

**WSR 05-21-007**  
**PERMANENT RULES**  
**STATE BOARD OF EDUCATION**

[Filed October 6, 2005, 3:07 p.m., effective November 6, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: All students entering a high school program in Washington state must be assigned a graduation year as required by Washington state administrative code and the federal No Child Left Behind Act. This rule change provides the addition of the graduation year to the transcript.

Citation of Existing Rules Affected by this Order: Amending WAC 180-51-035 Applicable standards for graduation—Amendments to this chapter.

Statutory Authority for Adoption: Chapter 28A.230 RCW and RCW 28B.50.915.

Adopted under notice filed as WSR 05-08-012 on March 28, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 17, 2005.

Larry Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 04-20-093, filed 10/5/04, effective 11/5/04)

**WAC 180-51-035 Applicable standards for graduation for students under age twenty-one—Applicable standards for graduation for students age twenty-one or older—Amendments to this chapter.** (1) All students entering a high school program in Washington state shall be assigned an expected graduation year as required by federal law and this section. Once students are assigned a graduation year, they will be aligned to the requirements for that specific graduating class and subject to the provisions of this section.

(a) Students shall be assigned an expected graduation year based on the year they commence 9th grade, or for out-of-district and out-of-state transfer students, based on local district policy. Provided, That the expected graduation year for students receiving special education services shall be assigned and based on an Individualized Education Program (IEP) team determination in the year in which the student turns sixteen.

(b) Students shall have the right and the obligation to meet the minimum graduation requirements in place for their expected graduation year designated at the time they enter a

district high school, regardless of what year they actually graduate.

(2) A student under age twenty-one shall have the right to graduate in accordance with the standards in effect for the school of graduation for any year since such student commenced the ninth grade or the equivalent of a four-year high school program and until the student turns age twenty-one.

~~((2))~~ (3)(a) A student age twenty-one or older who earns a high school diploma through the adult high school completion option under WAC 180-51-053 shall be required to meet the state minimum graduation credit requirements under WAC 180-51-060 or 180-51-061, depending on when the student began their high school program. Such students shall not be required to meet the following state minimum graduation requirements under WAC 180-51-061: Certificate of academic achievement or certificate of individual achievement;

(b) The state board of education reserves the prerogative to determine if and when the waived requirements under (a) of this subsection shall be required to earn an adult high school completion diploma.

~~((3))~~ (4) All subsequent amendments to this chapter and all subsequent local standards shall apply prospectively to the students who enter the ninth grade or begin the equivalent of a four-year high school program subsequent to the amendments.

**WSR 05-21-022**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket No. A-050271, General Order No. R-521—Filed October 10, 2005, 1:15 p.m., effective November 10, 2005]

In the matter of amending and adopting several rules in Title 480 WAC, relating to adoption-by-reference date revisions and other minor administrative changes.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 05-15-161 for an expedited rule making, filed with the code reviser on July 20, 2005. The commission brings this proceeding pursuant to RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353.

**2 STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

**3 DATE OF ADOPTION:** The commission adopts this rule on the date that this order is entered.

**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the commission's reasons for adopting the rule, a description of the differences between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), a summary of the com-

ments received regarding the proposed rule changes, and the commission's responses to the comments, reflecting the commission's consideration of them.

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the commission con-

sidered whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This rule amends the following sections of the Washington Administrative Code:

Rule Changes			
Action	WAC No.	Rule Title	Changes
<b>Chapter 480-14 WAC, Motor carriers excluding household goods carriers and common brokers</b>			
Amend	480-14-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li>• <b>North American Standard Out-of-Service Criteria (CVSA) April 1, 2005</b> - No significant change.</li> <li>• <b>Title 49 Code of Federal Regulations, October 1, 2004</b> - Part 390.</li> </ul> 2. Updated reference title in subsection (1). 3. Updated availability of resource materials.
<b>Chapter 480-15 WAC, Household goods carriers</b>			
Amend	480-15-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li>• <b>North American Standard Out-of-Service Criteria April 1, 2005</b> - No significant change.</li> <li>• <b>Title 49 Code of Federal Regulations October 1, 2004</b> - Part 390.</li> </ul> 2. Updated reference title in subsection (1). 3. Updated availability of resource materials.
<b>Chapter 480-30 WAC, Auto transportation companies</b>			
Amend	480-30-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li>• <b>North American Standard Out-of-Service Criteria April 1, 2005</b> - No significant change.</li> <li>• <b>Title 49 Code of Federal Regulations October 1, 2004</b> - No significant change.</li> </ul> 2. Updated reference title in subsection (1). 3. Updated availability of resource materials.
<b>Chapter 480-31 WAC, Private, nonprofit transportation providers</b>			
Amend	480-31-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li>• <b>North American Standard Out-of-Service Criteria April 1, 2005</b> - No significant change.</li> <li>• <b>Title 49 Code of Federal Regulations October 1, 2004</b> - No significant change.</li> </ul> 2. Updated reference title in subsection (1). 3. Updated availability of resource materials.
<b>Chapter 480-40 WAC, Passenger charter carriers</b>			
Amend	480-40-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li>• <b>North American Standard Out-of-Service Criteria April 1, 2005</b> - No significant change.</li> <li>• <b>Title 49 Code of Federal Regulations October 1, 2004</b> - Parts 382 and 391.</li> </ul> 2. Updated reference title in subsection (1). 3. Updated availability of resource materials.

<b>Rule Changes</b>			
<b>Action</b>	<b>WAC No.</b>	<b>Rule Title</b>	<b>Changes</b>
<b>Chapter 480-62 WAC, Railroad companies—Operations</b>			
Amend	480-62-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 49 Code of Federal Regulations</b> <b>October 1, 2004</b> - Part 219.</li> <li>• <b>MUTCD</b> <b>November 2004</b> - No significant change.</li> <li>• <b>WSDOT Chapter 468-95 WAC</b> <b>March 25, 2004</b> - No significant change.</li> <li>• <b>ANSI Z308.1</b> <b>April 29, 2003</b> - No change to current rule.</li> <li>• <b>ANSI/ISEA 107-1999 changed to ANSI/ISEA 107-2004</b> <b>September 15, 2004.</b></li> <li>• <b>Title 49 United States Code</b> <b>January 2, 2002</b> - No change to current rule.</li> </ul> <p>2. Updated availability of resource materials.</p>
<b>Chapter 480-70 WAC, Solid waste collection companies</b>			
Amend	480-70-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>North American Standard Out-of-Service Criteria</b> <b>April 1, 2005</b> - No significant change.</li> <li>• <b>Title 40 Code of Federal Regulations</b> <b>July 1, 2005</b> - No significant change.</li> <li>• <b>Title 49 Code of Federal Regulations</b> <b>October 1, 2004</b> - Parts 390 and 391.</li> </ul> <p>2. Updated availability of resource materials.</p>
<b>Chapter 480-73 WAC, Hazardous liquid pipeline companies</b>			
Amend	480-73-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 18 Code of Federal Regulations</b> <b>April 1, 2005</b> - No significant change.</li> </ul> <p>2. Updated availability of resource material.</p>
<b>Chapter 480-75 WAC, Hazardous liquid, gas, oil and petroleum pipeline companies—Safety</b>			
Amend	480-75-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> <li>• <b>Title 49 Code of Federal Regulations</b> <b>October 1, 2004</b> - Part 199.</li> <li>• <b>The American Society of Mechanical Engineers (ASME) B31.4 1998 edition</b> - No change to current rule.</li> <li>• <b>Section IX, ASME Boiler and Pressure Vessel Code - as of 2001</b> No change to current rule.</li> <li>• <b>American Petroleum Institute (API), Standard 1104 - 19th edition</b></li> <li>• <b>API RP standard 1117 - as of August 1996</b> No change to current rule.</li> </ul> <p>2. Updated availability of resource materials.</p>
<b>Chapter 480-90 WAC, Gas companies—Operations</b>			
Amend	480-90-252	Federal Energy Regulatory Commission (FERC) Form No. 2.	1. Correct part reference for Title 18 of the Code of Federal Regulations.

Amend	480-90-999	Adoption by reference.	<ol style="list-style-type: none"> <li>Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li><b>Title 18 Code of Federal Regulations April 1, 2005</b> - Part 201.</li> <li><b>NARUC, The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies - as of 1985</b> No change to current rule.</li> </ul> </li> <li>Added language in subsection (1) to preserve the commission's rate-making authority. See Note 7.</li> <li>Updated availability of resource materials.</li> </ol>
<b>Chapter 480-100 WAC, Electric companies</b>			
Amend	480-100-999	Adoption by reference.	<ol style="list-style-type: none"> <li>Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li><b>Title 18 Code of Federal Regulations April 1, 2005</b> - Part 101.</li> <li><b>NARUC, The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies - as of 1985</b> No change to current rule.</li> <li><b>National Electrical Code - as of 2002</b> No change to current rule.</li> <li><b>ANSI C12.1, Code for Electricity Metering, 2001 - as of 2001</b> No change to current rule.</li> </ul> </li> <li>Added language in subsection (1) to preserve the commission's rate-making authority. See Note 7.</li> <li>Updated availability of resource materials.</li> </ol>
<b>Chapter 480-110 WAC, Water companies</b>			
Amend	480-110-999	Adoption by reference.	<ol style="list-style-type: none"> <li>No change to current references: <ul style="list-style-type: none"> <li><b>NARUC, Uniform System of Accounts for Water Utilities - as of 1996</b> No change to current rule.</li> <li><b>NARUC, The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies - as of 1985</b> No change to current rule.</li> </ul> </li> </ol>
<b>Chapter 480-120 WAC, Telecommunications companies</b>			
Amend	480-120-999	Adoption by reference.	<ol style="list-style-type: none"> <li>Adoption by reference dates changed as follows: <ul style="list-style-type: none"> <li><b>American National Standards for Telecommunications - "Network Performance Parameters for Dedicated Digital Services - Specifications" - (ANSI T1.510-1999) - as of December 29, 1999</b> No change to current rule.</li> <li><b>The Institute of Electrical and Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics as of March 22, 1984 and reaffirmed September 16, 1992</b> No change to current rule.</li> <li><b>National Electrical Safety Code January 1, 2002</b> - No change to current rule.</li> <li><b>Title 47 Code of Federal Regulations, except Sections 64.2003 through 64.2009 October 1, 1998</b> - No change to current rule.</li> <li><b>Title 47 Code of Federal Regulations, Sections 64.2003 through 64.2009 October 1, 2004</b> - No significant change.</li> </ul> </li> <li>Updated availability of resource materials.</li> </ol>

**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** A preproposal statement of inquiry is not required under RCW 34.05.353, "Expedited rule making."

**8 NOTICE OF EXPEDITED RULE MAKING:** The commission filed notice of expedited rule making (CR-105) on July 20, 2005, at WSR 05-15-161. The notice informed interested persons that the rules were being proposed under an expedited rule-making process as required by RCW 34.05.353.

The commission provided notice of its expedited rule making to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.353, and by sending notice to all companies affected by the adoption-by-reference rule proposal. The notice provided interested persons the opportunity to submit written comments to the commission not later than September 19, 2005. The commission

posted the relevant rule-making information on its internet web site at [www.wutc.wa.gov](http://www.wutc.wa.gov).

**9 COMMENTERS (WRITTEN COMMENTS):** No comments were received on the proposed rules.

**10 RULE-MAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rule-making hearing scheduled during the commission's regularly scheduled open public meeting on September 28, 2005, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. No interested person commented.

**11 COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission amended the rules as proposed in the CR-105 at WSR 05-15-161.

**12 CHANGES FROM PROPOSAL:** The commission adopted the proposal noticed at WSR 05-15-161.

**13 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the commission determines that WAC 480-14-999, 480-15-999, 480-30-999, 480-31-999, 480-40-999, 480-62-999, 480-70-999, 480-73-999, 480-75-999, 480-90-252, 480-90-999, 480-100-999, 480-110-999,<sup>1</sup> and 480-120-999 should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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 14, 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.

#### ORDER

##### 14 THE COMMISSION ORDERS That:

15 WAC 480-14-999, 480-15-999, 480-30-999, 480-31-999, 480-40-999, 480-62-999, 480-70-999, 480-73-999, 480-75-999, 480-90-252, 480-90-999, 480-100-999, 480-110-999,<sup>2</sup> and 480-120-999 are amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

16 This order and the rules set out in Appendix A, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

<sup>1</sup> WAC 480-110-999 is amended to reflect "bold" typeface of two titles. Because the order typing service does not supply text if the only change is to "bold" rule language, the amendments to WAC 480-110-999 are not shown in Appendix A.

<sup>2</sup> See footnote 1.

DATED at Olympia, Washington, this 6th day of October, 2005.

Washington Utilities and Transportation Commission  
Mark H. Sidran, Chairman  
Patrick J. Oshie, Commissioner  
Philip B. Jones, Commissioner

**AMENDATORY SECTION** (Amending General Order No. R-511, Docket No. A-030852, filed 12/22/03, effective 1/22/04)

**WAC 480-14-999 Adoption of reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American ((Uniform)) Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2003)) 2005.

(b) This publication is referenced in WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), and WAC 480-14-390 (Hazardous materials regulations).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in ((Bethesda, Maryland)) Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2002)) 2004.

(b) This publication is referenced in WAC 480-14-040 (Definitions), WAC 480-14-070 (Federal regulations, 49 CFR, Part 390—General applicability and definitions), WAC 480-14-250 (Insurance requirements; cause for suspension or cancellation), WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), WAC 480-14-380 (Hours of service—On duty—Federal safety regulations), WAC 480-14-390 (Hazardous materials regulations), and WAC 480-14-400 (Transportation of radioactive materials—Driving and parking rules).

(c) Copies of Title 49 Code of Federal Regulations are available from the ((Seattle office of the Government Printing Office)) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending General Order No. R-511, Docket No. A-030852, filed 12/22/03, effective 1/22/04)

**WAC 480-15-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American ((Uniform)) Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2003)) 2005.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in ((Bethesda, Maryland)) Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2002)) 2004.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the ((Seattle office of the Government Printing Office)) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending General Order No. R-511, Docket No. A-030852, filed 12/22/03, effective 1/22/04)

**WAC 480-30-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American ((Uniform)) Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2003)) 2005.

(b) This publication is referenced in WAC 480-30-097 (Equipment—Inspection—Ordered for repairs) and WAC 480-30-100 (Operation of motor vehicles).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in ((Bethesda, Maryland)) Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2002)) 2004.

(b) This publication is referenced in WAC 480-30-095 (Equipment—Safety) and WAC 480-30-100 (Operation of motor vehicles).

(c) Copies of Title 49 Code of Federal Regulations are available from the ((Seattle office of the Government Printing Office)) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending General Order No. R-511, Docket No. A-030852, filed 12/22/03, effective 1/22/04)

**WAC 480-31-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American ((Uniform)) Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2003)) 2005.

(b) This publication is referenced in WAC 480-31-120 (Equipment—Inspection—Ordered for repairs).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in ((Bethesda, Maryland)) Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2002)) 2004.

(b) This publication is referenced in WAC 480-31-100 (Equipment—Safety), WAC 480-31-120 (Equipment—Inspection—Ordered for repairs), WAC 480-31-130 (Operation of motor vehicles) and WAC 480-31-140 (Safety inspections).

(c) Copies of Title 49 Code of Federal Regulations are available from the ((Seattle office of the Government Printing Office)) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending General Order No. R-511, Docket No. A-030852, filed 12/22/03, effective 1/22/04)

**WAC 480-40-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American ((Uniform)) Standard Out-of-Service Criteria** (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2003)) 2005.

(b) This publication is referenced in WAC 480-40-065 (Equipment—Inspection—Ordered for repairs) and WAC 480-40-100 (Out-of-service criteria).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in ((Bethesda, Maryland)) Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2002)) 2004.

(b) This publication is referenced in WAC 480-40-070 (Operation of motor vehicles) and WAC 480-40-075 (Equipment—Safety) and WAC 480-40-110 (Registered carriers).

(c) Copies of Title 49 Code of Federal Regulations are available from the ((Seattle office of the Government Printing Office)) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending General Order No. R-511, Docket No. A-030852, filed 12/22/03, effective 1/22/04)

**WAC 480-62-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ((2002)) 2004.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), and WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of Title 49 Code of Federal Regulations are available from the ((Seattle Office of the Government Printing Office)) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect ((on January 29, 2003)) in November 2004.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices), WAC 480-62-235 (Flaggers), and WAC 480-62-245 (Passenger carrying vehicles—Operation).

(c) Copies of the MUTCD are available from the ((Seattle Office of the Government Printing Office)) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Washington state department of transportation rules**, cited as chapter 468-95 WAC, are published by the statute law committee.

(a) The commission adopts the version in effect on ((February 28, 2003)) March 25, 2004.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices).

(c) Copies of the Washington state department of transportation rules are available from the department of transportation or on the internet web site for the office of the code reviser (slc.leg.wa.gov).

(4) **ANSI Z308.1 - 2003 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on April 29, 2003.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - 2003 American National Standard for Minimum Requirements for Workplace First Aid Kits are available from ((the American National Standards Institute, 11 West 42nd Street, New York, New York, 10036)) Global Engineering Documents in Englewood, Colorado.

(5) **ANSI/ISEA ((107-1999)) 107-2004 - American National Standard for High-Visibility Safety Apparel** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on ((January 29, 2004)) September 15, 2004.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel are available from ((the American National Standards Institute, 11 West 42nd Street, New York, New York, 10036)) Global Engineering Documents in Englewood, Colorado.

(6) **Title 49 United States Code**, cited as 49 U.S.C., is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 2, 2002.

(b) This publication is referenced in WAC 480-62-200 (Roadway worker safety and operating rules and statutes).

(c) Copies of Title 49 United States Code are available from the ((Seattle office of the Government Printing Office)) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending General Order No. R-511, Docket No. A-030852, filed 12/22/03, effective 1/22/04)

**WAC 480-70-999 Adoption by reference.** In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **The North American (~~Uniform~~) Standard Out-of-Service Criteria** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~2003~~) 2005.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in (~~Bethesda, Maryland~~) Washington D.C.

(2) **Title 40 Code of Federal Regulations**, cited as 40 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on July 1, (~~2003~~) 2005.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the (~~Government Printing Office~~) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, (~~2002~~) 2004.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431 (Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the (~~Government Printing Office~~) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending Docket No. A-021178 and TO-030288, General Order No. R-518, filed 2/28/05, effective 3/31/05)

**WAC 480-73-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, is published by the United States Government Printing Office.

(2) The commission adopts the version in effect on April 1, (~~2003~~) 2005.

(3) This publication is referenced in WAC 480-73-130 (Accounting system requirements), WAC 480-73-150 (Retaining and preserving records and reports), and WAC 480-73-160 (Annual reports).

(4) Copies of (~~18 CFR~~) Title 18 Code of Federal Regulations are available from the U.S. Government (~~Printing Office in Pittsburgh, Pennsylvania~~) Online Bookstore,

<http://bookstore.gpo.gov/>, and from various third-party vendors.

**AMENDATORY SECTION** (Amending General Order No. R-511, Docket No. A-030852, filed 12/22/03, effective 1/22/04)

**WAC 480-75-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 CFR, Parts 195 and 199 including all appendices and amendments except for 195.0, 195.1, 199.1 and 199.2 published by the United States Government Printing Office.

(a) The commission adopts the version in effect on (~~June 1, 2002~~) October 1, 2004.

(b) This publication is referenced in WAC 480-75-370 (Design factor (*F*) for steel pipe), WAC 480-75-630 (Incident reporting), and WAC 480-75-660 (Operations safety plan requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the (~~Seattle office of the Government Printing Office~~) U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **The American Society of Mechanical Engineers (ASME) B31.4, 1998 edition.**

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from The American Society of Mechanical Engineers, Park Avenue New York, New York.

(3) The 2001 edition of **Section IX of the ASME Boiler and Pressure Vessel Code.**

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from The American Society of Mechanical Engineers, Park Avenue, New York, New York.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** (~~(18th)~~) 19th edition.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 (~~(18th)~~) 19th edition are available from the Office of API Publishing Services in Washington DC.

(5) The commission adopts **API RP standard 1117** Second Edition, August 1996.

(a) This publication is referenced in WAC 480-75-500 (Moving and lowering hazardous liquid pipelines).

(b) Copies of API standard 1117 Second Edition are available from (~~the Office of API Publishing Services in Washington DC~~) Global Engineering Documents in Englewood, Colorado.



AMENDATORY SECTION (Amending Docket No. A-021178 and TO-030288, General Order No. R-518, filed 2/28/05, effective 3/31/05)

**WAC 480-90-252 Federal Energy Regulatory Commission (FERC) Form No. 2.** (1) Each gas utility must use the annual report form (FERC Form No. 2) promulgated by the Federal Energy Regulatory Commission in Title 18 of the Code of Federal Regulations, Part ~~((141))~~ 260, for purposes of this report to the commission. Data required by RCW 80.04.080 (Annual reports), but not included in the FERC Form No. 2, must also be submitted with the annual report. The utility must submit the annual report for the preceding calendar year, along with the regulatory fee, by May 1st of each year. If not presented in the prescribed FERC Form No. 2, the annual report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales. Information about the FERC Form No. 2 regarding the version adopted and where to obtain it is set out in WAC 480-90-999 (Adoption by reference).

(2) Each utility must also submit to this commission, in essentially the same format and content as the FERC Form No. 2, a report that documents the costs incurred and the property necessary to furnish utility service to its customers and the revenues obtained in the state of Washington. The report must include the following data per customer class for the calendar year: Revenues, average customer count, and total unit sales.

(3) Combination and multistate utilities must submit with the annual report their cost allocation methods necessary to develop results of operations for the state of Washington. Approval of cost allocation methods for rate-making purposes is accomplished only by commission order.

(4) The total utility results of operations reported by each utility in its annual report to the commission must agree with the results of operations shown on the utility's books and records.

AMENDATORY SECTION (Amending Docket No. A-021178 and TO-030288, General Order No. R-518, filed 2/28/05, effective 3/31/05)

**WAC 480-90-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, ~~((2003))~~ 2005.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-90-203 (Accounting system requirements), WAC 480-90-244

(Transferring cash or assuming obligation), WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2), and WAC 480-90-268 (Essential utilities services contracts report).

~~((e))~~ (d) Copies of ~~((18 CFR))~~ Title 18 Code of Federal Regulations are available from the U.S. Government (~~(Printing Office in Pittsburgh, Pennsylvania))~~ Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

AMENDATORY SECTION (Amending Docket No. A-021178 and TO-030288, General Order No. R-518, filed 2/28/05, effective 3/31/05)

**WAC 480-100-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, ~~((2003))~~ 2005.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligation), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

~~((e))~~ (d) Copies of ~~((18 CFR))~~ Title 18 Code of Federal Regulations are available from the U.S. Government (~~(Printing Office in Pittsburgh, Pennsylvania))~~ Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC in Washington, D.C.

(3) The **National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2002.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA in Quincy, Massachusetts.

(4) The **American National Standard for Electric Meters: Code for Electricity Metering**, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in 2001.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. Copies are available from Global Engineering Documents in Englewood, Colorado.

**AMENDATORY SECTION** (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

**WAC 480-120-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "*Network Performance Parameters for Dedicated Digital Services - Specifications*" (ANSI T1.510-1999) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services - Specifications*" is a copyrighted document. Copies are available from ~~((the publisher))~~ ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-1984) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect on March 22, 1984, and reaffirmed September 16, 1992.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ~~((the publishers))~~ ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the version in effect on January 1, 2002.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from ~~((the publishers))~~ IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 CFR, is published by the United States Government Printing Office, except sections 64.2003 through 64.2009.

(a) The commission adopts the version in effect on October 1, 1998.

(b) This publication is referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports).

(c) Copies of Title 47 Code of Federal Regulations are available from the ~~((Government Printing Office))~~ U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(5) Sections 64.2003 through 64.2009 of **Title 47 of the Code of Federal Regulations**, cited as 47 CFR §§ 64.2003 through 64.2009, are published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ~~((2002))~~ 2004.

(b) This publication is referenced in WAC 480-120-202 (Customer Proprietary Network Information).

(c) Copies of Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations are available from the ~~((Government Printing Office))~~ U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from third-party vendors.

## WSR 05-21-025

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed October 10, 2005, 4:14 p.m., effective November 10, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department may use brief adjudicative proceedings (BAPs) where their use will not violate any provisions of law, and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties.

Statutory Authority for Adoption: RCW 34.05.220.

Adopted under notice filed as WSR 05-13-119 on June 20, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 2, 2005.

Chuck R. Coach  
for Daniel Devoe  
Administrator

#### NEW SECTION

**WAC 308-08-535 Brief adjudicative proceedings conversion to formal adjudicative proceedings—Dealer and manufacturer services.** (1) At least five days before the scheduled issuance of either an initial or a final order, any party, including the department, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that it be converted to a formal adjudicative proceeding. Upon receiving a timely written objection, the presiding officer or reviewing officer, shall determine whether the matter should be converted. Regardless of whether any party files a timely objection, the presiding or reviewing officer may convert any brief adjudicative proceeding to a formal adjudicative proceeding whenever it appears that a brief adjudicative proceeding is insufficient to determine the issues pending before the agency.

(2) In determining whether to convert a proceeding, the presiding officer may consider the following factors:

(a) Whether witness testimony will aid the presiding or reviewing officer in resolving contested issues of fact;

(b) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;

(c) Whether a brief adjudicative proceeding will establish an adequate record for further agency or judicial review;

(d) Whether the legal issues involved in the proceeding present questions of legal significance or are being raised for the first time before the agency;

(e) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and

(f) Any other factors that the presiding or reviewing officer deems relevant in reaching a determination.

#### NEW SECTION

**WAC 308-08-545 Brief adjudicative proceedings. To what do they apply?** The department of licensing, dealer and manufacturer services section, adopts the provisions of RCW 34.05.482 through 34.05.494 for the matters listed in this section. The department may use brief adjudicative proceedings (BAPs) where their use will not violate any provisions of law, and where protection of the public interest does

not require the department to give notice and an opportunity to participate to persons other than the parties.

The department may use BAPs including, but not limited to, the following matters:

(1) Whether a surety bond (or insurance) has been exhausted or cancellation pursuant to RCW 46.70.070, 46.80.070, 46.55.030 or 88.02.060, or the insurance required in RCW 46.55.030;

(2) Whether the licensee has failed to maintain an established place of business pursuant to RCW 46.70.023, WAC 308-66-140, RCW 46.80.130, WAC 308-63-070, RCW 46.55.060, WAC 308-61-108, RCW 88.02.078, 46.79.030, or WAC 308-65-030;

(3) Whether a person has failed to comply with an order or to pay a previously assessed fine, pursuant to RCW 46.70.101, 46.55.200, 46.80.110, or 88.02.188;

(4) Whether a licensee has been selling, exchanging, offering, brokering, auctioning, soliciting, advertising new or current model vehicles without a service agreement with a manufacturer, pursuant to RCW 46.70.101 or 46.70.041;

(5) Whether a licensee had failed to promptly transfer title, pursuant to RCW 46.70.122, WAC 308-66-190, 308-56A-420, or 308-90-150;

(6) Whether a licensee had failed to notify the department of a fact in which the licensee is required to timely notify the department (e.g., WAC 308-66-210 or 308-61-108);

(7) Whether a licensee has failed to have a current certificate or registration with the department of revenue pursuant to RCW 46.70.101;

(8) Whether the applicant whose license was suspended for cause and the terms of the suspension have not been fulfilled pursuant to RCW 46.70.101;

(9) Whether the applicant having been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion pursuant to RCW 46.70.101 or 46.80.110 in the case of vehicle wreckers, or RCW 46.79.070 in the case of hulk haulers or scrap processors;

(10) Whether the applicant knowingly or with reason to know made a false statement of a material fact in his or her application for license or any data attached thereto pursuant to RCW 46.70.101;

(11) Whether an applicant or licensee has sufficient education credits as required by RCW 46.70.079;

(12) Whether a person is engaging in or about to engage in the business of a licensee as referenced in RCW 46.70.115, 46.80.180, or 46.55.210;

(13) Whether an applicant or licensee is solvent within the meaning of RCW 46.70.101;

(14) Whether a licensee has failed to maintain records as required by RCW 46.70.120, WAC 308-66-180, RCW 46.55.150 or 46.80.080.

The sole issue to be heard at the adjudicative proceedings shall be whether the applicant is in compliance with the requirements set forth in subsections (1) through (14) of this section.

**WSR 05-21-028**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed October 11, 2005, 8:05 a.m., effective November 11, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In response to a request received from the Washington State Noxious Weed Control Board (June 1, 2005), the department is adopting an amendment to WAC 16-752-505 Wetland and aquatic weed quarantine—Regulated articles, that adds *Glyceria maxima* to the list of aquatic plants prohibited from sale in Washington state. When this amendment becomes effective, it will replace the emergency rule that the department is filing today (October 11, 2005).

Citation of Existing Rules Affected by this Order: Amending WAC 16-752-505.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Adopted under notice filed as WSR 05-17-206 on August 24, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 11, 2005.

Valoria H. Loveland  
 Director

**AMENDATORY SECTION** (Amending WSR 04-19-004, filed 9/2/04, effective 10/3/04)

**WAC 16-752-505 Wetland and aquatic weed quarantine—Regulated articles.** All plants and plant parts of the following are regulated articles under this chapter:

<b>Scientific Name</b>	<b>Common Name</b>
<i>Butomus umbelatus</i>	flowering rush
<i>Cabomba caroliniana</i>	fanwort
<i>Crassula helmsii</i>	Australian swamp stonecrop
<i>Egeria densa</i>	Brazilian elodea
<i>Epilobium hirsutum</i>	hairy willow herb
<i>Glossostigma diandrum</i>	mud mat
<u><i>Gyceria maxima</i></u>	<u>reed sweetgrass, tall manna grass</u>
<i>Hydrilla verticillata</i>	hydrilla
<i>Hydrocharis morsus-ranae</i>	European frog-bit
<i>Lagarosiphon major</i>	African elodea

**Scientific Name**

*Ludwigia hexapetala*  
*Lysimachia vulgaris*  
*Murdannia keisak*

*Myriophyllum aquaticum*  
*Myriophyllum spicatum*  
*Najas minor*

*Nymphoides peltata*  
*Sagittaria graminea*  
*Sagittaria platyphylla*  
*Spartina alterniflora*  
*Spartina anglica*  
*Spartina densiflora*  
*Spartina patens*  
*Trapa natans*  
*Trapa bicornus*

*Utricularia inflata*

**Common Name**

water primrose  
 garden loosestrife  
 marsh dew flower, Asian spiderwort  
 parrotfeather  
 Eurasian watermilfoil  
 slender-leaved naiad, brittle naiad  
 yellow floating heart  
 grass-leaved arrowhead  
 delta arrowhead  
 smooth cordgrass  
 common cordgrass  
 dense-flowered cordgrass  
 salt meadow cordgrass  
 water chestnut, bull nut  
 water caltrap, devil's pod, bat nut  
 swollen bladderwort

**WSR 05-21-051**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed October 13, 2005, 11:45 a.m., effective November 13, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To implement HB 1321, enacted during the 2005 legislative session. This amendment gives TRS Plan 1 members who work as school psychologists, social workers, nurses, physical therapists, occupational therapists, speech language pathologists and audiologists the same option for computing benefit as previously given to classroom instructors, librarians and counselors.

Citation of Existing Rules Affected by this Order: Amending WAC 415-112-820.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.32.010 (10)(a)(iv).

Adopted under notice filed as WSR 05-18-047 on September 2, 2005.

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.

Date Adopted: October 13, 2005.

Sandra J. Matheson  
Director

**AMENDATORY SECTION** (Amending WSR 04-21-080, filed 10/20/04, effective 11/20/04)

**WAC 415-112-820 What is a bona fide position for purposes of WAC 415-112-810?** If you are a TRS Plan 1 member and meet the requirements in this section, you are deemed to occupy a bona fide position for purposes of WAC 415-112-810 through 415-112-835.

(1) Service for single employer. You are employed in a bona fide position if you perform contracted service for one and only one employer and you satisfy the requirements of (a), (b), and (c) of this subsection.

(a) Written contract. You are employed under a part-time written contract with a school district, educational service district, community or technical college, school for the deaf, or school for the blind that meets the following conditions:

(i) Contract with school district or educational service district. You must be under a part-time contract from the first teaching day to the last teaching day of the school's official calendar.

(ii) Contracts with community or technical college, school for the blind, or school for the deaf. You must be under part-time contracts for three of the four academic quarters (summer, fall, winter, or spring) of the institution's official calendar.

(b) Instructional position. You are employed in an instructional position. An instructional position is a position in which more than seventy-five percent of your time(~~(including office hours.)~~) is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor.

(c) Number of days. Under the contract(s), you must be employed not less than twenty full-time days or the equivalent, and earn less than a full year of service credit.

(2) Combining service to meet requirements of subsection (1) of this section. When you provide services under part-time written contracts with more than one employer, service under all part-time written contracts must be combined to determine if you are employed in a bona fide position. You are employed in a bona fide position only if you satisfy the requirements of (a), (b), and (c) of this subsection.

(a) Written contract. You are employed under two or more written contracts with a school district, educational service district, community or technical college, school for the deaf, or school for the blind. You must be under contract for the equivalent of three of the four academic quarters (summer, fall, winter, or spring) of the institution's official calendar.

Example 1. Susan is employed part time with School District B from September 1 through December 31. She is employed with School District C from January 1 through June 20. Susan meets the "written contract" requirement of this subsection because she is under contract for the equivalent of three academic quarters (fall, winter, and spring).

Example 2. Bill is employed with School District B from September 1 through December 31. He is employed with Community College C for Winter and Spring quarters. Bill meets the "written contract" requirement of this subsection because he is under contract for the equivalent of three academic quarters (fall, winter, and spring).

(b) Instructional position. The hours you spend as a classroom instructor, a librarian, or a counselor in any of the positions must be at least seventy-five percent of the total hours of service in all the positions.

(c) Number of days. The total number of days in all contracted positions must not be less than twenty full-time days or the equivalent, and must not be more than the one hundred forty-four full-time days or the equivalent.

(3) To determine if you meet the foregoing requirements, the department may consider additional information. Upon the department's request, employers must provide, without limitation, the following information:

(a) For school district employees, the salary schedule and related workload provisions, if any, adopted pursuant to RCW 28A.405.200 by the school district by which the member was employed;

(b) Whether your position is included on the employing district's salary schedule, in workload provisions, or in a collective bargaining agreement;

(c) Whether your position has duties, responsibilities, workload requirements, or methods of pay similar to those of positions found in the district's schedule, workload provisions, or collective bargaining agreement;

(d) When your position was created, and how long you held the position;

(e) Whether you have previously retired under the provisions of chapter 41.32 RCW.

### WSR 05-21-053

#### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed October 13, 2005, 3:47 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: These rules pertain to Washington management service (WMS) employees.

Citation of Existing Rules Affected by this Order: WAC 357-58-215 May a permanent WMS employee voluntarily demote from a WMS position to a WGS position?, 357-58-230 May a permanent WMS employee accept an appointment to a project position in the general service and does the employee have any return right to his/her permanent WMS

position?, 357-58-260 What happens to employees in project WMS positions at the conclusion of the project?, 357-58-345 When a permanent WMS employee does not complete the review period, what reversion rights does the employee have?, 357-58-355 Can a permanent employee voluntarily revert during a review period?, 357-58-375 When permanent WMS employees promote or demote to positions in the general service and fail to complete the trial service period what reversion rights do permanent WMS employees have?, 357-58-440 How may an employer lay off WMS employees and what notice is required?, 357-58-465 What option does a permanent ~~WMS~~ employee in a WMS position have to take a position when the employee is scheduled for layoff?, and 357-58-505 Does a WMS employee have appeal rights?

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-074 on September 7, 2005.

Changes Other than Editing from Proposed to Adopted Version: The word "have" was added to the question on WAC 357-58-375. A sentence was added to the end of WAC 357-58-505 clarifying that the conclusion of an acting appointment is not subject to appeal.

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 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 0, Amended 9, Repealed 0.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-215 May a permanent ((~~WMS~~)) employee voluntarily demote to a WGS position?** A permanent ((~~WMS~~)) employee may voluntarily demote from a WMS position to a WGS position at a lower pay level than his/her current position.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-230 May a permanent WMS employee accept an appointment to a project position in the general service and does the employee have any return right to his/her permanent WMS position?** A permanent WMS employee may accept an appointment to a project WGS position as provided in chapter 357-19 WAC. Any right to return

to the employee's permanent WMS position is negotiable between the employer and employee and must be agreed to prior to the employee accepting the WGS position. If no return right is agreed to, the employee has the rights provided by chapter 357-46 WAC upon layoff from the project.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-260 What happens to employees in project WMS positions at the conclusion of the project?**

(1) At the conclusion of an appointment to a project WMS position, the layoff provisions of this chapter apply.

(2) In addition to the layoff rights provided by this chapter:

(a) A permanent status employee who left a permanent WGS position to accept appointment to a project WMS position without a break in service has the additional rights provided by WAC 357-19-340; and

(b) A permanent ((~~status~~)) WMS employee who left a permanent WMS position may have additional rights negotiated under WAC 357-58-255.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-345 When a permanent WMS employee does not complete the review period, what reversion rights does the employee have?**

When a ((~~WMS~~)) permanent WMS employee is appointed to a WMS position and reverted during the review period, the current employing agency at the time of reversion must place the employee in a vacant funded WMS position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the last WMS appointment. If no vacant funded positions are available, the agency must place the employee in a WMS position for which the employee is qualified and which is similar to the employee's previous position and salary. If the reversion of the employee causes the total number of employees to exceed the total number of positions to be filled, the employer may implement a layoff.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-355 Can a((~~permanent~~)) permanent employee voluntarily revert during a review period?** Within the first thirty calendar days of any review period, a((~~permanent~~)) permanent employee may request to voluntarily revert to his/her former ((~~agency~~)) employer. If the former ((~~agency~~)) employer authorizes the reversion, the ((~~agency must place the employee in a vacant funded WMS position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the last WMS appointment.~~)) following applies:

(1) If the employee holds permanent status in WMS, the employer must place the employee in a vacant funded WMS position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the last WMS appointment.

(2) If the employee holds permanent status in WGS and has not yet gained permanent status in WMS, the employee has reversion rights in accordance with WAC 357-19-115, 357-19-117, and 357-19-120.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-375 When permanent WMS employees promote or demote to positions in the general service and fail to complete the trial service period what reversion rights do permanent WMS employees have?** (1) When a ((WMS)) permanent WMS employee **promotes** to a WGS position within the **same** agency and is reverted during the trial service, the agency must place the employee in a vacant funded WMS position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the WGS appointment. If no vacant funded positions are available, the agency must place the employee in a WMS position for which the employee is qualified and which is similar to the employee's previous position and salary. If the reversion of the employee causes the total number of employees to exceed the total number of positions to be filled, the employer may implement a layoff.

(2) When a ((WMS)) permanent WMS employee **demotes** to a WGS position in the **same** agency and is reverted during the trial service period the agency must place the employee in a vacant funded WMS position for which the employee is qualified and with a salary that is equal to or less than the salary range maximum of the class from which the employee is reverting. If the reversion of the employee causes the total number of employees to exceed the total number of positions to be filled, the employer may implement a layoff.

(3) When a ((WMS)) permanent WMS employee **promotes or demotes** to a WGS position in a **different** agency and is reverted during the trial service period, the employer may separate the employee by providing fifteen calendar days' written notice. The employee may apply for the general government transition pool.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-440 How may an employer lay off WMS employees and what notice is required?** WMS employees may be separated without prejudice due to layoff in accordance with the statutes and the agency's layoff procedure.

Permanent ((WMS)) employees must receive at least fifteen calendar days' written notice of layoff, except when the employer and employee agree to waive the fifteen-day notice. Notice of layoff must include the reason or basis for layoff and the employee's right to appeal the layoff.

WMS employees without permanent status must receive at least one calendar day's written notice of layoff.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-465 What option does a permanent ((WMS)) employee in a WMS position have to take a position when the employee is scheduled for layoff?** (1) Within the layoff unit, a permanent ((WMS)) employee scheduled for layoff from a WMS position must be offered the option to take a position, if available, that meets the following criteria:

(a) The employee has the required competencies for the position.

(b) The WMS position is at the same salary standard and/or evaluation points. If no option to a position with the same salary standard and/or evaluation points is available, the employer must consider other WMS positions with a lower salary standard and/or evaluation points, or general service positions in ~~((classes in which))~~ accordance with WAC 357-46-035(1) in descending salary order if the employee has held permanent status((;)) in ~~((descending salary order))~~ a WGS classification. At the agency's discretion, the employee may be offered a vacant position at higher evaluation points.

(c) The position being offered as the option is funded and vacant. If no vacant position is available, the position being offered as the option must be occupied by the employee with the lowest retention rating.

~~(2) ((The position is funded and vacant, or if no vacant position is available, the position is occupied by the employee with the lowest retention rating.))~~ If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an acting position in the layoff unit for which the employee is qualified.

AMENDATORY SECTION (Amending WSR 05-12-072, filed 5/27/05, effective 7/1/05)

**WAC 357-58-505 Does a WMS employee have appeal rights?** Any permanent ((WMS)) employee in a WMS position who is laid off, dismissed, suspended, demoted, separated, whose position has been reassigned beyond a reasonable commute without agreeing to the reassignment, or whose base salary is reduced may appeal in accordance with chapter 357-52 WAC. The conclusion of an acting appointment is not subject to appeal.

## WSR 05-21-054

### PERMANENT RULES

### DEPARTMENT OF PERSONNEL

[Filed October 13, 2005, 3:48 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: This rule pertains to an employer granting paid leave for an employee to take an examination or participate in an interview.

Citation of Existing Rules Affected by this Order:  
Amending WAC 357-16-105.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-075 on September 7, 2005.

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.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

**WAC 357-16-105 ((May)) Must an employee be granted ((release time)) leave with pay to take an examination or ((otherwise)) participate in an ((assessment process (which may include assessment tools such as phone screens)) interview((s, performance tests, etc.)) during scheduled work hours? ((Employers may release employees, without a loss in pay, to take an examination or otherwise participate in an assessment process)) In accordance with WAC 357-31-325, an employee must be granted leave with pay to take an examination or participate in an interview during scheduled work hours when applying or being considered for a position with a state agency, higher education institution or related higher education board.**

#### WSR 05-21-055

##### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed October 13, 2005, 3:51 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: This rule pertains to employers granting leave for miscellaneous reasons.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-325.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-076 on September 7, 2005.

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.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-08-138, filed 4/6/05, effective 7/1/05)

**WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination? (1) Leave with pay **must** be granted to an employee:**

(a) To allow an employee to receive assessment from the employee advisory service; or

(b) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(i) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(ii) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(2) An employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including but not limited to fire fighting, search and rescue efforts or donating blood. ~~((In the department of natural resources, leave with pay equivalent to one regular workshift may be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010.))~~

(3) In the department of natural resources, leave with pay equivalent to one regular workshift may be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010.

#### WSR 05-21-056

##### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed October 13, 2005, 3:53 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: This rule pertains to an employer writing criteria for WGS employees to receive relocation compensation.

Citation of Existing Rules Affected by this Order: Amending [new section] WAC 357-28-320.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-078 on September 7, 2005.

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.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

#### NEW SECTION

**WAC 357-28-320 Must the employer develop written criteria for relocation compensation?** An employer must develop written criteria prior to authorizing lump sum relocation compensation. The criteria must include:

(1) A description of the circumstances for which relocation compensation will be granted; and

(2) The method that will be used to determine the amount of relocation compensation.

#### **WSR 05-21-057**

##### **PERMANENT RULES**

#### **DEPARTMENT OF PERSONNEL**

[Filed October 13, 2005, 3:55 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: This rule pertains to holidays for state employees.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-005.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-079 on September 7, 2005.

Changes Other than Editing from Proposed to Adopted Version: The language was changed since the proposed filing to clarify that the holidays listed in this rule are for the purposes of chapter 357-31 WAC.

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.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

**WAC 357-31-005 (~~What legal holidays are designated by statute~~) For the purpose of chapter 357-31 WAC, what days are recognized as holidays?** The following (~~are legal holidays, which are established by RCW 4-16-050~~) days are designated as holidays for the purpose of chapter 357-31 WAC:

- (1) The first day of January (New Year's Day);
- (2) The third Monday of January (Martin Luther King, Jr.'s birthday);
- (3) The third Monday of February (Presidents' Day);
- (4) The last Monday of May (Memorial Day);
- (5) The fourth day of July (Independence Day);
- (6) The first Monday in September (Labor Day);
- (7) The eleventh day of November (Veterans Day);
- (8) The fourth Thursday of November (Thanksgiving Day);
- (9) The day immediately following Thanksgiving Day; and
- (10) The twenty-fifth day of December (Christmas Day).

Higher education employers may designate other days to be observed in place of the above holidays. Holiday schedules for higher education employers may be determined on a calendar or fiscal year basis. When a higher education employer establishes a modified schedule, paid holidays must be granted based on the modified schedule.

#### **WSR 05-21-058**

##### **PERMANENT RULES**

#### **DEPARTMENT OF PERSONNEL**

[Filed October 13, 2005, 3:56 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: This rule pertains to eligibility for the general government transition pool program.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-095.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-080 on September 7, 2005.

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.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

**AMENDATORY SECTION** (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

**WAC 357-46-095 Who is eligible for the general government transition pool program?** The following individuals are eligible to participate in the general government transition pool program:

(1) All general government permanent employees separated by layoff or notified by their employer that they are at risk of layoff;

(2) All general government permanent employees who are reverted and not returned to a permanent position in the class in which the employee last held permanent status:

~~((2))~~ (3) Employees who are eligible to participate in the return-to-work initiative program in accordance with chapter 357-19 WAC;

~~((3))~~ (4) Permanent Washington management service employees who accept a position in Washington general service and are being voluntarily or involuntarily reverted during the trial service period;

~~((4))~~ (5) Former permanent classified general government employees who have submitted a written request for reemployment within two (2) years of disability separation and who have met the reemployment requirements of WAC 357-19-475; ~~(and)~~

~~((5))~~ (6) General government employee business unit members whose contract has expired or been terminated~~(-)~~; and

~~((6))~~ (7) Permanent Washington management service employees who accept acting appointments and who do not return on the agreed upon date in accordance with WAC 357-58-275.

### WSR 05-21-059

#### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed October 13, 2005, 3:57 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: This rule pertains to the rate employees accrue vacation leave.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-165.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-081 on September 7, 2005.

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.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

**AMENDATORY SECTION** (Amending WSR 05-12-080, filed 5/27/05, effective 7/1/05)

**WAC 357-31-165 At what rate do employees accrue vacation leave?** (1) Full-time employees accrue vacation leave at the following rates:

(a) During the first year of continuous state employment - twelve days (eight hours per month);

(b) During the second year of continuous state employment - thirteen days (eight hours, forty minutes per month);

(c) During the third and fourth years of continuous state employment - fourteen days (nine hours, twenty minutes per month);

(d) During the fifth, sixth, and seventh years of total state employment - fifteen days (ten hours per month);

(e) During the eighth, ninth, and tenth years of total state employment - sixteen days (ten hours, forty minutes per month);

(f) During the eleventh year of total state employment - seventeen days (eleven hours, twenty minutes per month).

(g) During the twelfth year of total state employment - eighteen days (twelve hours per month).

(h) During the thirteenth year of total state employment - nineteen days (twelve hours, forty minutes per month).

(i) During the fourteenth year of total state employment - twenty days (thirteen hours, twenty minutes per month).

(j) During the fifteenth year of total state employment - twenty-one days (fourteen hours per month).

(k) During the sixteenth and succeeding years of total state employment - twenty-two days (fourteen hours, forty minutes per month).

(2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section.

(3) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or incumbent for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection (1)(k) of this section.

(4) The following applies for purposes of computing the rate of vacation leave accrual:

(a) (~~Employment in the legislative and/or the judicial branch except for time spent~~) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

(c) Each contract year, or equivalent, of full-time faculty and/or administrative exempt employment with a higher education employer is credited as one year of qualifying service.

(d) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

### WSR 05-21-060

#### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed October 13, 2005, 3:58 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: These rules pertain to definitions for the WMS chapter 357-58 WAC and WMS salaries being set outside the maximum of an assigned management band.

Citation of Existing Rules Affected by this Order: Amending WAC 357-58-065 and 357-58-085.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-082 on September 7, 2005.

Changes Other than Editing from Proposed to Adopted Version: When the modification to WAC 357-58-065 was filed the definition of "Washington management service" was inadvertently left out. This has been corrected on this filing. Also, the words "minimum and" have been deleted from the question in WAC 357-58-085.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-065 Definitions for WMS.** The following definitions apply to chapter 357-58 WAC:

(1) **Competencies.** Those measurable or observable knowledge, skills, abilities, and behaviors critical to success in a key job role or function.

(2) **Dismissal.** The termination of an individual's employment for disciplinary purposes.

(3) **Employee.** An individual working in the classified service. Employee business unit members are covered by chapter 357-43 WAC and defined in WAC 357-43-001.

(4) **Evaluation points.** Evaluation points are the points resulting from an evaluation of a position using the managerial job value assessment chart.

(5) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

(6) **Management bands.** Management bands are a series of management levels included in the Washington management service. Placement in a band reflects the nature of management, decision-making environment and policy impact, and scope of management accountability and control assigned to the position.

(7) **Performance management confirmation.** Approval granted by the director of the department of personnel to an employer allowing the employer to link individual employee performance to compensation or layoff decisions.

(8) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions, or circumstances associated with the job.

(9) **Reassignment.** A reassignment is an employer initiated movement of:

(a) a WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) a WMS position and its incumbent from one section, department, or geographical location to another section, department, or geographical location.

(10) **Review period.** The review period is a period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

~~((+0))~~ (11) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

~~((+1))~~ (12) **Separation.** Separation from state employment for nondisciplinary purposes.

~~((+2))~~ (13) **Suspension.** An absence without pay for disciplinary purposes.

~~((+3))~~ (14) **Transfer.** A WMS transfer is an employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

~~((+4))~~ (15) **Washington general service (WGS).** Washington general service is the system of personnel administration that applies to classified employees or posi-

tions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((15))~~ **(16) Washington management service (WMS).** Washington management service is the system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-085 Can WMS salaries be set outside the ~~((minimum and))~~ maximum of an assigned management band?** Compensation for a WMS position ~~((must not))~~ may be set outside the ~~((minimum or))~~ maximum of the assigned management band when allowed under any provision of this chapter or when approved by the department of personnel.

## WSR 05-21-061

### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed October 13, 2005, 3:59 p.m., effective November 15, 2005]

Effective Date of Rule: November 15, 2005.

Purpose: These rules pertain to certification of candidates, eligibility under the Family and Medical Leave Act, definition of "periodic increment date," acceleration or deferral of increment increases and an employer's salary determination policy.

Citation of Existing Rules Affected by this Order: Amending WAC 357-16-135, 357-31-530, 357-28-050, 357-28-075, and 357-28-035.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-18-083 on September 7, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: October 13, 2005.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-16-043, filed 7/27/05, effective 9/1/05)

**WAC 357-16-135 When may an employer certify candidates for affirmative action purposes?** An employer may use supplemental certification to add to the certified pool when:

(1) Per the employer's certification procedure, the number of eligible candidates being certified is fewer than the total number of candidates eligible for certification;

(2) The employer's approved affirmative action plan shows that a goal exists in the job category for the particular affected group; and

(3) There are no individuals on the internal layoff list ~~((list))~~ for the class who satisfy the competencies and other position requirements for the position.

AMENDATORY SECTION (Amending WSR 05-12-090, filed 5/27/05, effective 7/1/05)

**WAC 357-31-530 Under the Family and Medical Leave Act of 1993, how is an eligible employee defined?** In accordance with 29 CFR Part 825, an eligible employee is an employee who has worked for the state for at least twelve months and for at least one thousand two hundred fifty hours during the previous twelve-month period. Vacation leave, sick leave, the personal holiday, compensatory time off, or shared leave is not counted towards the one thousand two hundred ~~((and))~~ and fifty hour eligibility requirement.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-050 What is the periodic increment date (PID)?** The periodic increment date is the date upon which an employee is scheduled to receive an increment increase by moving to a higher salary step within the salary range for his/her current class.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-075 Can an employer accelerate or defer increment increases based on performance?** Employers who have received performance management confirmation from the director may in accordance with the employer's policy on performance-based increments:

(1) Accelerate the timing and/or amount of regularly scheduled increment increases stated in WAC 357-28-060 by advancing the periodic increment date for individual employees. This may only happen if employees receive an increase of at least two steps every twelve months from the periodic increment date until their salary reaches the top step of the salary range. When the periodic increment date is advanced, the employee has a new periodic increment date.

(2) Defer scheduled increment increases by postponing the periodic increment date for individual employees whose performance is less than satisfactory. When the periodic increment date is postponed to a future date, the employee has a new periodic increment date.

AMENDATORY SECTION (Amending WSR 05-16-041, filed 7/27/05, effective 9/1/05)

**WAC 357-28-035 What must be addressed in the employer's salary determination policy?** The employer's salary determination policy must minimally address the following:

- (1) Setting base salary for new employees;
- (2) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a position in a new class;
- (3) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a permanent position while in a nonpermanent appointment;
- (4) Setting base salary in accordance with WAC 357-28-140 when an employee transfers to a new position;
- (5) Setting base salary when an employee accepts a lay-off option, accepts a demotion in lieu of layoff, is appointed from an internal or statewide layoff list, or is reallocated to a position with a lower range and the employee's previous base salary is not within the salary range of the new position;
- (6) Setting base salary when an employee demotes for reasons other than accepting a demotion in lieu of layoff or accepting a demotion when a position is reallocated;
- (7) Setting (~~(f)~~) base salary when an employee is reverted following a voluntary demotion; and
- (8) Authorizing premiums for recruitment and retention as provided in WAC 357-28-095 and 357-28-100.

**WSR 05-21-067**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-245—Filed October 14, 2005, 3:09 p.m., effective November 14, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adopt hagfish emerging commercial fishery rules.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 05-16-059 on July 29, 2005.

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 4, 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.

Date Adopted: October 8, 2005.

Susan Yeager  
for Ron Ozment, Chair  
Fish and Wildlife Commission

NEW SECTION

**WAC 220-88E-010 Designation of the hagfish pot fishery as an emerging commercial fishery.** The director designates the hagfish pot fishery as an emerging commercial fishery for which use of a vessel is required. It is unlawful to fish for, possess, or deliver hagfish taken for commercial purposes unless the fisher has a valid emerging commercial fishery license and a hagfish pot trial fishery permit.

NEW SECTION

**WAC 220-88E-020 Emerging commercial fishery—Eligibility for trial fishery permits—Incidental catch.** (1) An individual may not hold more than one Washington hagfish pot trial permit.

(2) Hagfish pot trial fishery permits are not transferable. Only the vessel designated on the emerging commercial fishery license and hagfish pot trial fishery permit may be used to fish for or deliver hagfish.

(3) A hagfish trial fishery permit will be issued only to a natural person who has a valid emerging commercial fishery license.

(4) Incidental catch:

(a) It is unlawful to retain any species other than hagfish.

(b) All species other than hagfish must be carefully handled and returned to the water promptly.

NEW SECTION

**WAC 220-88E-030 Hagfish pot trial fishery—Season and gear.** It is unlawful to fish for hagfish for commercial purposes except as provided in this section:

(1) Season - Open year-round to hagfish pot gear only.

(2) Area - Open only in Pacific Ocean waters greater than 50 fathoms in depth.

(3) Gear restrictions:

(a) Maximum of 50 hagfish pots per permit. Pots may be fished individually or on a common ground line.

(b) Hagfish pot gear requirements:

(i) Maximum entrance tunnel size of eleven square inches. Entrance tunnels may be of any shape.

(ii) Each pot is required to have at least one escape exit of at least nine and one-half square inches in opening and which must be constructed of 120 thread size or smaller untreated cotton twine.

(c) Buoy requirements: Hag fish pot gear must be buoyed. Marker buoys must be floating and visible on the surface of the water, equipped with a pole, flag, radar reflector and operating light, and marked with the clear identification of the permittee. If ground lines are used, ground line end marker buoys must display the number of pots on the ground line.

NEW SECTION

**WAC 220-88E-040 Hagfish pot trial fishery—Logbook required.** It is unlawful for a participant in the hagfish pot trial fishery to fail to complete the department-supplied logbook with all indicated entries. Logbook information is required to be submitted quarterly, and it is unlawful to fail to remit the information by April 15, July 15, October 15 or January 15 for the previous quarter, whether or not fishing activity occurred during that quarter. Failure to submit logbook information may result in revocation of the trial fishery permit.

**WSR 05-21-068**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-246—Filed October 14, 2005, 3:11 p.m., effective November 14, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adopt crab buoy tag rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040 and 220-52-043.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 05-17-200 on August 24, 2005.

Changes Other than Editing from Proposed to Adopted Version: In WAC 220-52-040 (7)(d), delete last sentence.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 8, 2005.

Susan Yeager  
for Ron Ozment, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 01-219, filed 9/28/01, effective 10/29/01)

**WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (1) Net fishing boats shall not have crab aboard.** It is unlawful for any vessel geared or equipped with commercial net fishing gear to have aboard any quantity of crab while it is fishing

with the net gear or when it has other food fish or shellfish aboard for commercial purposes.

(2) **Area must be open to commercial crabbing.** Unless otherwise provided, it is unlawful to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs for commercial purposes in any area or at any time when the location is not opened for taking crabs for commercial purposes by permanent rule or emergency rule of the department: Provided, That following the close of a commercial crab season, permission may be granted by the director or his or her designee on a case-by-case basis for crab fishers to recover shellfish pots that were irretrievable due to extreme weather conditions at the end of the lawful opening. Crab fishers must notify and apply to department enforcement for such permission within twenty-four hours prior to the close of season.

(3) **Crabs must be male and 6-1/4 inches.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crabs; or

(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back immediately in front of the tips.

(4) **Each person and each Puget Sound license limited to 100 pots.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person holding two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130.

(5) **Additional area gear limits.** The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) 10 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E.

(b) 10 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula.

(c) 20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay.

(d) 10 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the I77 Rayonier Dock.

(6) **Groundline gear is unlawful.** No crab pot or ring net may be attached or connected to other crab pot or ring net by a common groundline or any other means that connects crab pots together.

(7) ~~((Puget Sound)) Crab buoys and pots ((must be tagged)) tagging requirements.~~

(a) ~~((In Puget Sound))~~ It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without attached buoy and pot tags that meets the requirements of ~~((WAC 220-52-043))~~ this subsection.

(b) Coastal crab pot tags: Each shellfish pot used in the coastal Dungeness crab fishery must bear a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person.

(c) Puget Sound crab pot tags: In Puget Sound, all crab pots must have a durable, nonbiodegradable tag securely attached to the pot and permanently and legibly marked with the license owner's name or license number, and telephone number. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with law.

(d) Crab buoy tags: The department will issue ~~((one hundred))~~ crab pot buoy tags to the owner of each ~~((Puget Sound))~~ commercial crab fishery license upon payment of an annual buoy tag fee of ~~((one hundred dollars))~~ seventy cents per ~~((license))~~ crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license. Only department-issued crab buoy tags may be used, and each crab pot is required to have a buoy tag.

(e) Puget Sound replacement crab buoy tags: Additional tags to replace lost tags will only be issued to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration under penalty of perjury in the presence of an authorized department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(f) Coastal replacement crab buoy tags: Coastal crab license holders with a 300 pot limit will be able to replace up to fifteen lost tags by January 15th, up to a total of thirty lost tags by February 15th, and up to a total of forty-five lost tags after March 15th of each season. Coastal crab license holders with a 500 pot limit will be able to replace up to twenty-five lost tags by January 15th, up to a total of fifty lost tags by February 15th, and up to a total of seventy-five lost tags after March 15th of each season. In the case of extraordinary loss of crab pot gear, the department may, on a case-by-case basis, issue replacement tags in excess of the amount set out in this subsection. Replacement buoy tags for the coastal crab fishery will only be issued after a signed affidavit is received by the department.

(8) ~~((Puget Sound—))~~ **No person can possess or use gear with other person's crab pot tag or crab buoy tag.** ~~((In Puget Sound))~~ No person may possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that person's, or any buoy not bearing tags issued by the department to that person, except that an alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(9) **Cannot tamper with pot tags.** No person shall remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots.

(10) **Thirty-day period when it is unlawful to buy or land crab from ocean without crab vessel inspection.** It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean during the first thirty days following the opening of a coastal crab season from any vessel which has not been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and properly licensed for commercial crab fishing if no Dungeness crabs are aboard. Inspections will be performed by authorized department personnel not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period.

(11) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (catch area 60B) with more than 200 shellfish pots in the aggregate. It shall be unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots.

(12) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless a shellfish pot limit has been assigned to the Dungeness crab-coastal fishery license held by the person, or to the equivalent Oregon or California Dungeness crab fishery license held by the person.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person, and it is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license.

(c) It is unlawful for a person to take or fish for Dungeness crab or to deploy shellfish pots unless the person is in possession of valid documentation issued by the department that specifies the shellfish pot limit assigned to the license.

(13) **Determination of coastal crab pot limits.**

(a) The number of shellfish pots assigned to a Washington Dungeness crab-coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, that show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria shall be used to determine and assign a shellfish pot limit to a Dungeness crab-coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15,

1997, from December 1, 1997, through September 15, 1998, and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license shall determine the crab pot limit for that license. A crab pot limit of 300 shall be assigned to a license with landings that total from zero to 35,999 pounds and a crab pot limit of 500 shall be assigned to a license with landings that total 36,000 pounds or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a shellfish pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon Department of Fish and Wildlife and/or the California Department of Fish and Game. Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a shellfish pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A shellfish pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license shall be assigned more than one shellfish pot limit.

(14) **Appeals of coastal crab pot limits.** An appeal of a shellfish pot limit by a coastal commercial license holder shall be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department shall remain in effect until such time as the appeal process is concluded.

(15) **Coastal - Barging of crab pots by undesignated vessels.** It is lawful for a vessel not designated on a Dungeness crab-coastal fishery license to be used to deploy shellfish pot gear provided that:

(a) Such a vessel may not carry aboard more than 150 shellfish pots at any one time.

(b) Such a vessel may deploy shellfish pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

(c) The lawful owner of the shellfish pot gear must be aboard the vessel when the gear is being deployed.

(16) ~~((Coastal shellfish pot tags. It is unlawful for a person to use a shellfish pot in the coastal Dungeness crab fishery unless the pot bears a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person. No person may operate or possess a pot that bears another person's tag, except that a person who is licensed as an alternate operator may operate or possess a pot that bears the tag of the primary license holder. It is unlawful for any person who is not the owner of Dungeness crab pot gear to remove, damage, or otherwise tamper with pot gear tags.~~

(17) **Coastal crab buoys - Registration and use of buoy brands and colors.**

(a) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with

the license. A license holder shall be allowed to register with the department only one, unique buoy brand and one buoy color scheme per license. Persons holding more than one license state shall register buoy color(s) for each license that are distinctly different. The buoy color(s) shall be shown in a color photograph.

(b) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

AMENDATORY SECTION (Amending Order 01-180, filed 8/22/01, effective 9/22/01)

**WAC 220-52-043 Commercial crab fishery—Additional gear and license use requirements.** (1) **Commercial gear limited to pots and ring nets.** It shall be unlawful to take or fish for crabs for commercial purposes except with shellfish pots and ring nets.

(2) **Commercial gear escape rings and ports defined.** It shall be unlawful to use or operate any shellfish pot gear in the commercial Dungeness crab fishery unless such gear meets the following requirements:

(a) Pot gear must have not less than two escape rings or ports not less than 4-1/4 inches inside diameter.

(b) Escape rings or ports described above must be located in the upper half of the trap.

(3) ~~((Puget Sound))~~ **Commercial crab gear ((tagging)) buoy tag requirements.**

(a) In ~~((Puget Sound, all))~~ coastal waters, each crab pot((s)) must have ((a durable, nonbiodegradable tag permanently and legibly marked with the license owner's name or license number, and telephone number)) the department-issued buoy tag securely attached to the ((pot. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with law)) first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of that buoy, at the end away from the crab pot buoy line.

(b) In Puget Sound, all crab buoys must have ((**Ⓢ**)) the buoy tag issued to the license owner by the department attached to the outermost end of the buoy line.

(c) If more than one buoy is attached to a pot, only one buoy tag is required.

(4) **Puget Sound - Description of lawful buoys.** All buoys attached to commercial crab gear in Puget Sound waters must consist of a durable material and remain floating on the water's surface when five pounds of weight is attached. It is unlawful to use bleach or antifreeze bottles or any other container as a float. All buoys fished under a single license must be marked in a uniform manner using one buoy brand number registered by the license holder with the department and be of identical color or color combinations. No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of thirty percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white, as the red and white colors are reserved for personal use crab gear as described in WAC 220-56-320 (1)(c).



(5) **Commercial crab license requirements.** In addition to, and separate from, all requirements in this chapter that govern the time, area, gear, and method for crab fishing, landing, possession, or delivery of crabs, no commercial crab fishing is allowed except when properly licensed. A person may take, fish for, land, or deliver crabs for commercial purposes in Washington or coastal waters only when the person has the license required by statute, or when the person is a properly designated alternative operator to a valid license. For Puget Sound, a person must have a "Dungeness crab - Puget Sound" fishery license provided by RCW 77.65.130. For coastal waters, such person must have a "Dungeness crab - Coastal" fishery license provided by RCW 77.65.130. To use ring nets instead of or in addition to pots, then the licensee must also have the "Crab ring net - Puget Sound" or "Crab ring net - non-Puget Sound" license in RCW 77.65.-130. Qualifications for the limited entry licenses, requirements for designating vessels, and use of alternate operators is provided by and controlled by chapters 77.65 and 77.70 RCW.

(6) **Maximum size for coastal crab pots.** The maximum volume of a crab pot used to fish for or take Dungeness crab from the waters provided for in WAC 220-52-040(12) is thirteen cubic feet.

(7) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any crab fishing.

## WSR 05-21-091

### PERMANENT RULES

#### DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

[Filed October 18, 2005, 11:18 a.m., effective November 18, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these rules is to support implementation of the individual development accounts (IDA) program to create incentives and support for savings and purchases of major assets by low-income people in Washington state. These are new rules for a new program created by 2005 legislative statute.

Statutory Authority for Adoption: RCW 43.79A.040 and chapter 43.31 RCW.

Adopted under notice filed as WSR 05-17-199 on August 24, 2005.

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 9, 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 9, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 18, 2005.

Sue Mauerman  
for Juli Wilkerson  
Director

## Chapter 365-205 WAC

### INDIVIDUAL DEVELOPMENT ACCOUNTS

#### NEW SECTION

**WAC 365-205-010 Purpose.** The purpose of the individual development accounts (IDA) program is to create incentives and support for savings and purchases of major assets by low-income people in Washington state. IDAs will promote job training, home ownership, and business development among low-income individuals and provide assistance in meeting the financial goals of low-income individuals. Additionally, a special IDA program for foster youth is described below.

The changes made in state statute to create this program can be found in RCW 43.79A.040 and chapter 43.31 RCW.

#### NEW SECTION

**WAC 365-205-020 What are individual development accounts (IDAs)?** IDAs are matched savings accounts for low-income households that are designed to help them invest in assets, such as home ownership, small business, or post-secondary education. The state will match eligible savings at a rate of one dollar for every dollar deposited by an IDA accountholder into their account. Accountholders can earn up to four thousand dollars in state match.

#### NEW SECTION

**WAC 365-205-030 What assets may be purchased with an IDA?** An IDA may be used for:

- **Postsecondary education and training.** Education and training may be provided to the accountholder, their spouse, or a dependent child and must be provided through an educational institution or training provider approved by the Washington state work force education and training coordinating board. Nonapproved training providers may be granted a purchase waiver by CTED.

- **First-time home ownership.** The accountholder cannot have owned a home during the three-year period prior to enrollment into the IDA program.

Exceptions include:

(1) Any individual who is a displaced homemaker or a single parent on the basis that the individual, while a homemaker and/or married, owned a home with his or her spouse or resided in a home owned by the spouse; and

(2) An individual who owns or owned, as a principal residence during such three-year period, a dwelling unit whose structure is:

(a) Not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or

(b) Not in compliance with state, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

- **Small business capitalization.** Eligible uses include capital, land, plant, equipment and inventory expenses or for working capital pursuant to a business plan. The business plan must have been developed with a business counselor, trainer and/or financial institution approved by the IDA service provider. The business plan must include a description of the services and/or goods to be sold, a marketing strategy and financial projections.

- **Computer.** The purchase of a computer must be determined by the IDA service provider to be necessary for work-related activities and/or postsecondary education or training.

- **Automobile or truck.** The purchase of a vehicle must be determined by the IDA service provider to be necessary for work-related activities and/or postsecondary education or training.

- **Home improvements.** Eligible improvements include repairs and other modifications to improve the health and safety, accessibility, or energy efficiency, of a home owned and occupied by the accountholder. The service provider may approve other improvements of a nonluxury nature.

- **Assistive technologies.** Eligible uses include the purchase or enhancement of technologies that will allow persons with disabilities to participate in work-related activities.

#### NEW SECTION

**WAC 365-205-040 Who is eligible to become an IDA accountholder?** Any individual whose household income at program entry is equal to or less than either:

- (1) Eighty percent of the area median income, adjusted for household size; or
- (2) Two hundred percent of federal poverty guidelines.

Local IDA service providers may choose to target incomes below these levels in their local IDA programs.

Additionally, the net worth of the individual's household as of the end of the previous calendar year may not exceed ten thousand dollars. Household net worth is defined as the total market value of all assets that are owned in whole or in part by any household member minus the total debts or obligations of household members, except that, for purposes of determining IDA eligibility, a household's assets shall not be considered to include the primary dwelling unit and one motor vehicle owned by a member of the household.

#### NEW SECTION

**WAC 365-205-050 How is the IDA program operated?** The Washington state department of community, trade and economic development (CTED) administers the IDA program through contracts with service providers for local service delivery. Service providers are responsible for local IDA program management and operations including:

- Accepting applications and determining eligibility for the program;

- Developing individual savings plans for each accountholder;

- Providing financial literacy and other types of training and/or counseling to prepare accountholders for their asset purchase;

- Providing basic support management for each accountholder and coordination with other resources and support services;

- Approving asset purchases and disbursing match to the person or organization from whom the asset is being purchased; and

- Ensuring compliance with program policies and procedures.

#### NEW SECTION

**WAC 365-205-060 What are the accountholder's responsibilities?** Accountholders must sign an individual savings plan that identifies their savings and asset goal, and open a savings account at a financial institution that is participating in the IDA program. Accountholders must make deposits to their savings account on a regular basis and must attend financial literacy classes, which will help them with managing their finances. Additional training or counseling may also be provided to accountholders that will help to prepare them for their specific asset, such as home ownership counseling or micro-enterprise training. An accountholder may terminate their agreement with their service provider at any time and withdraw their savings, thereby giving up access to all IDA matching funds.

#### NEW SECTION

**WAC 365-205-070 Under what circumstances may an accountholder withdraw funds from their account?** Once an accountholder is ready to make an asset purchase, they must request approval of the purchase from their IDA service provider. Upon approval of the purchase, the service provider will issue payment directly to the person or entity from whom the asset is being purchased. At the service provider's discretion, business capitalization expenses may be paid from an IDA match account directly to a business capitalization account that is established in a federally insured financial institution or state insured institution if no federally insured financial institution is available.

If an accountholder wishes to withdraw funds for some purpose other than an eligible asset purchase, they must request approval from their service provider. An accountholder may be allowed to withdraw all or part of their savings for the following emergencies:

- (1) Necessary medical expenses;
- (2) To avoid eviction of the individual from the individual's residence;
- (3) Necessary living expenses following loss of employment; or
- (4) Such other circumstances as the sponsoring organization determines merit emergency withdrawal.

The IDA accountholder making an emergency withdrawal from savings must reimburse the account for the amount withdrawn within twelve months of the date of withdrawal or the account will be closed. If an accountholder

wishes to use their savings for an unapproved use, they must withdraw from the program and their account will be closed. Once an account is closed, any unused match associated with that account is forfeited.

#### NEW SECTION

**WAC 365-205-080 Over what period of time must assets be purchased?** Accountholders must complete all program requirements and purchase their asset within four years of entering the program.

#### NEW SECTION

**WAC 365-205-090 What about the foster youth IDA program?** A special IDA program for foster youth is established to serve:

(1) A person who is fifteen years of age or older who is a dependent of the department of social and health services (DSHS); or

(2) A person who is at least fifteen years of age, but not more than twenty-three years of age, who was a dependent of DSHS for at least twenty-four months after the age of thirteen.

Foster youth IDAs follow the same general rules for operation and responsibilities as the regular low-income IDA program above with the differences noted below.

The state will match eligible savings at a rate up to two dollars for every dollar deposited by a foster youth IDA accountholder into their account. Foster accountholders can earn up to three thousand dollars in state match.

A foster youth IDA may be used for:

- **Postsecondary education or job training.** Education and training may be provided to the accountholder, their spouse, or a dependent child and must be provided through an educational institution or training provider approved by the Washington state education and training coordinating board. Nonapproved training providers may be granted a purchase waiver by CTED.

- **Housing needs.** Housing needs include rent, security deposit, and utilities costs and other costs deemed acceptable by the service provider.

- **Computer.** The purchase of a computer must be determined by the IDA service provider to be necessary for post-secondary education or training.

- **Car.** The purchase of a vehicle must be determined by the IDA service provider to be necessary for work-related activities.

- **Health insurance premiums.** Account funds must be used for paying premiums only, not insurance co-pays.

A foster youth participating in the program must contribute to an individual development account and develop an individual savings plan. The contributions may be derived from earned income or other income, as agreed to by CTED and the service provider. Other income shall include financial incentives for educational achievement provided by entities contracted with DSHS for independent living services for foster youth.

CTED has the authority to grant exceptions to rules (as long as they still comply with the statute).

**WSR 05-21-100**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed October 18, 2005, 1:45 p.m., effective November 18, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To amend WAC 388-400-0010 Who is eligible for state family assistance? and 388-442-0010 How does being a fleeing felon or having a conviction for a drug-related felony impact my eligibility for benefits?; the amended rules exercise the state's option to exempt individuals convicted of drug-related felonies from the temporary assistance for needy families (TANF) ban on receipt of benefits. This change is necessary to comply with SB 5213, passed during the 2005 legislative session (chapter 174, Laws of 2005).

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-400-0010 and 388-442-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090.

Other Authority: 21 U.S.C. 862a (d)(1)(A).

Adopted under notice filed as WSR 05-17-194 on August 24, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 13, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

**WAC 388-400-0010 Who is eligible for state family assistance?** (1) To be eligible for state family assistance (SFA), aliens must meet Washington state residency requirements as listed in WAC 388-468-0005 and immigrant eligibility requirements as listed in WAC 388-424-0015.

(2) You are eligible for SFA if you are not eligible for temporary assistance for needy families for the following reasons:

(a) You are a qualified alien and have been in the United States for less than five years as described in WAC 388-424-0006;

(b) You are a alien who is permanently residing in the United States under color of law (PRUCOL) as defined in WAC 388-424-0001;

(c) You are a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005;

(d) You are a caretaker relative of a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005; or

(e) You are a pregnant woman who has been convicted of(~~(~~

~~(i))~~ ~~misrepresenting their residence in order to receive benefits from two or more states at the same time(~~(~~ or~~

~~(ii) A drug-related felony as described in WAC 388-442-0010).~~

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

**AMENDATORY SECTION** (Amending WSR 04-18-002, filed 8/19/04, effective 9/19/04)

**WAC 388-442-0010 How does being a fleeing felon ((or having a conviction for a drug-related felony)) impact my eligibility for benefits?** (1) You are a **fleeing felon** if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.

(2) If you are a fleeing felon, or violating a condition of probation or parole as determined by an administrative body or court that has the authority to make this decision, you are not eligible for TANF/SFA, GA, or Basic Food benefits.

~~((3) You are a drug-related felon if you were convicted of a felony committed after August 21, 1996 that has an element of possession, use or distribution of a controlled substance as defined in Title 21 of the U.S. Code, Section 802(6). When we determine you are a drug-related felon:~~

~~(a) If you were convicted in the state of Washington, we use the Felony Offender Reporting System (FORS) to verify the date of your conviction and to determine if your conviction is for a drug-related felony.~~

~~(b) If you were convicted of a felony outside of Washington, we contact the jurisdiction where you were convicted to verify the date of your conviction and determine if the conviction is for a drug-related felony.~~

~~(c) We consider a felony conviction for attempt or conspiracy to possess, use or distribute a controlled substance as a conviction for a drug-related felony.~~

~~(4) If you are a drug-related felon, you are not eligible for TANF/SFA (cash) benefits unless you meet the conditions under subsection (5) of this section.~~

~~(5) If you are a drug-related felon, you may be eligible for TANF/SFA benefits if you meet all of the following conditions:~~

~~(a) You were convicted only of possession or use, but not distribution of a controlled substance;~~

~~(b) You were not convicted of a felony involving a controlled substance within the three-year period before your most recent conviction;~~

~~(c) You were assessed as chemically dependent by a program certified by the Division of Alcohol and Substance Abuse (DASA); and~~

~~(d) You are taking part in or have completed a DASA certified program's rehabilitation plan consisting of chemical dependency treatment and job services.~~

~~(6) If you are pregnant, but cannot get TANF/SFA because you were convicted of a drug-related felony, you can get SFA while you are pregnant if you meet all other TANF/SFA eligibility criteria under WAC 388-400-0005 or 388-400-0010.)~~

## WSR 05-21-101

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 18, 2005, 1:46 p.m., effective November 18, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food?, 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?, and 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?; to adopt federal standards for the food stamp program administered by the department under the Washington Basic Food program, Washington combined application program, and transitional food assistance program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Adopted under notice filed as WSR 05-18-066 on September 6, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 13, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 04-23-025, filed 11/8/04, effective 12/9/04)

**WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food?** We subtract the following amounts from your

assistance unit's (AU's) countable income before we determine your Basic Food benefit amount:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

Eligible and ineligible AU members	Standard deduction
1	\$134
2	\$134
3	\$134
4	\$134
5	<del>\$(153)</del> 157
6 or more	<del>\$(175)</del> 179

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense as described below:

(a) The dependent care must be needed for AU member to:

- (i) Keep work, look for work, or accept work;
- (ii) Attend training or education to prepare for employment; or
- (iii) Meet employment and training requirements under chapter 388-444 WAC.

(b) We subtract allowable dependent care expenses that are payable to someone outside of your AU:

- (i) Up to two hundred dollars for each dependent under age two; and
- (ii) Up to one hundred seventy-five dollars for each dependent age two or older.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) Legally obligated current or back child support paid to someone outside of your AU:

- (a) For a person who is not in your AU; or
- (b) For a person who is in your AU to cover a period of time when they were not living with you.

(6) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 04-23-025, filed 11/8/04, effective 12/9/04)

**WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?** The department calculates your shelter cost income deduction as follows:

EFFECTIVE ~~((10-1-04))~~ 10-1-05

Column A	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
Number of Eligible AU Members				
1	<del>\$(1,009)</del> 1037	<del>\$(776)</del> 798	<del>\$(149)</del> 152	<del>\$(1,281)</del> 1316

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or ~~((any amount))~~ mortgage payments you ~~((pay))~~ make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of ~~((three))~~ four hundred ~~((eighty-eight))~~ dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over ~~((three))~~ four hundred ~~((eighty-eight))~~ dollars.

AMENDATORY SECTION (Amending WSR 04-23-025, filed 11/8/04, effective 12/9/04)

**WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?** If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
2	((1,354)) <u>1390</u>	((1,041)) <u>1070</u>	((274)) <u>278</u>	((1,718)) <u>1765</u>
3	((1,698)) <u>1744</u>	((1,306)) <u>1341</u>	((393)) <u>399</u>	((2,155)) <u>2213</u>
4	((2,043)) <u>2097</u>	((1,571)) <u>1613</u>	((499)) <u>506</u>	((2,592)) <u>2661</u>
5	((2,387)) <u>2450</u>	((1,836)) <u>1885</u>	((592)) <u>601</u>	((3,030)) <u>3109</u>
6	((2,732)) <u>2803</u>	((2,101)) <u>2156</u>	((711)) <u>722</u>	((3,467)) <u>3558</u>
7	((3,076)) <u>3156</u>	((2,366)) <u>2428</u>	((786)) <u>798</u>	((3,904)) <u>4006</u>
8	((3,421)) <u>3509</u>	((2,631)) <u>2700</u>	((898)) <u>912</u>	((4,341)) <u>4454</u>
9	((3,766)) <u>3863</u>	((2,896)) <u>2972</u>	((1,010)) <u>1026</u>	((4,779)) <u>4903</u>
10	((4,111)) <u>4217</u>	((3,161)) <u>3244</u>	((1,112)) <u>1140</u>	((5,217)) <u>5532</u>
Each Additional Member	+((345)) <u>354</u>	+((265)) <u>272</u>	+((112)) <u>114</u>	+((438)) <u>449</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

**WSR 05-21-102**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed October 18, 2005, 1:47 p.m., effective November 18, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This WAC revision is intended to accomplish several objectives:

- Add advanced registered nurse practitioners (ARNPs) and physician assistants certified (PACs) to the list of eligible prescribers under this chapter;
- Exclude "Medicare/Medicaid" dual-eligible clients from the documentation requirement for prescriptions under WAC 388-543-1100 (1)(d) and 388-543-2800 (1);
- Add "washable protective underwear" to list of diapers and related supplies under WAC 388-543-1150;

- Clarify language for standard specifications for disposable incontinence products to match the description in the healthcare common procedure and coding system (HCPCS) manual; and
- Clarify products that cannot be used together under WAC 388-543-1150.

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-1100, 388-543-1150, and 388-543-2800.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.57 [74.04.057], and 74.08.090.

Adopted under notice filed as WSR 05-18-070 on September 7, 2005.

A final cost-benefit analysis is available by contacting Dianne Baum, Division of Medical Management, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1590, fax (360) 586-5299, e-mail baumdl@dshs.wa.gov. The preliminary cost-benefit analysis is unchanged and will be final.

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 3, 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.

Date Adopted: October 14, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 03-12-005, filed 5/22/03, effective 6/22/03)

**WAC 388-543-1100 Scope of coverage and coverage limitations for DME and related supplies, prosthetics, orthotics, medical supplies and related services.** The federal government deems **durable medical equipment (DME)** and related supplies, **prosthetics, orthotics, and medical supplies** as optional services under the **Medicaid** program, except when prescribed as an integral part of an approved plan of treatment under the home health program or required under the early and periodic screening, diagnosis and treatment (**EPSDT**) program. The **department** may reduce or eliminate coverage for optional services, consistent with legislative appropriations.

(1) The medical assistance administration (MAA) covers DME and related supplies, prosthetics, orthotics, medical supplies, related services, repairs and labor charges when ~~((all of the following apply. They must be))~~ they are:

(a) Within the scope of an eligible client's medical care program (see chapter 388-529 WAC);

(b) Within accepted medical or physical medicine community standards of practice;

(c) Prior authorized as described in WAC 388-543-1600, 388-543-1800, and 388-543-1900;

(d) Prescribed by a ~~((qualified provider, acting within the scope of the provider's practice))~~ physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC). Except for dual eligible Medicare/Medicaid clients, the prescription must:

(i) Be dated and signed by the prescriber;

(ii) Be less than six months in duration from the date the prescriber signs the prescription; and

(iii) State the specific item or service requested, diagnosis, ~~((prognosis,))~~ estimated length of need (weeks, ~~((or))~~ months, ~~((not to exceed six months before being reevaluated))~~ or years), and quantity;

(e) Billed to the department as the payor of last resort only. MAA does not pay first and then collect from Medicare and;

(f) **Medically necessary** as defined in WAC 388-500-0005. The provider or client must submit sufficient objective evidence to establish medical necessity. Information used to establish medical necessity includes, but is not limited to, the following:

(i) A physiological description of the client's disease, injury, impairment, or other ailment, and any changes in the client's condition written by the prescribing physician, ARNP, PAC, licensed prosthetist and/or orthotist, physical therapist, occupational therapist, or speech therapist; and/or

(ii) Video and/or photograph(s) of the client demonstrating the impairments as well and client's ability to use the requested equipment, when applicable.

(2) MAA evaluates a request for any equipment or devices that are listed as noncovered in WAC 388-543-1300 under the provisions of WAC 388-501-0165.

(3) MAA evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165 which relate to medical necessity.

(4) MAA evaluates requests for covered services in this chapter that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the standards for covered services in WAC 388-501-0165.

(5) MAA does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under **fee-for-service (FFS)** when the client is any of the following:

(a) An inpatient hospital client;

(b) Eligible for both **Medicare** and **Medicaid**, and is staying in a **nursing facility** in lieu of hospitalization;

(c) Terminally ill and receiving hospice care; or

(d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(6) MAA covers medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services, repairs, and labor charges listed in MAA's published issuances, including Washington Administrative Code (WAC), billing instructions, and numbered memoranda.

(7) An interested party may request MAA to include new equipment/supplies in the billing instructions by sending a written request plus all of the following:

- (a) Manufacturer's literature;
- (b) Manufacturer's pricing;
- (c) Clinical research/case studies (including FDA approval, if required); and
- (d) Any additional information the requester feels is important.

(8) MAA bases the decision to purchase or rent DME for a client, or to pay for repairs to client-owned equipment on medical necessity.

(9) MAA covers replacement batteries for purchased medically necessary DME equipment covered within this chapter.

(10) MAA covers the following categories of medical equipment and supplies only when they are medically necessary, prescribed by a physician (~~or other licensed practitioner of the healing arts~~), ARNP, or PAC, are within the scope of his or her practice as defined by state law, and are subject to the provisions of this chapter and related WACs:

- (a) Equipment and supplies prescribed in accordance with an approved plan of treatment under the home health program;
- (b) Wheelchairs and other DME;
- (c) Prosthetic/orthotic devices;
- (d) Surgical/ostomy appliances and urological supplies;
- (e) Bandages, dressings, and tapes;
- (f) Equipment and supplies for the management of diabetes; and
- (g) Other medical equipment and supplies, as listed in MAA published issuances.

(11) MAA evaluates a **BR** item, procedure, or service for its medical appropriateness and reimbursement value on a case-by-case basis.

(12) For a client in a **nursing facility**, MAA covers only the following when medically necessary. All other DME and supplies identified in MAA billing instructions are the responsibility of the nursing facility, in accordance with chapters 388-96 and 388-97 WAC. See also WAC 388-543-2900 (3) and (4). MAA covers:

- (a) The purchase and repair of a speech generating device (SGD), a wheelchair for the exclusive full-time use of a permanently disabled nursing facility resident when the wheelchair is not included in the nursing facility's per diem rate, or a **specialty bed**; and
- (b) The rental of a specialty bed.

(13) Vendors must provide instructions for use of equipment; therefore, instructional materials such as pamphlets and video tapes are not covered.

(14) Bilirubin lights are limited to rentals, for at-home newborns with jaundice.

AMENDATORY SECTION (Amending WSR 03-19-082, filed 9/12/03, effective 10/13/03)

**WAC 388-543-1150 Limits and limitation extensions.** The medical assistance administration (MAA) covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in

WAC 388-543-1100(1). MAA Limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). MAA approves such requests for LE when medical necessary, under the standards for covered services in WAC 388-501-0165. Procedures for LE are found in MAA's billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

- (1) Antiseptics and germicides:
  - (a) Alcohol (isopropyl) or peroxide (hydrogen) - one ~~(eight ounce bottle)~~ pint per month;
  - (b) Alcohol wipes (box of two hundred) - one box per month;
  - (c) Betadine or pHisoHex solution - one pint per month;
  - (d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month;
  - (e) Disinfectant spray - one twelve-ounce(~~s~~) bottle or can per six-month period; or
  - (f) Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.
- (2) Blood monitoring/testing supplies:
  - (a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period; and
  - (b) Spring-powered device for lancet - one in a six-month period.
- (3) Braces, belts and supportive devices:
  - (a) Custom vascular supports (CVS) - two pair per six-month period. CVS fitting fee - two per six-month period;
  - (b) Surgical stockings (below-the-knee, above-the-knee, thigh-high, or full-length) - two pair per six-month period;
  - (c) Graduated compression stockings for pregnancy support (panty hose style) - two per twelve-month period;
  - (d) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;
  - (e) Ankle, elbow, or wrist brace - two per twelve-month period;
  - (f) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;
  - (g) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.
- (4) Decubitus care products:
  - (a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;
  - (b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;
  - (c) Heel or elbow protectors - four per twelve-month period.



## (5) Ostomy supplies:

(a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.

(b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.

(c) Adhesive remover or solvent - three ounces per month.

(d) Adhesive remover wipes, fifty per box - one box per month.

(e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.

(f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.

(g) Continent plug for continent stoma - thirty per month.

(h) Continent device for continent stoma - one per month.

(i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.

(j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.

(k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.

(l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.

(m) Irrigation bag - two every six months.

(n) Irrigation cone and catheter, including brush - two every six months.

(o) Irrigation supply, sleeve - one per month.

(p) Ostomy belt (adjustable) for appliance - two every six months.

(q) Ostomy convex insert - ten per month.

(r) Ostomy ring - ten per month.

(s) Stoma cap - thirty per month.

(t) Ostomy faceplate - ten per month. MAA does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):

(i) Drainable pouches with plastic face plate attached; or

(ii) Drainable pouches with rubber face plate.

(6) Supplies associated with client-owned transcutaneous electrical nerve stimulators (TENS):

(a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)

(b) For a two-lead TENS unit - one kit per month.

(c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).

(d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).

(7) Urological supplies - diapers and related supplies:

(a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., ~~(adult)~~

briefs~~((child))~~, diapers, pull-up ~~((training))~~ pants, underpads for beds, ~~((and))~~ liners~~(+)~~, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:

(i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;

(ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;

(iii) The padding must provide uniform protection;

(iv) The product must be hypoallergenic; ~~((and))~~

(v) The product must meet the flammability requirements of both federal law and industry standards; and

(vi) All products are covered for client personal use only.

(b) In addition to the standards in subsection (a) of this section, ~~((adult briefs/child))~~ diapers must meet all the following specifications. They must:

(i) Be hourglass shaped with formed leg contours;

(ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;

(iii) Have leg gathers that consist of at least three strands of elasticized materials;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;

(vi) Have a topsheet that resists moisture returning to the skin;

(vii) Have an inner lining that is made of soft, absorbent material; and

(viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:

(A) ~~((For adult briefs, at least four tapes, two on each side.~~

~~((B)))~~ For child diapers, at least two tapes, one on each side.

~~((C)))~~ (B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up ~~((training))~~ pants and ~~((incontinent pants))~~ briefs must meet the following specifications. They must:

(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;

(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;

(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads ~~((for beds))~~ are covered only for incontinent purposes in a client's bed and must meet the following specifications ~~((They must))~~:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

~~((iv))~~ (vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners ~~((/))~~, shields, guards, ~~((including))~~ pads, and undergarments ~~((/))~~ are covered for incontinence only and must meet the following specifications ~~((They must))~~:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) MAA covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. MAA approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see MAA's billing instructions for how to specify this when billing). The total of all products used cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

(i) Disposable ~~((briefs (incontinent pants)/))~~diapers;

(ii) Disposable pull-up ~~((training))~~ pants and briefs;

(iii) Disposable liners ~~((/pads))~~, shields, guards, pads, and undergarments;

(iv) Rented reusable ~~((briefs/))~~diapers (e.g., from a diaper service); and

(v) Rented reusable briefs ~~((incontinent pants))~~ (e.g., from a diaper service), or pull-up ~~((training))~~ pants.

(g) Purchased disposable diapers (any size) are limited to:

(i) Three hundred per month for a child ~~((age))~~ three ~~((and older))~~ to eighteen years of age; and

(ii) Two hundred forty per month for an adult nineteen years of age and older.

(h) Reusable cloth diapers (any size) are limited to:

(i) Purchased - thirty-six per year; and

(ii) Rented - two hundred forty per month.

(i) Disposable briefs ~~((incontinent pants))~~ and pull-up ~~((training))~~ pants (any size) are limited to:

(i) Three hundred per month for a child age three ~~((and older))~~ to eighteen years of age; and

(ii) One hundred fifty per month for an adult nineteen years of age and older.

(j) Reusable briefs ~~((incontinent pants))~~, washable protective underwear, or pull-up ~~((training))~~ pants (any size) are limited to:

(i) Purchased - four per year.

(ii) Rented - one hundred fifty per month.

(k) Disposable pant ~~((liner/pads))~~ liners, shields, guards, pads, and undergarments are limited to two hundred forty per month.

(l) Underpads for beds are limited to:

(i) Disposable (any size) - one hundred eighty per month.

(ii) Purchased, reusable (large) - forty-two per year.

(iii) Rented, reusable (large) - ninety per month.

(8) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adaptor; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adaptor, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric). Allowed as replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.

(9) Miscellaneous supplies:

(a) Bilirubin light therapy supplies - five days' supply. MAA reimburses only when these are provided with a prior authorized bilirubin light.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

(e) Lice comb (e.g., LiceOut TM, or LiesMeister TM, or combs of equivalent quality and effectiveness) - one per year.

(f) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.

(g) Syringes and needles ("sharps") disposal container for home use, up to one gallon size - two per month.

(10) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period.

(b) Blood glucose monitor (specialized or home) - one in a three-year period.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

(d) Diaphragmatic pacing antennae - four per twelve month-period.

(e) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

(f) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(11) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(12) Positioning devices:

(a) Deluxe floor sitter/feeder seat (small, medium, or large), including floor sitter wedge, shoulder harness, and hip strap - one in a three-year period.

(b) High-back activity chair, including adjustable footrest, two pairs of support blocks, and hip strap - one in a three-year period.

(c) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

(d) Prone stander (child, youth, infant or adult size) - one in a five-year period.

(e) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

AMENDATORY SECTION (Amending WSR 01-16-141, filed 7/31/01, effective 8/31/01)

**WAC 388-543-2800 Reusable and disposable medical supplies.** (1) MAA requires that a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC) prescribe reusable and disposable medical supplies. Except for dual eligible Medicare/Medicaid clients, the prescription must:

(a) Be dated and signed by the prescriber;

(b) Be less than six months in duration from the date the prescriber signs the prescription; and

(c) State the specific item or service requested, diagnosis, (~~prognosis~~), estimated length of need (weeks (~~or~~), months, (~~not to exceed six months before being reevaluated~~) or years), and quantity.

(2) MAA bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA). MAA considers all of the following when establishing utilization criteria:

(a) High cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(3) MAA requires a provider to obtain a limitation extension in order to exceed the stated limits for nondurable medical equipment and medical supplies. See WAC 388-501-0165.

(4) MAA categorizes medical supplies and non-DME (MSE) as follows (see WAC 388-543-1150, 388-543-1600, and MAA's billing instructions for further information about specific limitations and requirements for PA and EPA):

(a) Antiseptics and germicides;

(b) Bandages, dressings, and tapes;

(c) Blood monitoring/testing supplies;

(d) Braces, belts, and supportive devices;

(e) Decubitus care products;

- (f) Ostomy supplies;
- (g) Pregnancy-related testing kits and nursing equipment supplies;
- (h) Supplies associated with transcutaneous electrical nerve stimulators (TENS);
- (i) Syringes and needles;
- (j) Urological supplies (e.g., diapers, urinary retention catheters, pant liners, and doublers); and
- (k) Miscellaneous supplies.

**WSR 05-21-128**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed October 19, 2005, 9:02 a.m., effective November 19, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to amend chapter 246-249 WAC to allow disposal of up to 100,000 cubic feet per year of diffuse naturally occurring and accelerator produced radioactive material (NARM) disposed at the commercial low-level radioactive waste site in Richland, Washington. The amendment also allows the licensee to seek approval to dispose of diffuse NARM volumes greater than of 100,000 cubic feet if there are unused volumes from previous years.

Citation of Existing Rules Affected by this Order: Amending WAC 246-249-001, 246-249-010, 246-249-080, and 246-249-090.

Statutory Authority for Adoption: RCW 70.98.050.

Adopted under notice filed as WSR 05-17-189 on August 24, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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.

Date Adopted: October 19, 2005.

M. C. Selecky  
Secretary

AMENDATORY SECTION (Amending Order 187, filed 8/7/91, effective 9/7/91)

**WAC 246-249-001 Purpose and scope.** ~~((This chapter provides))~~ These rules ((governing)) govern generators and brokers of low-level radioactive waste (LLRW) and generators and brokers of naturally occurring and accelerator produced radioactive material (NARM) seeking to dispose ((of

~~such))~~ waste at any commercial disposal facility in the state of Washington. For purposes of this chapter, the term "radioactive waste" refers to both low-level radioactive waste and naturally occurring and accelerator produced radioactive material. These rules are in addition to applicable requirements of the United States Nuclear Regulatory Commission (NRC), the United States Department of Transportation (DOT), and other requirements of Title 246 WAC, the requirements of the department of ecology, Title 173 WAC, and conditions of the license issued to the disposal site operator(s).

AMENDATORY SECTION (Amending WSR 98-09-117, filed 4/22/98, effective 5/23/98)

**WAC 246-249-010 Definitions.** As used in this chapter, the following definitions apply:

(1) "Low-level radioactive waste," ~~((has the same meaning as in))~~ consistent with the Low-Level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240, ~~((that is,))~~ means radioactive waste not classified as high-level radioactive waste, spent nuclear fuel, or by-product material as defined in section 11e.(2) of the Atomic Energy Act.

(2) "Broker" means a person who performs one or more of the following functions for a ~~((low-level))~~ radioactive waste generator:

(a) Arranges for transportation of the ~~((low-level))~~ radioactive waste;

(b) Collects and/or consolidates shipments of ~~((such low-level))~~ radioactive waste (waste collector);

(c) Processes ~~((such low-level))~~ radioactive waste in some manner ~~((; provided it shall not mean a))~~, not including carriers whose sole function is to transport ~~((such low-level))~~ radioactive waste (waste processor).

(3) "Chelating agent" means amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxy-carboxylic acids, and polycarboxylic acids (e.g., citric acid, carboic acid, and glucinic acid).

(4) "Chemical description" means a description of the principal chemical characteristics of a ~~((low-level))~~ radioactive waste.

(5) "Computer-readable medium" means ~~((that))~~ the regulatory agency's computer can transfer the information from the medium into its memory.

(6) "Consignee" means the designated receiver of the shipment of ~~((low-level))~~ radioactive waste.

(7) "Decontamination facility" means a facility operating under a commission or agreement state license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this section, is not considered to be a consignee for ~~((LLW))~~ radioactive waste shipments.

(8) "Disposal container" means a container principally used to confine ~~((low-level))~~ radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"). Note that for some shipments, the disposal container may be the transport package.

(9) "EPA identification number" means the number ~~((received by a transporter following application to the~~

~~administrator of EPA as required by~~) assigned by the EPA administrator under 40 CFR Part 263.

(10) "Generator" means any entity including a licensee operating under a commission or agreement state license who:

(a) Is a waste generator as defined in this part; or

(b) Is the entity or licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

(11) "High integrity container (HIC)" means a container commonly designed to meet the structural stability requirements of this chapter, and to meet department of transportation ~~(requirements for a)~~ Type A package requirements.

(12) "Land disposal facility" means the land, buildings, and equipment which are intended to be used for the disposal of radioactive wastes. For the purposes of this chapter, a land disposal facility does not include a geologic repository.

(13) "Motor vehicle" means any vehicle, truck, tractor, semi-trailer, or trailer (or any permitted combination of these), driven by mechanical power and used upon the high-ways to carry property.

(14) "Motor common carrier" means a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both.

(15) "Motor contract carrier" means a person other than a common carrier providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons.

(16) "Motor private carrier" means a person, other than a motor carrier, transporting property by motor vehicle when the person is the owner, lessee, or bailee of the property being transported; and the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

(17) "Motor carrier" means a motor common carrier and a motor contract carrier.

(18) "Naturally occurring and accelerator produced material (NARM) means any radioactive material of natural or accelerator origin; but does not include by-product, source or special nuclear material. Diffuse NARM is low activity NARM that has less than 2 nCi/g of 226-Ra.

(19) "NRC Forms 540, 540A, 541, 541A, 542, and 542A" are official NRC Forms referenced in this section. Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, NRC Forms 541 (and 541A) and NRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

~~((19))~~ (20) "Package" means the assembly of components necessary to ensure compliance with the packaging requirements of DOT regulations, together with its radioactive contents, as presented for transport.

~~((20))~~ (21) "Physical description" means the items ~~(called for)~~ on NRC Form 541 ~~((t))~~ that describe a ~~((low-level))~~ radioactive waste.

~~((21))~~ (22) "Radioactive waste" means either or both low-level radioactive waste and naturally occurring and accelerator produced radioactive material.

~~((23))~~ (23) "Residual waste" means ~~((low-level))~~ radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

~~((22))~~ (24) "Rollover volume" means the difference, in a calendar year, between the volume of NARM disposed at the disposal site and the site volume limit set forth under WAC 246-249-080(4).

~~((25))~~ (25) "Shipper" means the licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers ~~((low-level))~~ radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator.

~~((23))~~ (26) "Shipment" means the total ~~((low-level))~~ radioactive waste material transported in one motor vehicle.

~~((24))~~ (27) "Shipping paper" means NRC Form 540 and, if required, NRC Form 540A which includes the information required by DOT in 49 CFR Part 172.

~~((25))~~ (28) "Transuranic waste" means material contaminated with elements that have an atomic number greater than 92.

~~((26))~~ (29) "Uniform Low-Level Radioactive Waste Manifest or uniform manifest" means the combination of NRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

~~((27))~~ (30) "Waste collector" means an entity, operating under a commission or agreement state license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

~~((28))~~ (31) "Waste description" means the physical, chemical and radiological description of a ~~((low-level))~~ radioactive waste as called for on NRC Form 541.

~~((29))~~ (32) "Waste generator" means an entity, operating under a commission or agreement state license, who:

(a) Possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(b) Transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal.

A licensee performing processing or decontamination services may be a "waste generator" if the transfer of ~~((low-level))~~ radioactive waste from its facility is defined as "residual waste."

~~((30))~~ (33) "Waste processor" means an entity, operating under a commission or agreement state license, whose principal purpose is to process, repackage, or otherwise treat ~~((low-level))~~ radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

~~((31))~~ (34) "Waste type" means a waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste

sorbed on or solidified or stabilized in a specifically defined media).

AMENDATORY SECTION (Amending WSR 95-13-094, filed 6/21/95, effective 7/22/95)

**WAC 246-249-080 Naturally occurring and accelerator produced radioactive material (NARM), excluding source material.** (1) In addition to requirements for a disposal site use permit contained in WAC 246-249-020, single generators of ~~((radioactive wastes))~~ naturally occurring or accelerator produced radioactive material shall obtain the specific approval of the department prior to offering ~~((naturally occurring or accelerator produced radioactive material,))~~ wastes for disposal.

(2) Applications for specific departmental approval ~~((shall))~~ must be submitted to the department for volumes greater than one thousand cubic feet of diffuse NARM, and must describe:

(a) The chemical processes which produce or have produced the waste;

(b) The volume of waste to be disposed; and

(c) The radionuclides in the waste.

(3) A request for specific approval may be approved if the department finds the material ~~((to be))~~ is:

(a) In conformance with conditions of all licenses and permits issued to the disposal site operator; and

(b) Consistent with protection of the public health, safety and environment.

(4) Diffuse naturally occurring and accelerator produced radioactive material, excluding source material, shall be limited to a total site volume of no more than ~~((eight))~~ one hundred thousand ~~((six hundred))~~ cubic feet per calendar year; and individual generators shall be limited to an annual total volume of one thousand cubic feet per calendar year, provided that there shall be no annual site limit or individual generator volume limit for). This annual disposal limit does not apply to:

(a) Accelerator produced radioactive material excluding decommissioning waste; and

(b) Discrete sealed sources. For purposes of this section, sealed sources means any device containing naturally occurring radioactive material or accelerator produced radioactive material to be used as a source of radiation which has been constructed in such a manner as to prevent the escape of any radioactive material.

(5) Rollover provision. For a given calendar year, the site licensee may apply to the department for an increase in the site volume limit not to exceed the cumulative rollover volume from previous years. The licensee must submit an application to the department describing the request and addressing the possible impacts. The department may approve the application if it finds that disposal of rollover volumes in excess of one hundred thousand cubic feet per year is appropriate based on the real or potential impacts to the public health, safety and environment.

(6) Emergency provision. If the annual total site ~~((volume limit or an individual generator's annual total))~~ volume limit has been met~~((;))~~ and an emergency situation occurs, single generators of diffuse NARM may seek emergency

approval from the secretary to dispose of ~~((NARM excluding source materials))~~ waste in excess of volume limitations. The secretary may approve emergency disposal if he or she finds that an emergency exists based upon the circumstances described by the applicant, the real or potential impact on the public health and safety as determined by the department and that approval of such additional disposal is consistent with protecting the public health and safety of the citizens of the state of Washington.

~~((6))~~ (7) The department shall review ~~((subsection (4)(a) and (b) of))~~ this section, every five years, beginning five years from the rule's effective date ~~((of this regulation, to determine if volume limits should be set.~~

~~((7) Denial by the department of a request for specific approval shall not be interpreted as an approval to dispose of naturally occurring or accelerator produced radioactive material without regard to its radioactivity)).~~

AMENDATORY SECTION (Amending WSR 98-09-117, filed 4/22/98, effective 5/23/98)

**WAC 246-249-090 Transfer for disposal and manifests.** The requirements of this section are designed to control transfers of ~~((low-level))~~ radioactive waste by any waste generator, waste collector, or waste processor licensee who ships ~~((low-level))~~ radioactive waste either directly, or indirectly through a waste collector or waste processor, to a licensed low-level waste land disposal facility; establish a manifest tracking system; and supplement existing requirements concerning transfers and recordkeeping for those wastes.

(1) Effective March 1, 1998, each shipment of radioactive waste intended for disposal at a licensed land disposal facility in the state of Washington must be accompanied by a uniform low-level radioactive waste shipment manifest.

(2) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on NRC's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with this section.

(a) Each shipment manifest must include a certification by the waste generator as specified in this section.

(b) Each person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in this section.

(c) When recording information on shipment manifests, information must be recorded in the International System of Units (SI) or in SI and units of curie, rad, rem, including multiples and subdivisions.

(3) A waste generator, collector, or processor who transports, or offers for transportation, ~~((low-level))~~ radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility must prepare a manifest reflecting information requested on applicable NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and

Regional Compact Tabulation)). NRC Forms 540 and 540A must be completed and must physically accompany the pertinent low-level waste shipment. Upon agreement between shipper and consignee, NRC Forms 541 and 541A and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. Licensees are not required by the department to comply with the manifesting requirements of this section when they ship:

(a) ~~((LLW))~~ Radioactive waste for processing and expect its return (i.e., for storage under their license) prior to disposal at a licensed land disposal facility;

(b) ~~((LLW))~~ Radioactive waste that is being returned to the licensee who is the "waste generator" or "generator," as defined in this part; or

(c) Radioactively contaminated material to a "waste processor" that becomes the processor's "residual waste."

For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this section may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

This section includes information requirements of the U.S. Department of Transportation, as codified in 49 CFR Part 172. Information on hazardous, medical, or other waste, required to meet Environmental Protection Agency regulations, as codified in 40 CFR Parts 259, 261 or elsewhere, is not addressed in this section, and must be provided on the required EPA forms. However, the required EPA forms must accompany the Uniform Low-Level Radioactive Waste Manifest required by this section.

(4) Information requirements.

(a) General information.

The shipper of the radioactive waste, shall provide the following information on the uniform manifest:

(i) The name, facility address, and telephone number of the licensee shipping the waste;

(ii) An explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifest shipment; and

(iii) The name, address, and telephone number, or the name and EPA identification number for the carrier transporting the waste.

(b) Shipment information.

The shipper of the radioactive waste shall provide the following information regarding the waste shipment on the uniform manifest:

(i) The date of the waste shipment;

(ii) The total number of packages/disposal containers;

(iii) The total disposal volume and disposal weight in the shipment;

(iv) The total radionuclide activity in the shipment;

(v) The activity of each of the radionuclides H-3, C-14, Tc-99, and I-129 contained in the shipment; and

(vi) The total masses of U-233, U-235, and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

(c) Disposal container and waste information.

The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

(i) An alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(ii) A physical description of the disposal container, including the manufacturer and model of any high integrity container;

(iii) The volume displaced by the disposal container;

(iv) The gross weight of the disposal container, including the waste;

(v) For waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(vi) A physical and chemical description of the waste;

(vii) The total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(viii) The approximate volume of waste within a container;

(ix) The sorbing, stabilization, or solidification media, if any, and the identity of the solidification or stabilization media vendor and brand name;

(x) The identities and activities of individual radionuclides contained in each container, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

(xi) The total radioactivity within each container; and

(xii) For wastes consigned to a disposal facility, the classification of the waste ~~((pursuant to))~~ under this chapter. ((Waste not meeting the structural stability requirements of this chapter must be identified.)) The shipper must identify the waste if it does not meet the structural stability requirements in this chapter.

(d) Uncontainerized waste information.

The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

(i) The approximate volume and weight of the waste;

(ii) A physical and chemical description of the waste;

(iii) If the chelating agent exceeds 0.1% by weight, the total weight percentage of chelating agent ((if the chelating agent exceeds 0.1% by weight,)) plus the identity of the principal chelating agent;

(iv) For waste consigned to a disposal facility, the classification of the waste ~~((pursuant to))~~ under this chapter. ((Waste not meeting the structural stability requirements of this chapter must be identified.)) The shipper must identify the waste if it does not meet the structural stability requirements in this chapter.

(v) The identities and activities of individual radionuclides contained in the waste, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

(vi) For wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

(e) Multigenerator disposal container information.

This subsection applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the ~~(LLW)~~ radioactive waste resulting from a processor's activities may be attributable to one or more "generators," including "waste generators." It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.)

(i) For homogeneous mixtures of waste, such as incinerator ash, provide waste description applicable to the mixture and the volume of the waste attributed to each generator.

(ii) For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following:

(A) The volume of waste within the disposal container;

(B) A physical and chemical description of the waste, including the stabilization or solidification agent, if any;

(C) The total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(D) The sorbing, solidification, or stabilization media, if any, and the identity of the stabilization media vendor and brand name, if the media is claimed to meet stability requirements in WAC 246-249-050(2); and

(E) Radionuclide identities and activities contained in the waste, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

(5) Certification.

An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, the U.S. Nuclear Regulatory Commission, and the department. A collector in signing the certification is certifying that nothing has been done to the collected waste which would invalidate the waste generator's certification.

(6) Control and tracking.

(a) Any licensee who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in (a)(i) through (ix) of this subsection. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of (a)(iv) through (ix) of this section. A licensee shall:

(i) Prepare all wastes so that the waste is classified according to WAC 246-249-040 and meets the waste characteristics requirements in WAC 246-249-050;

(ii) Label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is Class A waste, Class B waste, Class C waste, or greater than Class C waste, in accordance with WAC 246-249-040;

(iii) Conduct a quality assurance program to assure compliance with WAC 246-249-040 and 246-249-050 (the program must include management evaluation of audits);

(iv) Prepare the NRC Uniform Low-Level Radioactive Waste Manifest as required by this section;

(v) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either receipt of the manifest precedes the ~~(LLW)~~ waste shipment or the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both methods is also acceptable;

(vi) Include NRC Form 540 (and NRC Form 540A, if required) with the shipment regardless of the option chosen in (a)(v) of this subsection;

(vii) Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(viii) Retain a copy of, or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by these regulations; and

(ix) For any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with (e) of this subsection.

(b) Any waste collector licensee who handles only pre-packaged waste shall:

(i) Acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC Form 540;

(ii) Prepare a new manifest to reflect consolidated shipments that meet the requirements of this section. The waste collector shall ensure that, for each container of waste in the shipment, the manifest identifies the generator of that container of waste;

(iii) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either receipt of the manifest precedes the ~~(LLW)~~ waste shipment, or the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both methods is also acceptable;

(iv) Include NRC Form 540 (and NRC Form 540A, if required) with the shipment regardless of the option chosen in (b)(iii) of this subsection;

(v) Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(vi) Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by these regulations;

(vii) For any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with this section; and

(viii) Notify the shipper and the department when any shipment, or part of a shipment, has not arrived within sixty



days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

(c) Any licensed waste processor who treats or repackages waste shall:

(i) Acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC Form 540;

(ii) Prepare a new manifest that meets the requirements of this section. Preparation of the new manifest reflects that the processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in subsection (4)(e) of this section;

(iii) Prepare all wastes so that the waste is classified according to WAC 246-249-040 and meets the waste characteristics requirements in WAC 246-249-050;

(iv) Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with WAC 246-249-040 and 246-249-060;

(v) Conduct a quality assurance program to assure compliance with WAC 246-249-040 and 246-249-050 (the program shall include management evaluation of audits);

(vi) Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either receipt of the manifest precedes the ~~((LLW))~~ waste shipment, or the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both methods is also acceptable;

(vii) Include NRC Form 540 (and NRC Form 540A, if required) with the shipment regardless of the option chosen in (c)(vi) of this subsection;

(viii) Receive acknowledgement of the receipt of the shipment in the form of a signed copy of NRC Form 540;

(ix) Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by these regulations;

(x) For any shipment or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with (e) of this subsection; and

(xi) Notify the shipper and the department when any shipment, or part of a shipment, has not arrived within sixty days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

(d) The land disposal facility operator shall:

(i) Acknowledge receipt of the waste within one week of receipt by returning, as a minimum, a signed copy of NRC Form 540 to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. If any discrepancy exists between materials listed on the Uniform Low-Level Radioactive Waste Manifest and materials received, copies or electronic transfer of the affected forms must be returned indicating the discrepancy;

(ii) Maintain copies of all completed manifests and electronically store the information required by WAC 246-250-600(8) until the license is terminated; and

(ii) Notify the shipper and the department when any shipment, or part of a shipment, has not arrived within sixty days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

(e) ~~((Any shipment or part of a shipment for which acknowledgement is not received))~~ If the shipper does not receive acknowledgement from the land disposal facility operator for any shipment or part of a shipment within the times set ((forth)) in this section, the shipper must:

(i) ~~((Be investigated by the shipper))~~ Investigate if the shipper has not received notification or receipt within twenty days after transfer; and

(ii) ~~((Be traced and reported. The investigation shall include tracing the shipment and filing a report with))~~ Trace the shipment or part of shipment and report the investigation to the department. Each licensee who conducts a trace investigation shall file a written report with the department within two weeks of completion of the investigation.

### WSR 05-21-133

#### PERMANENT RULES

#### UNIVERSITY OF WASHINGTON

[Filed October 19, 2005, 9:08 a.m., effective November 19, 2005]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To make housekeeping amendments to various Title 478 WAC, University of Washington rules. Amendments include updating the location of board of regents meetings; updating the location and phone number of the secretary to the committee on the use of university facilities; updating the Dean of Libraries title; and clarifying the rule that indicates committees of the board of regents are considered the same as the full board for the purpose of executive sessions.

Citation of Existing Rules Affected by this Order: Amending WAC 478-04-030, 478-136-015, 478-136-030, 478-168-035, 478-168-180, 478-168-310, and 478-168-390.

Statutory Authority for Adoption: RCW 28B.20.130 for all sections; additionally, for WAC 478-04-030 is RCW 34.05.330; and for WAC 478-168-310 and 478-168-390 is RCW 28B.15.031.

Other Authority: University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2.

Adopted under notice filed as WSR 05-15-090 on July 15, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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 7, Repealed 0.

Date Adopted: October 12, 2005.

Mark Emmert  
President

**AMENDATORY SECTION** (Amending WSR 05-08-064, filed 3/31/05, effective 5/1/05)

**WAC 478-04-030 Meetings of the board of regents.**

(1) Regular meetings. Regular meetings of the board shall be held pursuant to a schedule and at locations established yearly by resolution of the board. (~~Meetings of the board will be held in the Walker-Ames Room of Kane Hall on the campus in Seattle, Washington, or at such other place as the board may direct from time to time.~~) The president of the board, with the concurrence of a majority of the members of the board, may cancel any regular meeting. All such regular meetings will be conducted in conformance with the laws of the state of Washington governing such meetings.

The board shall give no less than twenty-four hours notice of cancellation of a regular meeting.

(2) Special meeting. The president of the university, the president of the board, or any six members of the board may call a special meeting at any time. Not less than twenty-four hours before any special meeting, the secretary shall have notified each member of the board by written notice of the time, place, and the business to be transacted at the meeting. Such notice shall be distributed and posted in accordance with the laws of the state governing such meetings. The presence of a regent at the meeting or the regent's written waiver of notice filed with the secretary shall constitute a waiver of receiving written notice of the meeting. When the meeting is called to deal with an emergency involving injury or damage, or the likelihood of injury or damage, to persons or property, and the time requirements for notice provided for above would be impractical and increase the likelihood of such injury or damage, such required notice may be dispensed with and the secretary shall notify each member of the board by the best means possible under the circumstances.

(3) Notice of agenda for regular meeting. Not less than four days before any regular meeting, the secretary shall mail to each member of the board a reminder of the regular meeting and a preliminary agenda setting forth the matters which are to be considered at the meeting.

(4) Addenda to the agenda at regular or special meetings. Addenda to the agenda of either a regular or a special meeting may be permitted at the commencement of or during such meeting, except that final disposition shall not be taken on addenda to the agenda of a special meeting unless notice as required by applicable law has been given.

(5) Quorum. A majority of the entire board shall be necessary to constitute a quorum at all regular meetings and special meetings.

(6) Order of business. The following shall be the order of business at each regular meeting of the board:

- Report of the president of the board;
- Report of the president of the university;
- Consent agenda (including approval of minutes);
- Reports of standing committees of the board;

Reports of special committees of the board; and

Any other business that may properly come before the board.

The following shall be the order of business at each special meeting of the board:

- Reading of notice of meeting;
- The special business for which the meeting was called; and

Any other business that may properly come before the board.

The order of business of the board may be changed or suspended at any meeting by a majority of the regents present. An item shall be removed from the consent agenda by request of any regent.

(7) Minutes. The minutes of all regular and special meetings of the board shall be kept by the secretary. Such minutes, following approval, shall be open to public inspection in the office of the secretary of the board of regents during regular university business hours.

(8) Public meetings. Regular and special meetings of the board of regents and committees thereof as required by applicable law shall be open to the public, except for executive sessions which may be held as permitted by applicable law. Board members may appear at any meeting through a telephone or video-conferencing device that permits communications with all other persons at the meeting. Persons wishing to appear before the board to make a presentation shall comply with the procedures as specified in subsection (11) of this section.

(9) Committee of the whole meetings. Meetings of the board as a committee of the whole may be held before regular or special meetings of the board or at such time and such place as the president of the board may direct from time to time.

(10) Executive sessions. During any regular or special meeting of the board or committee, the board or committee may hold an executive session to discuss matters as permitted in applicable laws of the state of Washington.

(11) Communications to and appearance before the board. Any persons who wish to communicate to the board or appear before the board shall do so as follows:

(a) Communications to the board. Any person who wishes to bring a matter to the attention of the board may do so by submitting such communication in writing to the secretary of the board of regents. The secretary shall bring such written communications to the attention of the president of the board and the president of the university for direction as to response and/or transmittal to the board.

(b) Appearance before the board. The meetings of the board of regents are intended for presentation of agenda items by the chairs of the respective standing committees and by the president of the university for discussion and action by the members of the board. Public testimony on agenda items, or on other relevant items which any person may wish to call to the attention of the board, may be taken by the appropriate standing committee or by the committee of the whole. The chair of each committee shall have the discretion to limit the time and order of appearances as deemed desirable for a fair presentation of views consistent with the other business before the committee. In an unusual case, this subsection may

be waived by the president of the board or by any other six members of the board.

(c) Petition to board for promulgation, amendment, or repeal of rule. Persons having an interest in the promulgation, amendment, or repeal of a "rule" as defined in RCW 34.05.010 may submit a written petition to the university's rules coordination office. Any petition so submitted shall contain the name and address of the petitioner or petitioners, a description of the persons on whose behalf the petition is presented if it is presented in a representative capacity, a statement of the interest of the petitioner and/or the persons on whose behalf it is presented, and a statement of the reasons supporting the petition. If the petition is for the promulgation of a rule, it shall contain the proposed rule. If the petition is for an amendment of an existing rule, it shall contain the rule with the proposed deletions lined out and proposed additions underlined or italicized. If the petition is for the repeal of a rule, it shall contain a copy of the rule proposed to be repealed. The petition shall be considered by the board at the first regular meeting held not less than thirty days after the date the petition was submitted to the rules coordination office, provided that the board may consider the petition at any earlier regular or special meeting of the board.

Within sixty days after submission of a petition to the rules coordination office that is for the promulgation, amendment, or repeal of a "rule," as defined in RCW 34.05.010, the board shall either deny the petition in writing or initiate rule-making procedures in accordance with RCW 34.05.330.

(12) Rules of procedure. *Robert's Rules of Order*, latest revised edition, shall govern all meetings of the board and its committees except where such rules of order are superseded by the bylaws of the board of regents or standing orders of the board. Any member of the board may make a motion which need not be seconded in order to bring the subject of the motion before the board for action.

AMENDATORY SECTION (Amending WSR 02-06-020, filed 2/25/02, effective 3/28/02)

**WAC 478-136-015 Administrative responsibilities.**

(1) The board of regents has delegated to the president of the university the authority to regulate the use of university facilities.

(2) Under this authority, the president has appointed the committee on the use of university facilities: To provide for proper review of the use of university facilities; to establish within the framework of this policy guidelines and procedures governing such use; to approve or disapprove requested uses; and to establish policies regarding fees and rental schedules where appropriate. Inquiries concerning the use of university facilities may be directed to:

University of Washington  
Secretary of the Committee on the  
Use of University Facilities  
(~~400~~) 239M Gerberding Hall  
Box (~~351210~~) 351241  
Seattle, WA (~~98195-1210~~) 98195-1241  
(or phone: (~~206-543-2560~~) 206-543-9233).

(3) Preliminary approval of an event by an academic or administrative unit of the university implies that a responsible official has applied his or her professional judgment to the content of the program, the qualifications of the individuals conducting the event, the manner of presentation, and has concluded that the event is consistent with the teaching, research, and/or public service mission of the university.

(4) Final approval of a facilities use request by the committee on the use of university facilities implies that the committee has reviewed the proposed event with regard to: The general facilities policy; the direct and indirect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods and the general public.

(5) The university will not make its facilities or services available to organizations which do not assure the university that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. 12132, 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

(6) The university will not make its facilities or services available to organizations which do not assure the university that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.

(7) Individuals who violate the university's use of facilities regulations and approved users who violate university contract terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave university property or be refused future use of university facilities. Failure to comply with a request to leave university property could subject such individuals to arrest and criminal prosecution under provisions of applicable state, county, and city laws.

AMENDATORY SECTION (Amending WSR 03-24-045, filed 11/26/03, effective 12/27/03)

**WAC 478-136-030 Limitations on use.** (1) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. Additionally, use of university facilities may be subject to reasonable time, place and manner restrictions.

(2) University facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office so long as the event has received preliminary approval by an administrative or academic unit and final approval by the committee on the use of university facilities. There are, however, certain limitations on the use of university facilities for these political activities.

(a) First priority for the use of campus facilities shall be given to regularly scheduled university activities.

(b) University facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. However, use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside university buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the university is not disrupted and entrances to and exits from buildings are not blocked.

(f) University facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the committee on the use of university facilities.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-136-010, the university will make its facilities available only for purposes related to the educational mission of the university, as determined by the committee on the use of university facilities, including but not limited to instruction, research, public assembly, and student activities. When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the committee on the use of university facilities. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/teletext information related to the user's activities offered in university facilities. The committee will determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would sig-

nificantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Electronic amplification on the grounds of the campus is prohibited with the following exceptions:

(a) The lawn area immediately west of the Husky Union Building will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, faculty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee on the use of university facilities may grant permission, under special circumstances, for the use of other amplification equipment on the lawn site west of the Husky Union Building or in other outdoor locations. Permission should be requested through:

University of Washington  
Secretary to the Committee on the  
Use of University Facilities  
(~~400~~) 239M Gerberding Hall  
Box (~~351210~~) 351241  
Seattle, WA (~~98195-4210~~) 98195-1241

(or phone: (~~206-543-2560~~) 206-543-9233), sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in campus facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license obtained under subsection (13) of this section. In addition to having the beverages or drugs con-

fiscated, violators may be subject to university disciplinary action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Smoking is prohibited in the seating areas of all athletic stadia. Smoking is permitted on pedestrian concourses.

(d) All persons entering events in Husky Stadium or other athletic venues or events in other campus auditoria or facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or non-profit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo, but in keeping with university policy may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located on the scoreboard.

(12) The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following smoking policy to protect nonsmokers from exposure to smoke in their university-associated environments and to protect life and property against fire hazards:

(a) Except as provided in subsections (10)(c) and (12)(b) of this section, smoking is prohibited in all university vehicles, inside all buildings owned or occupied by the university and/or used by the university's faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.

(b) Smoking may be permitted in student rooms in university residence halls and apartments in university student housing in accordance with smoking regulations established for those facilities by the vice-president for student affairs.

(c) The director of environmental health and safety may designate specific outdoor locations as no smoking areas.

(d) Any student, staff, or faculty member who violates the university smoking policy may be subject to disciplinary action. In addition, violations of the university smoking policy may be subject to enforcement by the University of Washington police department.

(13) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at the faculty center, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(d) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(e) Except as provided in (c) and (d) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the committee on the use of university facilities and an application to the committee must be accompanied by a request for written authorization under (f) or (g) of this subsection or proof that the seller holds an appropriate license; and

(ii) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance, and a university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) or (g) of this subsection; and

(iii) A university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) or (g) of this subsection; and

(iv) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. Unopen containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(f) Written authorization to apply for a special occasion license to sell alcoholic beverages at university facilities must be obtained from the committee on the use of university facilities prior to applying for a special occasion license from the Washington state liquor control board. Authorization should

be requested through the University of Washington, secretary to the committee on the use of university facilities, sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such license shall accompany the license application filed with the Washington state liquor control board.

(g) Written authorization to apply for a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the vice-president for student affairs prior to applying for the permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, office of the vice-president for student affairs, sufficiently in advance of the program to allow timely consideration. Written authorization to apply for such permit shall accompany the permit application filed with the Washington state liquor control board.

(h) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

**AMENDATORY SECTION** (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-035 University of Washington libraries and Marian Gould Gallagher Law Library—Service schedule.** (1) Business hours are based on the identifiable needs of the university community as a whole and in consideration of the staff made available to support public service activities of the libraries.

(2) All libraries may close on legal and university holidays. Such closures are posted at the respective library locations seven days in advance.

(3) Unscheduled closures may be declared by the (~~director~~) dean of university libraries or his/her designee, for the University of Washington libraries. The director of the Marian Gould Gallagher Law Library or his/her designee will have responsibilities for determining unscheduled closures for the Marian Gould Gallagher Law Library. Unscheduled closures will be due to staffing or physical plant problems beyond the libraries' control which constitute a threat to life, limb, essential creature comforts or utility of the facilities by users and staff.

**AMENDATORY SECTION** (Amending WSR 04-13-087, filed 6/17/04, effective 9/21/04)

**WAC 478-168-180 Identification card—Conditions of use.** (1) Each borrower is responsible for obtaining an official identification card from the appropriate university office or a library borrower's card from the library cashier.

(2) An identification card is authorized for use only by the individual whose name appears on the card.

(3) Official identification must be presented for the completion of each in-person circulation transaction.

(4) Each borrower is responsible for materials checked out on his/her University of Washington identification card or library borrower's card. Library materials are not to be loaned to others except as designated in WAC 478-168-180(6).

(5) Campus borrowers are responsible for keeping the registrar or payroll office informed of changes of address. Off-campus borrowers are responsible for keeping the library cashier informed of changes of address.

(6) Each University of Washington faculty, academic personnel, administrative personnel, professional staff, visiting scholar, and other individuals as authorized by the (~~director~~) dean of university libraries, may designate up to two proxies or couriers for the purpose of picking up materials for his/her use.

**AMENDATORY SECTION** (Amending WSR 04-13-087, filed 6/17/04, effective 9/21/04)

**WAC 478-168-310 Fines and charges.** (1) All borrowers are subject to a uniform system of fines and charges for late return of library material and for replacement costs when required. The (~~director~~) dean of university libraries or his/her designee will set the schedule of fines and charges on a regular basis.

(2) The approved schedule of fines and charges will be available online and in the *Libraries Operations Manual*.

(3) Fines are monetary sanctions for the late return of material. Fines are levied only when an overdue item is returned prior to billing.

(4) Billing charges are levied to defray the costs incurred by the libraries in billing, processing sanctions, and other activities related to the recovery of material that is substantially overdue.

(5) Replacement charges are levied to pay for the replacement of substantially overdue material. The replacement charges include the cost of the material and the cost of processing the material for the shelves. All library materials, regardless of fines and fees paid, remain state property.

(6) Binding, mending and damage charges are levied to repair material, to prepare replacement materials for circulation or to compensate for the decreased value of materials due to irreparable damage.

**AMENDATORY SECTION** (Amending WSR 04-13-087, filed 6/17/04, effective 9/21/04)

**WAC 478-168-390 Failure to pay library charges and misuse of library privileges.** (1) Failure to pay library charges and/or return library material may result in:

- (a) Holds being placed on student records.
- (b) Cancellation or blocking of registration for students.
- (c) Collection processing by the libraries and/or campus agencies designated by the University of Washington. Such accounts may also be reported to credit bureaus and/or litigation instituted.
- (d) Revocation of borrowing privileges.
- (e) Civil or criminal action against the borrower.
- (f) Any combination thereof.

(2) Misuse of library privileges may result in revocation of borrowing privileges by the (~~director~~) dean of university libraries or his/her designee.



