries Service's 2000 biological opinion for the federal Columbia River power system, and continuous monitoring and special studies conducted by hydroelectric project owners on the river.

The TMDL/implementation plan identifies strategies for reducing total dissolved gas in the mid-Columbia/Lake Roosevelt from the Canadian border to the Snake River. For this project, ecology and the United States Environmental Protection Agency (EPA) will issue a joint TMDL, sharing responsibility depending on jurisdiction. EPA will lead the TMDL for Lake Roosevelt and tribal waters in the Columbia River. Ecology will lead for the state waters of the Columbia downstream of Grand Coulee Dam.

EPA works closely with ecology and provides technical review of all products produced by ecology. Ecology worked with the Spokane Tribe to develop the implementation plan to reduce TDG in the Columbia River and Lake Roosevelt.

**Why is Elevated Total Dissolved Gas (TDG) a Problem?** Saturation of the water with dissolved gases may result from either natural or human caused conditions. High concentrations of TDG negatively impact the health and survival of fish and other aquatic life. The primary source of elevated dissolved gas in the mid-Columbia/Lake Roosevelt is from water spilled at seven dams – Priest Rapids, Wanapum, Rock Island, Rocky Reach, Wells, Chief Joseph, and Grand Coulee – and from sources in Canada and the United States upstream of Lake Roosevelt.

Spill results from river flows exceeding the available capacity of the dam's powerhouse. Water is also spilled to assist fish passage. The mid-Columbia River's salmonid populations have declined significantly, and inadequate fish passage has been identified as one of the causes. The habitat – the lakes and rivers where fish live – also needs to be healthy for the fish populations to recover. This TMDL attempts to balance fish passage needs with the TDG levels necessary to protect habitat.

**Federal Law Requires Cleanup of Polluted Waters:** Federal law requires states to identify sources of pollution in water bodies that fall short of water quality standards and to determine how much pollution needs to be reduced for the

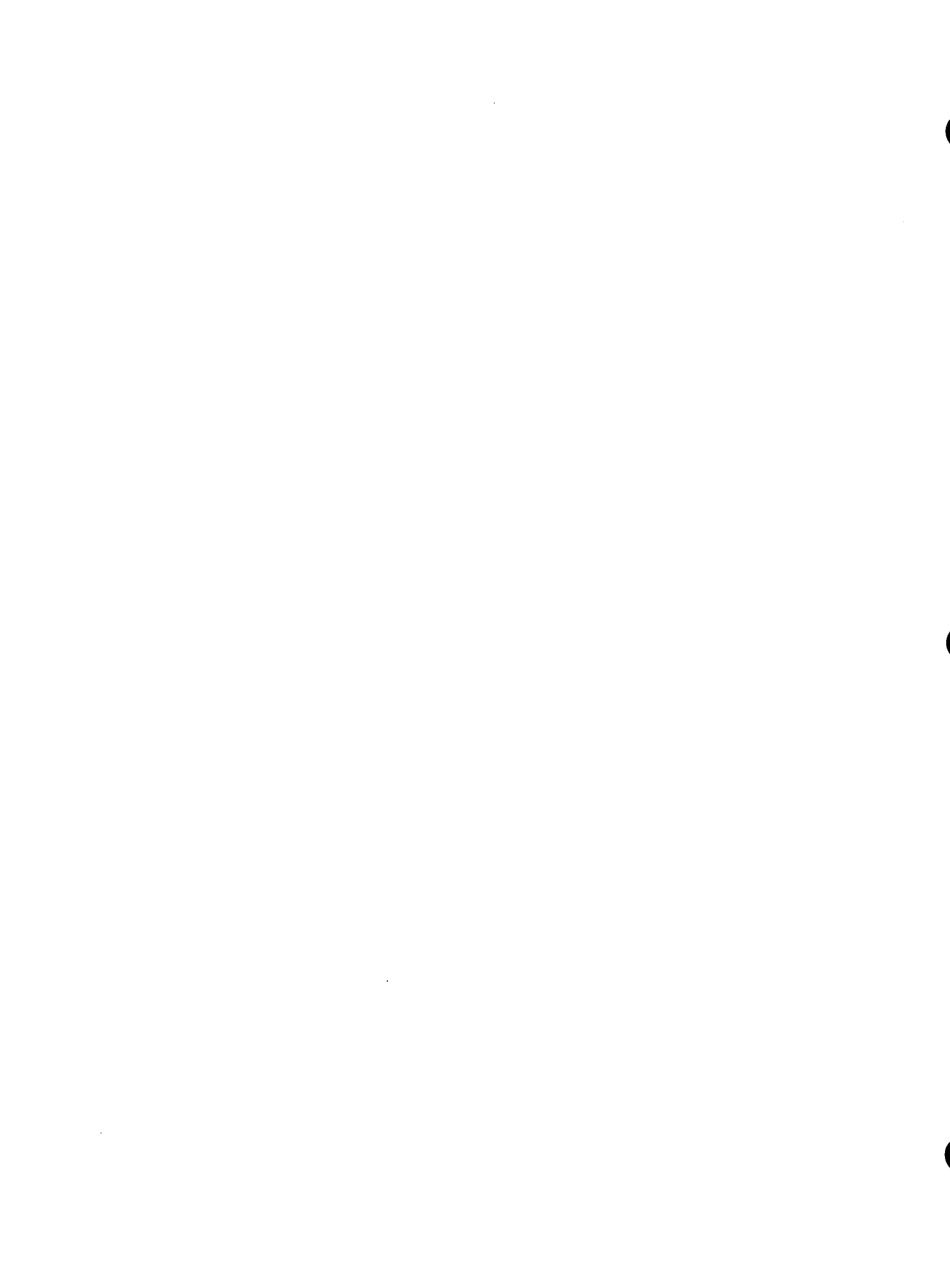
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water to remain healthy. Given this information, ecology, EPA, the Spokane Tribe and regional interests develop strategies for achieving the necessary reduction or elimination of pollution. The result is a water cleanup plan or TMDL, which identifies the allowable pollution levels from various sources. In the mid-Columbia/Lake Roosevelt, TDG levels at times violate the standards of the Colville and Spokane tribes and the state of Washington. This TMDL provides target levels and an implementation plan to reduce TDG to acceptable levels.

**Public Comment Period and Hearings:** Ecology, EPA, and the Spokane Tribe will review and consider all relevant comments received during the public comment period. Following this review, the TMDL and implementation plan may be modified. When complete, the TMDL will be sent to EPA for final approval. You will be notified of the final decision if you present either oral or written comments during the comment period. If you do not comment but wish to receive notification of ecology's final decision, please call or e-mail Ann Butler.

**Mail written comments to Ann Butler, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.** Written comments on the proposed total maximum daily load and/or implementation plan must be received by 5 p.m. on March 18, 2004. Public hearings will be scheduled in Wenatchee and Spokane in mid-March - contact Ann Butler or ecology's website: <http://ecy.wa.gov/programs/wq/wqhome.html> - for details.



**Table of WAC Sections Affected**

**KEY TO TABLE**

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

**Symbols:**

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJECT = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind of existing section
- REVIEW = Review of previously adopted rule
- SUSP = Suspending an existing section

**Suffixes:**

- C = Continuance of previous proposal
  - E = Emergency action
  - P = Proposed action
  - S = Supplemental notice
  - W = Withdrawal of proposed action
  - 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 #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
1- 21-070	AMD	04-02-071	16-230-845	PREP	04-03-004	16-231-235	PREP	04-03-004
16- 08-003	NEW	04-02-063	16-230-850	PREP	04-03-004	16-231-300	PREP	04-03-004
16- 08-004	NEW	04-02-063	16-230-855	PREP	04-03-004	16-231-305	PREP	04-03-004
16-228-1220	PREP	04-03-005	16-230-860	PREP	04-03-004	16-231-310	PREP	04-03-004
16-228-1231	PREP	04-03-004	16-230-861	PREP	04-03-004	16-231-315	PREP	04-03-004
16-228-1250	PREP	04-03-004	16-230-862	PREP	04-03-004	16-231-320	PREP	04-03-004
16-230-400	PREP	04-03-004	16-230-863	PREP	04-03-004	16-231-325	PREP	04-03-004
16-230-410	PREP	04-03-004	16-230-864	PREP	04-03-004	16-231-330	PREP	04-03-004
16-230-420	PREP	04-03-004	16-230-866	PREP	04-03-004	16-231-335	PREP	04-03-004
16-230-430	PREP	04-03-004	16-230-868	PREP	04-03-004	16-231-400	PREP	04-03-004
16-230-440	PREP	04-03-004	16-231-100	PREP	04-03-004	16-231-405	PREP	04-03-004
16-230-450	PREP	04-03-004	16-231-105	PREP	04-03-004	16-231-410	PREP	04-03-004
16-230-460	PREP	04-03-004	16-231-107	PREP	04-03-004	16-231-413	PREP	04-03-004
16-230-470	PREP	04-03-004	16-231-110	PREP	04-03-004	16-231-415	PREP	04-03-004
16-230-600	PREP	04-03-004	16-231-115	PREP	04-03-004	16-231-420	PREP	04-03-004
16-230-605	PREP	04-03-004	16-231-119	PREP	04-03-004	16-231-425	PREP	04-03-004
16-230-610	PREP	04-03-004	16-231-125	PREP	04-03-004	16-231-500	PREP	04-03-004
16-230-615	PREP	04-03-004	16-231-130	PREP	04-03-004	16-231-505	PREP	04-03-004
16-230-620	PREP	04-03-004	16-231-135	PREP	04-03-004	16-231-510	PREP	04-03-004
16-230-625	PREP	04-03-004	16-231-140	PREP	04-03-004	16-231-515	PREP	04-03-004
16-230-630	PREP	04-03-004	16-231-145	PREP	04-03-004	16-231-520	PREP	04-03-004
16-230-635	PREP	04-03-004	16-231-149	PREP	04-03-004	16-231-525	PREP	04-03-004
16-230-640	PREP	04-03-004	16-231-153	PREP	04-03-004	16-231-530	PREP	04-03-004
16-230-645	PREP	04-03-004	16-231-156	PREP	04-03-004	16-231-600	PREP	04-03-004
16-230-650	PREP	04-03-004	16-231-159	PREP	04-03-004	16-231-605	PREP	04-03-004
16-230-655	PREP	04-03-004	16-231-162	PREP	04-03-004	16-231-610	PREP	04-03-004
16-230-660	PREP	04-03-004	16-231-165	PREP	04-03-004	16-231-613	PREP	04-03-004
16-230-665	PREP	04-03-004	16-231-168	PREP	04-03-004	16-231-615	PREP	04-03-004
16-230-670	PREP	04-03-004	16-231-171	PREP	04-03-004	16-231-620	PREP	04-03-004
16-230-673	PREP	04-03-004	16-231-174	PREP	04-03-004	16-231-700	PREP	04-03-004
16-230-675	PREP	04-03-004	16-231-177	PREP	04-03-004	16-231-705	PREP	04-03-004
16-230-800	PREP	04-03-004	16-231-180	PREP	04-03-004	16-231-710	PREP	04-03-004
16-230-810	PREP	04-03-004	16-231-183	PREP	04-03-004	16-231-715	PREP	04-03-004
16-230-813	PREP	04-03-004	16-231-200	PREP	04-03-004	16-231-720	PREP	04-03-004
16-230-815	PREP	04-03-004	16-231-205	PREP	04-03-004	16-231-725	PREP	04-03-004
16-230-820	PREP	04-03-004	16-231-210	PREP	04-03-004	16-231-800	PREP	04-03-004
16-230-825	PREP	04-03-004	16-231-215	PREP	04-03-004	16-231-805	PREP	04-03-004
16-230-830	PREP	04-03-004	16-231-220	PREP	04-03-004	16-231-810	PREP	04-03-004
16-230-835	PREP	04-03-004	16-231-225	PREP	04-03-004	16-231-815	PREP	04-03-004
16-230-840	PREP	04-03-004	16-231-230	PREP	04-03-004	16-231-820	PREP	04-03-004

**TABLE**

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
16-231-825	PREP	04-03-004	51- 13-304	AMD-X	04-03-033	192-150-090	AMD-E	04-02-039
16-231-830	PREP	04-03-004	51- 13-402	AMD-X	04-03-033	192-150-110	NEW-E	04-02-039
16-231-835	PREP	04-03-004	51- 13-502	AMD-X	04-03-033	192-150-115	NEW-E	04-02-039
16-231-840	PREP	04-03-004	51- 13-503	AMD-X	04-03-033	192-150-120	NEW-E	04-02-039
16-231-900	PREP	04-03-004	131	PREP	04-03-032	192-150-125	NEW-E	04-02-039
16-231-905	PREP	04-03-004	139- 01-100	AMD-P	04-02-040	192-150-130	NEW-E	04-02-039
16-231-910	PREP	04-03-004	182- 20-400	AMD	04-03-006	192-150-135	NEW-E	04-02-039
16-231-912	PREP	04-03-004	192- 04-040	AMD-E	04-02-039	192-150-140	NEW-E	04-02-039
16-231-915	PREP	04-03-004	192- 04-050	AMD-E	04-02-039	192-150-150	NEW-E	04-02-039
16-231-920	PREP	04-03-004	192- 12-011	REP-E	04-02-039	192-150-200	NEW-E	04-02-039
16-231-925	PREP	04-03-004	192- 12-012	REP-E	04-02-039	192-150-205	NEW-E	04-02-039
16-231-930	PREP	04-03-004	192- 12-020	REP-E	04-02-039	192-150-210	NEW-E	04-02-039
16-231-935	PREP	04-03-004	192- 12-180	REP-E	04-02-039	192-150-215	NEW-E	04-02-039
16-232-001	PREP	04-03-004	192- 12-184	REP-E	04-02-039	192-150-220	NEW-E	04-02-039
16-232-005	PREP	04-03-004	192- 12-190	REP-E	04-02-039	192-180-010	AMD-E	04-02-039
16-232-007	PREP	04-03-004	192- 12-300	REP-E	04-02-039	192-180-015	AMD-E	04-02-039
16-232-010	PREP	04-03-004	192- 12-310	REP-E	04-02-039	192-180-020	AMD-E	04-02-039
16-232-015	PREP	04-03-004	192- 12-320	REP-E	04-02-039	192-180-025	AMD-E	04-02-039
16-232-020	PREP	04-03-004	192- 12-330	REP-E	04-02-039	192-180-030	AMD-E	04-02-039
16-232-025	PREP	04-03-004	192- 12-340	REP-E	04-02-039	192-180-040	NEW-E	04-02-039
16-232-027	PREP	04-03-004	192- 16-009	AMD-E	04-02-039	192-200-005	NEW-E	04-02-039
16-232-030	PREP	04-03-004	192- 16-015	AMD-E	04-02-039	192-200-010	NEW-E	04-02-039
16-232-035	PREP	04-03-004	192- 16-016	AMD-E	04-02-039	192-200-030	NEW-E	04-02-039
16-232-041	PREP	04-03-004	192- 16-019	REP-E	04-02-039	192-220-010	NEW-E	04-02-039
16-232-044	PREP	04-03-004	192- 16-023	REP-E	04-02-039	192-220-020	NEW-E	04-02-039
16-232-047	PREP	04-03-004	192- 23-014	REP-E	04-02-039	192-220-030	NEW-E	04-02-039
16-232-050	PREP	04-03-004	192- 23-015	REP-E	04-02-039	192-230-100	NEW-E	04-02-039
16-232-053	PREP	04-03-004	192- 23-016	REP-E	04-02-039	192-240-035	AMD-E	04-02-039
16-232-056	PREP	04-03-004	192- 23-017	REP-E	04-02-039	192-240-040	AMD-E	04-02-039
16-232-059	PREP	04-03-004	192- 23-019	REP-E	04-02-039	192-300-050	AMD-E	04-02-039
16-232-062	PREP	04-03-004	192- 23-061	REP-E	04-02-039	192-310-010	AMD-E	04-02-039
16-232-065	PREP	04-03-004	192- 23-096	REP-E	04-02-039	192-310-025	AMD-E	04-02-039
16-232-068	PREP	04-03-004	192- 23-800	REP-E	04-02-039	192-310-030	AMD-E	04-02-039
16-232-071	PREP	04-03-004	192- 23-810	REP-E	04-02-039	192-320-070	AMD-E	04-02-039
16-232-074	PREP	04-03-004	192- 28-105	REP-E	04-02-039	192-320-075	NEW-E	04-02-039
16-232-077	PREP	04-03-004	192- 28-110	REP-E	04-02-039	192-340-100	NEW-E	04-02-039
16-232-100	PREP	04-03-004	192- 28-115	REP-E	04-02-039	220- 32-05100P	NEW-E	04-03-075
16-232-105	PREP	04-03-004	192- 28-120	REP-E	04-02-039	220- 32-05100P	REP-E	04-03-075
16-232-110	PREP	04-03-004	192-100-010	NEW-E	04-02-039	220- 44-05000A	NEW-E	04-03-010C
16-232-115	PREP	04-03-004	192-100-020	NEW-E	04-02-039	220- 44-05000Z	REP-E	04-03-010C
16-232-120	PREP	04-03-004	192-100-030	NEW-E	04-02-039	220- 52-04600D	REP-E	04-03-049
16-232-200	PREP	04-03-004	192-110-200	NEW-E	04-02-039	220- 52-04600G	NEW-E	04-03-049
16-232-205	PREP	04-03-004	192-110-210	NEW-E	04-02-039	220- 52-07100D	NEW-E	04-03-031
16-232-210	PREP	04-03-004	192-120-050	NEW-E	04-02-039	220- 52-07300J	REP-E	04-03-010B
16-232-215	PREP	04-03-004	192-130-060	NEW-E	04-02-039	220- 52-07300K	NEW-E	04-03-010B
16-232-220	PREP	04-03-004	192-130-065	NEW-E	04-02-039	220- 52-07300K	REP-E	04-03-074
16-232-225	PREP	04-03-004	192-130-070	NEW-E	04-02-039	220- 52-07300L	NEW-E	04-03-074
16-232-300	PREP	04-03-004	192-130-080	NEW-E	04-02-039	220- 56-35000Q	NEW-E	04-03-010A
16-232-305	PREP	04-03-004	192-140-070	NEW-E	04-02-039	220- 56-36000W	NEW-E	04-03-048
16-232-310	PREP	04-03-004	192-140-075	NEW-E	04-02-039	220- 56-36000W	REP-E	04-03-048
16-232-315	PREP	04-03-004	192-140-080	NEW-E	04-02-039	220- 56-38000G	NEW-E	04-03-010A
16-530-005	NEW-P	04-03-111	192-140-085	NEW-E	04-02-039	230- 30-072	AMD-P	04-02-045
16-530-006	NEW-P	04-03-111	192-140-090	NEW-E	04-02-039	232- 28-271	AMD	04-03-026
16-530-010	AMD-P	04-03-111	192-140-100	NEW-E	04-02-039	232- 28-61900G	NEW-E	04-03-047
16-530-020	AMD-P	04-03-111	192-140-120	NEW-E	04-02-039	232- 28-61900G	REP-E	04-03-047
16-530-030	REP-P	04-03-111	192-140-200	NEW-E	04-02-039	246- 50-001	AMD-W	04-02-066
16-530-040	AMD-P	04-03-111	192-140-210	NEW-E	04-02-039	246- 50-005	NEW-W	04-02-066
51- 04-030	AMD-X	04-03-034	192-150-050	AMD-E	04-02-039	246- 50-010	AMD-W	04-02-066
51- 13-106	AMD-X	04-03-033	192-150-055	AMD-E	04-02-039	246- 50-020	AMD-W	04-02-066
51- 13-201	AMD-X	04-03-033	192-150-060	AMD-E	04-02-039	246- 50-030	AMD-W	04-02-066
51- 13-302	AMD-X	04-03-033	192-150-065	AMD-E	04-02-039	246- 50-035	NEW-W	04-02-066
51- 13-303	AMD-X	04-03-033	192-150-085	AMD-E	04-02-039	246- 50-040	REP-W	04-02-066

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
246-50-990	AMD-W	04-02-066	296-24-15001	REP-P	04-03-085	296-24-20019	REP-P	04-03-085
246-247-075	AMD-W	04-02-067	296-24-15003	REP-P	04-03-085	296-24-20021	REP-P	04-03-085
246-247-110	AMD-W	04-02-067	296-24-15005	REP-P	04-03-085	296-24-205	REP-P	04-03-085
246-247-120	AMD-W	04-02-067	296-24-15007	REP-P	04-03-085	296-24-20501	REP-P	04-03-085
246-247-130	AMD-W	04-02-067	296-24-15009	REP-P	04-03-085	296-24-20503	REP-P	04-03-085
246-272B	PREP	04-03-010	296-24-165	REP-P	04-03-085	296-24-20505	REP-P	04-03-085
246-808-190	PREP	04-02-064	296-24-16501	REP-P	04-03-085	296-24-20507	REP-P	04-03-085
246-808-535	PREP	04-02-064	296-24-16503	REP-P	04-03-085	296-24-20509	REP-P	04-03-085
246-828-030	REP	04-02-068	296-24-16505	REP-P	04-03-085	296-24-20511	REP-P	04-03-085
246-828-045	AMD	04-02-068	296-24-16507	REP-P	04-03-085	296-24-20513	REP-P	04-03-085
246-828-055	REP	04-02-068	296-24-16509	REP-P	04-03-085	296-24-20515	REP-P	04-03-085
246-828-061	REP	04-02-068	296-24-16511	REP-P	04-03-085	296-24-20517	REP-P	04-03-085
246-828-070	REP	04-02-068	296-24-16513	REP-P	04-03-085	296-24-20519	REP-P	04-03-085
246-828-075	AMD	04-02-068	296-24-16515	REP-P	04-03-085	296-24-20521	REP-P	04-03-085
246-828-090	AMD	04-02-068	296-24-16517	REP-P	04-03-085	296-24-20523	REP-P	04-03-085
246-828-095	AMD	04-02-068	296-24-16519	REP-P	04-03-085	296-24-20525	REP-P	04-03-085
246-828-100	AMD	04-02-068	296-24-16521	REP-P	04-03-085	296-24-20527	REP-P	04-03-085
246-828-105	AMD	04-02-068	296-24-16523	REP-P	04-03-085	296-24-20529	REP-P	04-03-085
246-828-220	AMD	04-02-068	296-24-16525	REP-P	04-03-085	296-24-20531	REP-P	04-03-085
246-828-270	AMD	04-02-068	296-24-16527	REP-P	04-03-085	296-24-20533	REP-P	04-03-085
246-828-290	AMD	04-02-068	296-24-16529	REP-P	04-03-085	296-24-20699	REP-P	04-03-085
246-828-320	AMD	04-02-068	296-24-16531	REP-P	04-03-085	296-24-20700	REP-P	04-03-085
246-828-330	AMD	04-02-068	296-24-16533	REP-P	04-03-085	296-24-20710	REP-P	04-03-085
246-828-350	AMD	04-02-068	296-24-16535	REP-P	04-03-085	296-24-20720	REP-P	04-03-085
246-828-500	AMD	04-02-068	296-24-16537	REP-P	04-03-085	296-24-20730	REP-P	04-03-085
246-828-550	AMD	04-02-068	296-24-16539	REP-P	04-03-085	296-24-69003	AMD-P	04-03-085
246-828-990	AMD	04-02-068	296-24-180	REP-P	04-03-085	296-24-88020	AMD-P	04-03-085
246-887-160	AMD-X	04-03-105	296-24-18001	REP-P	04-03-085	296-24-90003	AMD-P	04-03-085
246-915-085	AMD-P	04-03-104	296-24-18003	REP-P	04-03-085	296-24-975	AMD-P	04-03-102
246-915-182	NEW-P	04-03-119	296-24-18005	REP-P	04-03-085	296-45-175	AMD-P	04-03-102
246-915-210	AMD-P	04-03-107	296-24-18007	REP-P	04-03-085	296-54-573	AMD-P	04-03-085
246-915-220	AMD-P	04-03-107	296-24-18009	REP-P	04-03-085	296-54-57310	AMD-P	04-03-102
246-915-230	AMD-P	04-03-107	296-24-190	REP-P	04-03-085	296-59-130	AMD-P	04-03-085
246-915-240	AMD-P	04-03-107	296-24-19001	REP-P	04-03-085	296-62-141	AMD	04-03-081
246-915-250	AMD-P	04-03-107	296-24-19003	REP-P	04-03-085	296-62-300	AMD	04-02-053
246-915-260	AMD-P	04-03-107	296-24-19005	REP-P	04-03-085	296-78-56511	AMD-P	04-03-085
246-915-270	AMD-P	04-03-107	296-24-19007	REP-P	04-03-085	296-78-590	AMD-P	04-03-085
246-915-280	AMD-P	04-03-107	296-24-19009	REP-P	04-03-085	296-78-605	AMD-P	04-03-085
246-919-480	PREP	04-03-106	296-24-19011	REP-P	04-03-085	296-78-615	AMD-P	04-03-085
250-20-041	AMD-P	04-03-108	296-24-19013	REP-P	04-03-085	296-78-650	AMD-P	04-03-085
287-01-030	AMD	04-03-114	296-24-19015	REP-P	04-03-085	296-78-660	AMD-P	04-03-085
287-02-030	AMD	04-03-114	296-24-195	REP-P	04-03-085	296-78-665	AMD-P	04-03-085
287-02-130	AMD	04-03-114	296-24-19501	REP-P	04-03-085	296-78-690	AMD-P	04-03-085
296-19A-210	AMD-S	04-03-035	296-24-19503	REP-P	04-03-085	296-78-70503	AMD-P	04-03-085
296-19A-480	AMD-S	04-03-035	296-24-19505	REP-P	04-03-085	296-78-71007	AMD-P	04-03-085
296-20-01002	AMD-P	04-03-082	296-24-19507	REP-P	04-03-085	296-78-71017	AMD-P	04-03-085
296-20-02704	AMD-P	04-03-082	296-24-19509	REP-P	04-03-085	296-78-71505	AMD-P	04-03-085
296-20-02705	AMD-P	04-03-082	296-24-19511	REP-P	04-03-085	296-79-030	AMD-P	04-03-085
296-20-03011	AMD-P	04-03-082	296-24-19513	REP-P	04-03-085	296-79-220	AMD-P	04-03-102
296-20-03012	AMD-P	04-03-082	296-24-19514	REP-P	04-03-085	296-115-050	AMD-P	04-03-085
296-24-110	REP-P	04-03-102	296-24-19517	REP-P	04-03-085	296-127-011	AMD-X	04-03-083
296-24-11001	REP-P	04-03-102	296-24-197	REP-P	04-03-085	296-155	PREP	04-03-084
296-24-11003	REP-P	04-03-102	296-24-200	REP-P	04-03-085	296-155-429	AMD-P	04-03-102
296-24-11005	REP-P	04-03-102	296-24-20001	REP-P	04-03-085	296-155-487	AMD-P	04-03-085
296-24-11007	REP-P	04-03-102	296-24-20003	REP-P	04-03-085	296-155-488	AMD-P	04-03-085
296-24-11009	REP-P	04-03-102	296-24-20005	REP-P	04-03-085	296-155-525	AMD-P	04-03-085
296-24-11011	REP-P	04-03-102	296-24-20007	REP-P	04-03-085	296-155-682	AMD-P	04-03-085
296-24-11013	REP-P	04-03-102	296-24-20009	REP-P	04-03-085	296-301-020	AMD-P	04-03-085
296-24-11015	REP-P	04-03-102	296-24-20011	REP-P	04-03-085	296-301-170	AMD-P	04-03-085
296-24-11017	REP-P	04-03-102	296-24-20013	REP-P	04-03-085	296-302-010	REP-P	04-03-085
296-24-119	REP-P	04-03-102	296-24-20015	REP-P	04-03-085	296-302-015	REP-P	04-03-085
296-24-150	REP-P	04-03-085	296-24-20017	REP-P	04-03-085	296-302-020	REP-P	04-03-085





Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
296-809-50020	NEW	04-03-081	308-124A-025	AMD-P	04-03-039	388-140-0055	NEW-E	04-03-0100
296-809-50022	NEW	04-03-081	308-124A-110	AMD-P	04-03-039	388-140-0060	NEW-E	04-03-0100
296-809-50024	NEW	04-03-081	308-124A-440	AMD-P	04-03-039	388-140-0065	NEW-E	04-03-0100
296-809-600	NEW	04-03-081	308-124C-030	AMD-P	04-03-037	388-140-0070	NEW-E	04-03-0100
296-809-60002	NEW	04-03-081	308-124D-030	AMD-P	04-03-038	388-140-0075	NEW-E	04-03-0100
296-809-60004	NEW	04-03-081	314- 02-105	AMD-P	04-02-075	388-140-0080	NEW-E	04-03-0100
296-809-700	NEW	04-03-081	314- 17	PREP	04-02-074	388-140-0085	NEW-E	04-03-0100
296-809-70002	NEW	04-03-081	326- 02-010	AMD-P	04-02-043	388-140-0090	NEW-E	04-03-0100
296-809-70004	NEW	04-03-081	326- 02-030	AMD-P	04-02-043	388-140-0095	NEW-E	04-03-0100
296-809-800	NEW	04-03-081	326- 02-040	AMD-P	04-02-043	388-140-0100	NEW-E	04-03-0100
296-843-100	NEW	04-02-053	326- 02-045	AMD-P	04-02-043	388-140-0105	NEW-E	04-03-0100
296-843-110	NEW	04-02-053	326- 07-030	AMD-P	04-02-043	388-140-0110	NEW-E	04-03-0100
296-843-11005	NEW	04-02-053	326- 20-010	AMD-P	04-02-043	388-140-0115	NEW-E	04-03-0100
296-843-11010	NEW	04-02-053	326- 20-045	NEW-P	04-02-043	388-140-0120	NEW-E	04-03-0100
296-843-120	NEW	04-02-053	326- 20-046	NEW-P	04-02-043	388-140-0125	NEW-E	04-03-0100
296-843-12005	NEW	04-02-053	326- 20-047	NEW-P	04-02-043	388-140-0130	NEW-E	04-03-0100
296-843-130	NEW	04-02-053	326- 20-048	NEW-P	04-02-043	388-140-0135	NEW-E	04-03-0100
296-843-13005	NEW	04-02-053	326- 20-050	AMD-P	04-02-043	388-140-0140	NEW-E	04-03-0100
296-843-13010	NEW	04-02-053	326- 20-070	AMD-P	04-02-043	388-140-0145	NEW-E	04-03-0100
296-843-140	NEW	04-02-053	326- 20-080	AMD-P	04-02-043	388-140-0150	NEW-E	04-03-0100
296-843-14005	NEW	04-02-053	326- 20-092	AMD-P	04-02-041	388-140-0155	NEW-E	04-03-0100
296-843-150	NEW	04-02-053	326- 20-094	AMD-P	04-02-041	388-140-0160	NEW-E	04-03-0100
296-843-15005	NEW	04-02-053	326- 20-095	AMD-P	04-02-041	388-140-0165	NEW-E	04-03-0100
296-843-15010	NEW	04-02-053	326- 20-096	AMD-P	04-02-041	388-140-0170	NEW-E	04-03-0100
296-843-15015	NEW	04-02-053	326- 20-098	AMD-P	04-02-041	388-140-0175	NEW-E	04-03-0100
296-843-160	NEW	04-02-053	326- 20-110	AMD-P	04-02-043	388-140-0180	NEW-E	04-03-0100
296-843-16005	NEW	04-02-053	326- 20-120	AMD-P	04-02-043	388-140-0185	NEW-E	04-03-0100
296-843-170	NEW	04-02-053	326- 20-125	AMD-P	04-02-042	388-140-0190	NEW-E	04-03-0100
296-843-17005	NEW	04-02-053	326- 20-160	AMD-P	04-02-043	388-140-0195	NEW-E	04-03-0100
296-843-180	NEW	04-02-053	326- 20-173	AMD-P	04-02-043	388-140-0200	NEW-E	04-03-0100
296-843-18005	NEW	04-02-053	326- 20-180	AMD-P	04-02-043	388-140-0205	NEW-E	04-03-0100
296-843-18010	NEW	04-02-053	371- 08-306	NEW	04-03-001	388-140-0210	NEW-E	04-03-0100
296-843-18015	NEW	04-02-053	371- 08-315	AMD	04-03-001	388-140-0215	NEW-E	04-03-0100
296-843-18020	NEW	04-02-053	388- 27-0120	AMD-E	04-03-018	388-140-0220	NEW-E	04-03-0100
296-843-190	NEW	04-02-053	388- 27-0130	AMD-E	04-03-018	388-140-0225	NEW-E	04-03-0100
296-843-19005	NEW	04-02-053	388- 27-0135	AMD-E	04-03-018	388-140-0230	NEW-E	04-03-0100
296-843-200	NEW	04-02-053	388- 27-0155	AMD-E	04-03-018	388-140-0235	NEW-E	04-03-0100
296-843-20005	NEW	04-02-053	388- 27-0160	AMD-E	04-03-018	388-140-0240	NEW-E	04-03-0100
296-843-20010	NEW	04-02-053	388- 27-0165	AMD-E	04-03-018	388-140-0245	NEW-E	04-03-0100
296-843-20015	NEW	04-02-053	388- 27-0175	AMD-E	04-03-018	388-140-0250	NEW-E	04-03-0100
296-843-20020	NEW	04-02-053	388- 27-0190	AMD-E	04-03-018	388-140-0255	NEW-E	04-03-0100
296-843-20025	NEW	04-02-053	388- 27-0195	AMD-E	04-03-018	388-140-0260	NEW-E	04-03-0100
296-843-20030	NEW	04-02-053	388- 27-0200	AMD-E	04-03-018	388-140-0265	NEW-E	04-03-0100
296-843-20035	NEW	04-02-053	388- 27-0210	AMD-E	04-03-018	388-140-0270	NEW-E	04-03-0100
296-843-210	NEW	04-02-053	388- 27-0215	AMD-E	04-03-018	388-140-0275	NEW-E	04-03-0100
296-843-21005	NEW	04-02-053	388- 27-0220	AMD-E	04-03-018	388-140-0280	NEW-E	04-03-0100
296-843-220	NEW	04-02-053	388- 27-0225	REP-E	04-03-018	388-140-0285	NEW-E	04-03-0100
296-843-22005	NEW	04-02-053	388- 27-0230	AMD-E	04-03-018	388-140-0290	NEW-E	04-03-0100
296-843-22010	NEW	04-02-053	388- 27-0235	REP-E	04-03-018	388-140-0295	NEW-E	04-03-0100
296-843-300	NEW	04-02-053	388- 27-0240	REP-E	04-03-018	388-140-0300	NEW-E	04-03-0100
308- 56A-030	AMD-P	04-03-120	388- 27-0245	REP-E	04-03-018	388-140-0305	NEW-E	04-03-0100
308- 56A-040	AMD-P	04-03-120	388- 27-0270	REP-E	04-03-018	388-140-0310	NEW-E	04-03-0100
308- 56A-640	AMD	04-03-016	388-140-0005	NEW-E	04-03-0100	388-140-0315	NEW-E	04-03-0100
308- 96A	PREP	04-03-002	388-140-0010	NEW-E	04-03-0100	388-140-0320	NEW-E	04-03-0100
308- 96A	PREP	04-03-003	388-140-0015	NEW-E	04-03-0100	388-140-0325	NEW-E	04-03-0100
308- 96A-005	PREP	04-03-002	388-140-0020	NEW-E	04-03-0100	388-140-0330	NEW-E	04-03-0100
308- 96A-021	AMD-P	04-03-121	388-140-0025	NEW-E	04-03-0100	388-140-0335	NEW-E	04-03-0100
308- 96A-072	AMD-P	04-03-121	388-140-0030	NEW-E	04-03-0100	388-140-0340	NEW-E	04-03-0100
308- 96A-074	AMD-P	04-03-121	388-140-0035	NEW-E	04-03-0100	388-140-0345	NEW-E	04-03-0100
308- 96A-311	PREP	04-03-003	388-140-0040	NEW-E	04-03-0100	388-140-0350	NEW-E	04-03-0100
308- 96A-550	AMD-P	04-03-121	388-140-0045	NEW-E	04-03-0100	388-140-0355	NEW-E	04-03-0100
308- 96A-560	AMD-P	04-03-121	388-140-0050	NEW-E	04-03-0100	388-140-0360	NEW-E	04-03-0100





Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-148-0900	AMD-P	04-03-116	388-290-0085	AMD-P	04-02-047	388-448-0010	AMD-P	04-02-048
388-148-0905	AMD-P	04-03-116	388-290-0090	AMD-P	04-02-047	388-448-0020	AMD-P	04-02-048
388-148-0915	AMD-P	04-03-116	388-290-0095	AMD-P	04-02-047	388-448-0030	AMD-P	04-02-048
388-148-0935	REP-P	04-03-116	388-290-0100	AMD-P	04-02-047	388-448-0120	AMD-P	04-02-048
388-148-0995	AMD-P	04-03-116	388-290-0105	AMD-P	04-02-047	388-448-0160	AMD-P	04-02-048
388-148-1020	REP-P	04-03-116	388-290-0107	NEW-P	04-02-047	388-448-0160	AMD-E	04-02-051
388-148-1025	AMD-P	04-03-116	388-290-0108	NEW-P	04-02-047	388-448-0160	AMD-E	04-03-010E
388-148-1030	AMD-P	04-03-116	388-290-0110	AMD-P	04-02-047	388-448-0170	REP-P	04-02-048
388-148-1035	AMD-P	04-03-116	388-290-0120	AMD-P	04-02-047	388-448-0170	REP-E	04-02-051
388-148-1045	AMD-P	04-03-116	388-290-0125	AMD-P	04-02-047	388-448-0170	REP-E	04-03-010E
388-148-1050	AMD-P	04-03-116	388-290-0130	AMD-P	04-02-047	388-448-0180	AMD-P	04-02-048
388-148-1060	AMD-P	04-03-116	388-290-0135	AMD-P	04-02-047	388-448-0190	REP-P	04-02-048
388-148-1065	REP-P	04-03-116	388-290-0140	AMD-P	04-02-047	388-448-0190	REP-E	04-02-051
388-148-1066	NEW-P	04-03-116	388-290-0143	AMD-P	04-02-047	388-448-0190	REP-E	04-03-010E
388-148-1070	AMD-P	04-03-116	388-290-0145	AMD-P	04-02-047	388-448-0200	AMD-P	04-02-048
388-148-1076	NEW-P	04-03-116	388-290-0150	AMD-P	04-02-047	388-448-0210	AMD-P	04-02-048
388-148-1077	NEW-P	04-03-116	388-290-0155	AMD-P	04-02-047	388-450-0005	AMD-C	04-02-058
388-148-1078	NEW-P	04-03-116	388-290-0160	AMD-P	04-02-047	388-450-0165	AMD-C	04-02-058
388-148-1079	NEW-P	04-03-116	388-290-0165	AMD-P	04-02-047	388-450-0170	AMD	04-03-051
388-148-1085	AMD-P	04-03-116	388-290-0167	AMD-P	04-02-047	388-454-0010	AMD-C	04-03-010F
388-148-1115	AMD-P	04-03-116	388-290-0180	AMD-P	04-02-047	388-466-0130	AMD-C	04-02-058
388-148-1120	AMD-P	04-03-116	388-290-0190	AMD-P	04-02-047	388-472-0010	AMD-P	04-03-093
388-148-1205	NEW-P	04-03-116	388-290-0200	AMD-P	04-02-047	388-478-0005	AMD-C	04-02-058
388-148-1210	NEW-P	04-03-116	388-290-0205	AMD-P	04-02-047	388-478-0055	AMD-S	04-03-096
388-148-1215	NEW-P	04-03-116	388-290-0210	REP-P	04-02-047	388-484-0005	AMD-C	04-02-058
388-148-1220	NEW-P	04-03-116	388-290-0220	AMD-P	04-02-047	388-513-1350	AMD-C	04-02-056
388-148-1225	NEW-P	04-03-116	388-290-0225	AMD-P	04-02-047	388-513-1380	AMD-C	04-02-056
388-148-1230	NEW-P	04-03-116	388-290-0230	AMD-P	04-02-047	388-530-1850	PREP	04-03-089
388-148-1235	NEW-P	04-03-116	388-290-0235	AMD-P	04-02-047	388-546	PREP	04-02-060
388-148-1240	NEW-P	04-03-116	388-290-0245	AMD-P	04-02-047	388-550	PREP	04-03-092
388-148-1245	NEW-P	04-03-116	388-290-0247	NEW-P	04-02-047	388-550-2800	PREP	04-03-091
388-148-1250	NEW-P	04-03-116	388-290-0250	AMD-P	04-02-047	388-550-2900	PREP	04-03-091
388-148-1255	NEW-P	04-03-116	388-290-0255	AMD-P	04-02-047	388-550-4900	PREP	04-03-090
388-148-1260	NEW-P	04-03-116	388-290-0260	AMD-P	04-02-047	388-550-5000	PREP	04-03-090
388-148-1265	NEW-P	04-03-116	388-290-0265	AMD-P	04-02-047	388-550-5100	PREP	04-03-090
388-148-1270	NEW-P	04-03-116	388-290-0270	AMD-P	04-02-047	388-550-5200	PREP	04-03-090
388-148-1275	NEW-P	04-03-116	388-290-0271	NEW-P	04-02-047	388-551	PREP	04-02-061
388-148-1280	NEW-P	04-03-116	388-290-0273	NEW-P	04-02-047	388-553-100	NEW-C	04-02-055
388-273-0025	AMD-E	04-03-097	388-310-1500	AMD-C	04-02-058	388-553-200	NEW-C	04-02-055
388-273-0030	AMD-E	04-03-097	388-310-1600	AMD-P	04-03-095	388-553-300	NEW-C	04-02-055
388-273-0035	AMD-E	04-03-097	388-310-1650	AMD-P	04-03-095	388-553-400	NEW-C	04-02-055
388-290-0001	AMD-P	04-02-047	388-310-2000	AMD-C	04-02-058	388-553-500	NEW-C	04-02-055
388-290-0005	AMD-P	04-02-047	388-408-0034	AMD-P	04-02-050	388-720-0020	AMD-C	04-02-059
388-290-0010	AMD-P	04-02-047	388-408-0035	AMD-P	04-02-050	458-20-186	PREP	04-03-101
388-290-0012	NEW-P	04-02-047	388-410-0001	AMD-C	04-02-058	458-20-18601	PREP	04-03-101
388-290-0015	AMD-P	04-02-047	388-416-0015	AMD	04-03-019	458-20-252	PREP	04-02-070
388-290-0020	AMD-P	04-02-047	388-418-0005	AMD-W	04-02-052	458-20-265	PREP	04-02-070
388-290-0025	AMD-P	04-02-047	388-418-0005	AMD-P	04-02-072	468-60-010	NEW-P	04-03-112
388-290-0030	AMD-P	04-02-047	388-418-0005	AMD-E	04-02-073	468-100-306	AMD-X	04-03-113
388-290-0031	NEW-P	04-02-047	388-418-0025	AMD	04-03-019	468-310-020	PREP	04-03-011
388-290-0032	NEW-P	04-02-047	388-426	PREP-W	04-03-052	468-310-050	PREP	04-03-011
388-290-0035	AMD-P	04-02-047	388-426-0005	AMD	04-03-050	480-80	PREP	04-03-118
388-290-0040	AMD-P	04-02-047	388-434-0005	AMD	04-03-019	480-120	PREP	04-03-118
388-290-0045	AMD-P	04-02-047	388-436-0002	AMD-P	04-02-049	480-120-146	AMD-S	04-03-117
388-290-0050	AMD-P	04-02-047	388-436-0002	AMD-E	04-03-098	516-60-001	AMD-P	04-03-073
388-290-0055	AMD-P	04-02-047	388-436-0015	AMD-C	04-02-057	516-60-010	NEW-P	04-03-073
388-290-0060	AMD-P	04-02-047	388-436-0040	AMD-C	04-02-058			
388-290-0065	AMD-P	04-02-047	388-440	PREP-W	04-03-052			
388-290-0070	AMD-P	04-02-047	388-440-0001	AMD-C	04-02-058			
388-290-0075	AMD-P	04-02-047	388-444-0055	AMD-C	04-02-058			
388-290-0080	REP-P	04-02-047	388-446-0005	AMD-P	04-03-094			
388-290-0082	NEW-P	04-02-047	388-448-0001	AMD-P	04-02-048			

TABLE

## Subject/Agency Index

(Citation in bold type refer to material in this issue)

<b>ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY COMMISSION</b>					
Meetings	MISC	04-01-113		statewide and local amendments, policies and procedures	PERM 04-01-107 EXPE 04-03-034
<b>ACCOUNTANCY, BOARD OF</b>				ventilation and indoor air quality code	EXPE 04-03-033
Administration fees	PERM	04-01-076		<b>CHIROPRACTIC QUALITY ASSURANCE COMMISSION</b> (See HEALTH, DEPARTMENT OF)	
Meetings	MISC	04-01-077		<b>CLARK COLLEGE</b>	
<b>ADVANCED TUITION PAYMENT, COMMITTEE ON</b>				Meetings	MISC 04-01-153
Meetings	MISC	04-01-040		<b>CODE REVISER'S OFFICE</b>	
<b>AFRICAN AMERICAN AFFAIRS, COMMISSION ON</b>				Ergonomics rules, Initiative 841	MISC 04-01-012
Meetings	MISC	04-01-148		Quarterly reports	
<b>AGING AND ADULT SERVICES</b>				03-19 - 03-24 See Issue 04-01	
(See SOCIAL AND HEALTH SERVICES, DEPARTMENT OF)				Rule-making process	PERM 04-02-071
<b>AGRICULTURE, DEPARTMENT OF</b>				<b>COLUMBIA RIVER GORGE COMMISSION</b>	
Barley commission				Economic development certification process	PROP 04-01-020
marketing orders	PROP	04-03-111		<b>COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, DEPARTMENT OF</b>	
meetings	MISC	04-03-013		Public works board	MISC 04-03-045
Beef commission				<b>COMMUNITY AND TECHNICAL COLLEGES, BOARD FOR</b>	
meetings	MISC	04-03-028		Information services, center for	MISC 04-01-075
Dairy products commission				Rules	
meetings	MISC	04-03-008		revisions required by EHB 1403	PREP 04-03-032
Forest reproductive material				Tuition charges	PREP 04-01-146
certification and fees	PROP	04-01-180		<b>CONSERVATION COMMISSION</b>	
Hop commission				Meetings	MISC 04-01-006 MISC 04-03-007
meetings	MISC	04-03-012		<b>CONVENTION AND TRADE CENTER</b>	
Horticulture				Meetings	MISC 04-01-017 MISC 04-03-046
plant tagging	PREP	04-02-054		<b>CORRECTIONS, DEPARTMENT OF</b>	
winter pears, controlled atmosphere storage requirements	PROP	04-01-185		Meetings	MISC 04-01-103
Livestock				Prisons	
inspection and identification	PERM	04-01-171		discipline	PREP 04-01-167
livestock nutrient management program (LNMP)	EMER	04-01-014		Rules	
	PERM	04-02-063		agenda	MISC 04-01-173
Pesticides and herbicides				<b>COUNTY ROAD ADMINISTRATION BOARD</b>	
applications by airblast sprayers or aircraft				Rules coordinator	MISC 04-01-172
near schools or hospitals	PREP	04-03-005		<b>CRIMINAL JUSTICE TRAINING COMMISSION</b>	
phytotoxicity	PREP	04-03-004		Business office address	PROP 04-02-040
Quarantine				<b>DEAF, WASHINGTON STATE SCHOOL FOR THE</b>	
annual bluegrass	PROP	04-01-182		Emergency expulsion of students	PERM 04-02-002
apple maggot	PROP	04-01-202		Meetings	MISC 04-01-137
seeds	PREP	04-01-184		<b>DEVELOPMENTAL DISABILITIES</b> (See SOCIAL AND HEALTH SERVICES, DEPARTMENT OF)	
Red raspberry commission				<b>EASTERN WASHINGTON UNIVERSITY</b>	
meetings	MISC	04-01-084		Meetings	MISC 04-01-047 MISC 04-03-078
Seed certification and fees	PROP	04-01-179		<b>ECOLOGY, DEPARTMENT OF</b>	
	PROP	04-01-181		Fine particulate matter areas, designation of	
	PREP	04-01-183		public hearings	MISC 04-01-115
Wine commission				Natural resource damage assessment committee (NRDA)	MISC 04-01-078
meetings	MISC	04-01-062		Policy statements	MISC 04-03-110
<b>ATTORNEY GENERAL</b>				Public hearings	MISC 04-01-115 MISC 04-03-099 MISC 04-03-100 MISC 04-03-021
Notice of request for opinion	MISC	04-03-027		Rules agenda	PERM 04-01-117
<b>BAIL AND BOND AGENCIES</b>				Shoreline management	
(See LICENSING, DEPARTMENT OF)				Solid waste	
<b>BATES TECHNICAL COLLEGE</b>				incinerator facilities	PERM 04-01-159
Meetings	MISC	04-01-033		Total maximum daily loads (TMDL)	MISC 04-03-122
	MISC	04-01-081		Wastewater discharge permits	
	MISC	04-03-042		fees	PREP 04-01-116
Student rights and responsibilities	PREP	04-01-028		Water quality assessment	MISC 04-03-020
<b>BELLEVUE COMMUNITY COLLEGE</b>				<b>ECONOMIC DEVELOPMENT FINANCE AUTHORITY</b>	
Meetings	MISC	04-01-123		Meetings	MISC 04-03-079
Parking and traffic rules	PERM	04-01-046			
<b>BELLINGHAM TECHNICAL COLLEGE</b>					
Meetings	MISC	04-01-018			
	MISC	04-02-046			
<b>BUILDING CODE COUNCIL</b>					
Code reviews and adoptions					
building code	PERM	04-01-108			
energy code	PERM	04-01-106			
fire code	PERM	04-01-105			
mechanical code	PERM	04-01-104			
plumbing code	PERM	04-01-110			
residential code	PERM	04-01-109			

## Subject/Agency Index

(Citation in **bold type** refer to material in this issue)

<b>EDMONDS COMMUNITY COLLEGE</b>					<b>EMER 04-03-047</b>
Meetings	MISC	04-01-061	Hunting		
	MISC	<b>04-03-029</b>	game management units	PREP	04-01-187
<b>EDUCATION, STATE BOARD OF</b>			licenses	PERM	04-01-051
Courses of study and equivalency	PREP	04-01-045	suspension	PROP	04-01-196
Meetings	MISC	04-01-024	permits	PREP	04-01-187
<b>ELECTIONS</b>			private lands partnerships	<b>PERM 04-03-026</b>	
(See <b>SECRETARY OF STATE</b> )			rules	PREP	04-01-188
<b>EMERGENCY SERVICES</b>			Nonnative aquatic species, invasive	PERM	04-01-096
(See <b>MILITARY DEPARTMENT</b> )			Oysters and clams - sales from state reserves	PERM	04-01-054
<b>EMPLOYMENT SECURITY, DEPARTMENT OF</b>			Residency rules	PREP	04-01-034
Unemployment insurance program revisions	EMER	04-02-039	Rock doves	PREP	04-01-079
<b>ENERGY FACILITY SITE EVALUATION COUNCIL</b>			Rules		
Meetings	EXPE	04-01-097	withdrawals	PROP	04-01-080
<b>ENVIRONMENTAL HEARINGS OFFICE</b>				PROP	04-02-017
Environmental and land use hearings board	EMER	04-02-027	Volunteer cooperative fish and wildlife		
Livestock nutrient management program (LNMP)	EMER	04-01-011	enhancement program	PERM	04-01-055
	PERM	<b>04-03-001</b>	Wildlife		
<b>EVERETT COMMUNITY COLLEGE</b>			dogs harassing deer and elk	EMER	04-01-037
Meetings	MISC	04-01-039	nuisance wildlife control operator rule	PERM	04-01-053
	MISC	04-01-193	watchable wildlife program	PERM	04-01-052
<b>EVERGREEN STATE COLLEGE, THE</b>			<b>FOREST PRACTICES BOARD</b>		
Meetings	MISC	04-01-082	(See <b>NATURAL RESOURCES, DEPARTMENT OF</b> )		
<b>EXCISE TAX</b>			<b>GAMBLING COMMISSION</b>		
(See <b>REVENUE, DEPARTMENT OF</b> )			Licenses		
<b>FINANCIAL INSTITUTIONS, DEPARTMENT OF</b>			renewal application and fees, timeline for	PREP	04-01-022
Check cashers, check sellers and small loan			Punch boards and pull-tabs	PREP	04-01-023
lenders	PREP	<b>04-03-080</b>		PROP	04-02-045
Mortgage lending fraud prosecution fund	PERM	04-02-008	Rules		
<b>FISH AND WILDLIFE, DEPARTMENT OF</b>			withdrawals	PROP	04-02-016
Enforcement officers			<b>GENERAL ADMINISTRATION, DEPARTMENT OF</b>		
relief from active duty	PERM	04-01-056	Capitol grounds		
Fish and wildlife commission			design advisory committee		
meetings	MISC	04-01-038	meetings	MISC	<b>04-03-015</b>
Fishing, commercial			state capitol committee	MISC	04-01-025
anchovy	EMER	04-01-101		MISC	<b>04-03-014</b>
bottomfish	EMER	04-01-005	<b>GOVERNOR, OFFICE OF</b>		
	EMER	<b>04-03-010C</b>	Clemency and pardons board	MISC	<b>04-03-022</b>
clams, razor	EMER	04-01-102		MISC	<b>04-03-023</b>
crab	EMER	04-01-004	<b>GRAYS HARBOR COLLEGE</b>		
	EMER	04-01-059	Student conduct code	PERM	04-01-100
	EMER	04-02-019	<b>GREEN RIVER COMMUNITY COLLEGE</b>		
	EMER	<b>04-03-049</b>	Meetings	MISC	<b>04-03-009</b>
fish receiving ticket descriptions	PREP	<b>04-03-030</b>	<b>GUARANTEED EDUCATION TUITION COMMITTEE</b>		
fish transportation tickets	PROP	04-01-135	(See <b>ADVANCED TUITION PAYMENT, COMMISSION ON</b> )		
herring	EMER	04-01-101	<b>HEALTH, DEPARTMENT OF</b>		
sea cucumbers	EMER	<b>04-03-031</b>	Chiropractic quality assurance commission		
sea urchins	EMER	04-01-042	continuing education	PREP	04-01-198
	EMER	04-01-060	delegation of services	PREP	04-02-064
	EMER	04-02-006	licensure endorsement	PREP	04-01-199
	EMER	<b>04-03-010B</b>	Emergency medical service personnel		
shrimp	EMER	<b>04-03-074</b>	certification	PROP	04-01-200
smelt	PROP	04-01-136	Hearing and speech		
	EMER	04-01-101	audiologists and speech-language pathologists	PERM	04-02-068
	EMER	04-01-189	In-home service agencies	PERM	04-01-197
	EMER	04-01-190	Optometry, board of		
sturgeon	EMER	04-02-005	optometrist certification	PROP	04-01-201
	EMER	<b>04-03-075</b>	Pharmacy		
Fishing, recreational			schedule III controlled substances	EXPE	<b>04-03-105</b>
crab	EMER	04-01-036	Physical therapy		
herring	EMER	04-01-101	continuing competency	PROP	<b>04-03-104</b>
licenses	PERM	04-01-051	mandatory reporting	PROP	<b>04-03-107</b>
	PERM	04-01-095	sexual misconduct	PROP	<b>04-03-119</b>
marine preserves	PROP	04-01-195	Policy statements	MISC	04-02-065
rules, areas and seasons	PROP	04-01-035		MISC	<b>04-03-103</b>
shellfish			Retired physicians as volunteers during		
clams other than razor	EMER	<b>04-03-010A</b>	emergencies and disasters	PREP	<b>04-03-106</b>
razor clams	EMER	04-01-120	Rules		
	EMER	<b>04-03-048</b>	withdrawals	PROP	04-02-066
smelt	EMER	04-01-101		PROP	04-02-067
steelhead	EMER	04-01-139	Sewage systems, large onsite	PREP	<b>04-03-010</b>
			Trauma/emergency medical services		
			designation process and standards	PERM	04-01-041

**Subject/Agency Index**  
(Citation in bold type refer to material in this issue)

<b>HEALTH CARE AUTHORITY</b> Nonprofit community clinics	PERM	04-03-006	Prevailing wage Rules	EXPE	04-03-083
<b>HEALTH CARE AUTHORITY</b> Prescription drug programs	PROP	04-01-186	agenda	MISC	04-03-025
Public employees benefits board (PEBB) meetings	MISC	04-01-010	withdrawals	PROP	04-01-063
<b>HIGHER EDUCATION COORDINATING BOARD</b> State need grant	PROP	04-03-108	Safety standards	PREP	04-03-084
<b>HIGHLINE COMMUNITY COLLEGE</b> Meetings	MISC	04-01-073	construction work	PROP	04-01-164
	MISC	04-03-115	Vocational rehabilitation	PROP	04-03-035
<b>HISPANIC AFFAIRS, COMMISSION ON</b> Meetings	MISC	04-01-118	<b>LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' PLAN</b> <b>2 RETIREMENT BOARD</b>		
Rules	MISC	04-01-064	Meetings	MISC	04-01-001
coordinator	MISC	04-01-064		MISC	04-01-093
<b>HORSE RACING COMMISSION</b> Appeal to the commission	PROP	04-02-038		MISC	04-03-040
Claims	PROP	04-02-035	<b>LICENSING, DEPARTMENT OF</b>		
Controlled medication program	PROP	04-02-036	Bail bond agents	PERM	04-01-021
	PROP	04-02-037	Camping resorts	PREP	04-01-121
Definitions	PROP	04-02-032	Cosmetology, barber, manicurist, and estheticians	PROP	04-01-191
Employment of persons under sixteen	PROP	04-02-034	Motor vehicles		
Public records	PROP	04-02-031	certificates of title	PREP	04-01-161
Special rates	PROP	04-02-033		PERM	04-03-016
<b>HUMAN RIGHTS COMMISSION</b> Meetings	MISC	04-01-112	licenses	PROP	04-03-120
<b>HUNTING</b> (See FISH AND WILDLIFE, DEPARTMENT OF)				PERM	04-01-163
<b>INSURANCE COMMISSIONER, OFFICE OF THE</b> Automobile claims, repairs, and total loss	PERM	04-01-176	rental car taxation and licensing	PREP	04-03-002
settlements	PREP	04-01-178	unauthorized or abandoned	PROP	04-03-003
Office description	PREP	04-01-178	Real estate	PROP	04-03-121
Rate filings requirements, large commercial	PERM	04-01-175		PERM	04-01-162
property casualty accounts	PERM	04-01-175		PREP	04-01-114
Records	PREP	04-01-177		PROP	04-01-138
public access	PREP	04-01-177		PROP	04-03-037
<b>INTERAGENCY COMMITTEE, OFFICE OF THE</b> Interagency committee for outdoor recreation	MISC	04-01-002		PROP	04-03-038
meetings	MISC	04-02-062		PROP	04-03-039
Rules agenda	MISC	04-03-044		MISC	04-03-036
Salmon recovery funding board	MISC	04-01-003			
meetings	MISC	04-01-003			
<b>INTEREST RATES</b> (See inside front cover)					
<b>INVESTMENT BOARD, STATE</b> Address and location	PERM	04-03-114			
<b>JAIL INDUSTRIES BOARD</b> Meetings	MISC	04-01-026			
<b>JUDICIAL CONDUCT, COMMISSION ON</b> Meetings	MISC	04-01-016			
<b>LABOR AND INDUSTRIES, DEPARTMENT OF</b> Boiler rules, board of					
rules					
clarification	PERM	04-01-194			
review	PREP	04-01-094			
Confined spaces	PERM	04-03-081			
Cranes, derricks, and other lifting equipment	PROP	04-01-157			
First-aid rules	PROP	04-01-155			
Hazardous waste operations	PERM	04-02-053			
Lockout/tagout (control of hazardous energy)	PROP	04-03-102			
Machine safety	PROP	04-03-085			
Medical aid rules					
evidence-based prescription drug program	PROP	04-03-082			
health care services for injured workers and					
crime victims	PREP	04-01-156			
Policy and interpretive statements	MISC	04-01-158			
	MISC	04-03-024			

## Subject/Agency Index

(Citation in bold type refer to material in this issue)

### PARKS AND RECREATION COMMISSION

Meetings MISC 04-01-168  
MISC 04-01-169  
Moorage and use of inland water facilities PERM 04-01-068  
Public use of state park areas PERM 04-01-067

### PIERCE COLLEGE

Meetings MISC 04-01-166

### PRISONS AND PRISONERS

(See CORRECTIONS, DEPARTMENT OF)

### PUBLIC ASSISTANCE

(See SOCIAL AND HEALTH SERVICES, DEPARTMENT OF)

### PUBLIC DISCLOSURE COMMISSION

Forms for lobbyists PERM 04-02-028  
Meetings MISC 04-01-057  
Reporting requirements PERM 04-01-128  
PERM 04-01-129  
PERM 04-01-130  
PERM 04-01-131  
PERM 04-01-132  
PERM 04-01-133  
PERM 04-01-134  
PREP 04-01-147  
  
Rules  
agenda MISC 04-02-029

### PUBLIC EMPLOYEES BENEFITS BOARD

(See HEALTH CARE AUTHORITY)

### PUBLIC EMPLOYMENT RELATIONS COMMISSION

Meetings MISC 04-01-074  
Rules  
agenda MISC 04-03-086

### PUBLIC INSTRUCTION, SUPERINTENDENT OF

Vocational indirect cost limit PERM 04-01-058

### PUGET SOUND CLEAN AIR AGENCY

Gasoline dispensing facilities PROP 04-03-109

### QUARTERLY REPORTS

(See CODE REVISER'S OFFICE)

### REAL ESTATE APPRAISERS

(See LICENSING, DEPARTMENT OF)

### RETIREMENT SYSTEMS, DEPARTMENT OF

Defined contribution plans, Plan 3 PERM 04-02-004  
General provision  
LEOFF Plan 1 service transfer PROP 04-01-048  
Law enforcement officers' and firefighters' retirement system  
PROP 04-01-049  
PERM 04-02-003  
Pension  
bills anticipated for 2004 legislature PREP 04-01-009  
school employees' retirement system PROP 04-01-154  
Processing legal orders, fees PROP 04-01-008  
Retire/rehire provisions PROP 04-01-050

### REVENUE, DEPARTMENT OF

Excise tax  
cigarettes PREP 04-03-101  
extracting natural products PERM 04-01-126  
manufacturing and research/development  
activities in distressed areas PERM 04-01-127  
Forest land and timber PERM 04-01-125  
PERM 04-02-018  
Hazardous substance tax and petroleum products tax  
tax PREP 04-02-070  
Personal property PERM 04-01-119  
Rules  
agenda MISC 04-02-069

### RULES COORDINATORS

County road administration board MISC 04-01-172  
Forest practices board MISC 04-01-151  
Hispanic affairs, commission on MISC 04-01-064  
Natural resources, department of MISC 04-01-007

(See Issue 04-01 for complete list designated as of 12/29/03)

### SALMON RECOVERY FUNDING BOARD

(See INTERAGENCY COMMITTEE, OFFICE OF THE)

### SCHOOLS

(See EDUCATION, STATE BOARD OF)

### SECRETARY OF STATE

Absentee voting PERM 04-01-072  
Electronic voting requirements EMER 04-01-071

### SKAGIT VALLEY COLLEGE

Meetings MISC 04-03-072

### SOCIAL AND HEALTH SERVICES, DEPARTMENT OF

Aging and adult services  
adult family homes minimum licensing requirements PERM 04-01-032  
comprehensive assessment reporting evaluation tool (CARE) PREP 04-01-087  
home and community services and programs PREP 04-01-087  
PERM 04-01-090  
PERM 04-02-001  
PREP 04-01-192  
  
in-home waiver program  
Assistance programs  
change of circumstance PROP 04-02-072  
EMER 04-02-073  
client complaints PERM 04-03-050  
emergency cash assistance PROP 04-02-049  
EMER 04-03-098  
PROP 04-02-050  
PROP 04-02-048  
EMER 04-02-051  
EMER 04-03-010E  
EXPE 04-01-031  
PERM 04-02-025  
PERM 04-03-051  
PROP 04-03-010F  
PROP 04-03-093  
EMER 04-02-011  
EMER 04-02-012  
PROP 04-03-096  
EMER 04-03-097  
PROP 04-02-047  
  
telephone assistance program  
working connections child care (WCCC)  
Child care agencies/licensing requirements  
foster homes, group care programs/facilities, and agencies  
group receiving centers  
Child welfare services  
adoption PROP 04-03-116  
EMER 04-03-010D  
PROP 04-01-088  
PROP 04-02-026  
EMER 04-03-018  
  
Developmental disabilities services  
Fircrest School PREP 04-02-009  
EMER 04-02-010  
state supplemental payment (SSP) EMER 04-01-143  
EMER 04-01-144  
EMER 04-01-145  
PERM 04-02-014  
PERM 04-02-015  
  
Juvenile rehabilitation  
collection of costs PROP 04-02-059  
Medical assistance  
administration of programs PERM 04-01-099  
alternatives to hospital services, home health care  
client not in home, institutional medical PREP 04-02-061  
EMER 04-02-013  
PROP 04-02-056  
PROP 04-01-141  
PROP 04-01-043  
PROP 04-01-044  
PROP 04-01-044  
PROP 04-03-019  
PROP 04-03-090  
PROP 04-03-091  
PROP 04-03-092  
  
interpreters and translators  
certification PREP 04-01-142  
interpretive or policy statements MISC 04-01-029  
MISC 04-01-030  
MISC 04-01-085

## Subject/Agency Index

(Citation in bold type refer to material in this issue)

	MISC	04-01-098	<b>WASHINGTON STATE PATROL</b>	
	MISC	04-02-020	Fire protection policy board	
	MISC	04-02-021	meetings	MISC 04-01-065
	MISC	04-02-022	Motor vehicles	
	MISC	04-02-023	impounds	PROP 04-01-019
	MISC	04-02-024		
	MISC	04-03-010G	<b>WASHINGTON STATE UNIVERSITY</b>	
	MISC	04-03-010H	Meetings	MISC 04-03-077
	MISC	04-03-010I		
	MISC	04-03-010J	<b>WASTEWATER</b>	
	MISC	04-03-010K	(See <b>ECOLOGY, DEPARTMENT OF</b> )	
	MISC	04-03-010L		
	MISC	04-03-017	<b>WENATCHEE VALLEY COLLEGE</b>	
	MISC	04-03-053	Meetings	MISC 04-01-165
	MISC	04-03-054		
	MISC	04-03-055	<b>WESTERN WASHINGTON UNIVERSITY</b>	
	MISC	04-03-056	Admission and registration procedures	PROP 04-03-073
	MISC	04-03-057		
	MISC	04-03-058	<b>WHATCOM COMMUNITY COLLEGE</b>	
	MISC	04-03-059	Meetings	MISC 04-03-043
	MISC	04-03-060		
	MISC	04-03-061	<b>WINE COMMISSION</b>	
	MISC	04-03-062	(See <b>AGRICULTURE, DEPARTMENT OF</b> )	
	MISC	04-03-063		
	MISC	04-03-064	<b>WORKFORCE TRAINING AND EDUCATION COORDINATING</b>	
	MISC	04-03-065	<b>BOARD</b>	
	MISC	04-03-066	Meetings	MISC 04-03-076
	MISC	04-03-067		
	MISC	04-03-070	<b>YAKIMA VALLEY COMMUNITY COLLEGE</b>	
	MISC	04-03-071	Meetings	MISC 04-02-030
	MISC	04-03-088		
pharmacy services	PERM	04-01-089		
transportation services	PREP	04-03-089		
Mental health	PREP	04-02-060		
community mental health and involuntary treatment programs				
Public hearings	PERM	04-01-091		
	PROP	04-02-055		
	PROP	04-02-058		
Rules				
corrections	PROP	04-02-057		
	PROP	04-03-094		
withdrawals	PREP	04-01-086		
	PROP	04-02-052		
	PREP	04-03-052		
	PREP	04-03-087		
Workfirst				
sanction and child SafetyNet	PROP	04-03-095		
<b>SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY</b>				
General regulations	PROP	04-01-160		
<b>SUPREME COURT, STATE</b>				
General application, rules of	MISC	04-01-015		
<b>TAX APPEALS, BOARD OF</b>				
Meetings	MISC	04-01-027		
<b>TRANSPORTATION, DEPARTMENT OF</b>				
Commute trip reduction performance grant program	PROP	04-03-112		
Ferries				
auto, procure new	PREP	04-03-011		
Motorcycles, construction warning sign	PREP	04-01-069		
	EMER	04-01-070		
Reestablishment expenses - nonresidential moves	EXPE	04-03-113		
<b>TREASURER'S OFFICE</b>				
Usury rate (See inside cover)				
<b>UNIVERSITY OF WASHINGTON</b>				
Meetings	MISC	04-03-041		
<b>USURY RATE</b>				
(See inside cover)				
<b>UTILITIES AND TRANSPORTATION COMMISSION</b>				
Adoption-by-reference dates	PERM	04-01-152		
Interpretive or policy statement	MISC	04-01-140		
Telephone companies	PROP	04-03-117		
	PREP	04-03-118		
Utilities general	PREP	04-03-118		







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