WSR 05-24-032

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed November 30, 2005, 1:49 p.m., effective December 31, 2005]

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

Purpose: These rules add a new section on reproductive health; define "department-approved family planning provider"; clarify who is eligible for family planning only and TAKE CHARGE; clarify provider requirements for reproductive health, family planning only, and TAKE CHARGE; clarify when services are covered under family planning only and TAKE CHARGE; clarify which services are covered under TAKE CHARGE; add definition for ECRR services; clarify billing requirements for managed care clients who self-refer outside their plan; clarify documentation requirements for TAKE CHARGE; and clarify when TAKE CHARGE providers are exempt from billing third party insurance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-532-001, 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-130, 388-532-140, 388-532-500, 388-532-510, 388-532-520, 388-532-530, 388-532-540, 388-532-550, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-750, 388-532-760, 388-532-780, and 388-532-790.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, and 74.09.800.

Adopted under notice filed as WSR 05-14-123 on July 1, 2005.

Changes Other than Editing from Proposed to Adopted Version: The following changes, other than editing changes, have been made to the rules as proposed (additions indicated by underlined text, deletions indicated by ~~strikethrough text~~):

REVISED SECTIONS

The following change occurred through the entire chapter: All instances of the "Medical Assistance Administration (MAA)" or "MAA" were changed to the "department." This change was necessary to align with the changes currently underway in the organizational structure of the Health and Recovery Services Administration (HRSA) formerly known as the Medical Assistance Administration (MAA).

WAC 388-532-050 Reproductive health services—Definitions.

The following definitions were removed as proposed by stakeholders during the CR-102 stage:

~~**"Certified full fee" -** A family planning clinic's actual acquisition cost plus dispensing fee for a product purchased through 340B of the Public Health Services Act. This is the same amount as reported annually to the department of health.~~

~~**"Dispensing fee" -** The fee the medical assistance administration (MAA) may reimburse family planning clinics for expenses involved in acquiring, storing and dispensing contraceptives which are reimbursed at actual acquisition cost.~~

The following definition was added:

"Department" - The Department of Social and Health Services.

WAC 388-532-140 Reproductive health services—Reimbursement and payment limitations.

The following text was removed as proposed by stakeholders during the CR-102 stage:

~~(2) …MAA reimburses for covered drugs, drug supplies and devices as follows:~~

~~(a) For drugs purchased under the Public Health Service Act, providers must comply with Pharmacy Services WAC 388-530-1425;~~

~~(b) For other drugs, drug supplies and devices, providers must bill according to Pharmacy Services WAC 388-530-1700(4); and~~

~~(c) According to instructions in published fee schedules.~~

~~(3) Family planning providers must bill all laboratory services directly to MAA for clients who are enrolled in an MAA managed care plan and who self-refer to an MAA-approved family planning provider outside their plan for family planning or STD-I services. See WAC 388-532-050 definition for MAA-approved family planning provider.~~

The following text was added as proposed by stakeholders during the CR-102 stage:

(2) When a client enrolled in a department-approved managed care plan self-refers outside the plan to either a department approved family planning provider or a department-contracted local health department STD-I clinic for family planning or STD-I services, all laboratory services must be billed through the family planning provider.

(3) When a client enrolled in a department managed care plan obtains family planning or STD-I services from a department-approved family planning provider or a department-contracted local health department STD-I clinic which has a contract with the managed care plan, those services must be billed directly to the managed care plan.

WAC 388-532-550 Family planning only program—Reimbursement and payment limitations.

Removed proposed text as requested by stakeholders during the CR-102 stage:

(2) ~~MAA~~ The department reimburses ~~for covered drugs, drug supplies and devices as follows:~~

~~(a) For drugs purchased under the Public Health Service Act, providers must comply with Pharmacy Services WAC 388-530-1425;~~

~~(b) For other drugs, drug supplies and devices, providers must bill according to Pharmacy Services WAC 388-530-1700(4); and~~

~~(c) According to instructions in MAA's published fee schedules.~~

~~(3) Except as noted in subsection (2) of this section, MAA pays~~ providers for covered family planning only services using ~~MAA's~~ the department's published fee schedules.

WAC 388-532-550 Family planning only program—Reimbursement and payment limitations.

The following edits match the current language for the TAKE CHARGE program found in WAC 388-532-780(6):

~~(4)~~ (3) ~~MAA~~ The department does not ~~pay for~~ cover inpatient services under the family planning only program ~~rules~~. However, inpatient ~~costs~~ charges may be incurred as a result of complications arising directly from a covered family planning service~~s~~. If this happens, providers of family planning-related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to the department a complete report of the circumstances and conditions that caused the need for the inpatient services ~~for MAA to consider payment~~.

WAC 388-532-710 TAKE CHARGE program—Definitions.

Changed the text of the following definition as a result of stakeholder comments:

"Education, counseling and risk reduction ((~~service~~)) intervention" or **"ECRR"** - A stand alone ~~set of~~ department-designated service~~s~~…

WAC 388-532-720 TAKE CHARGE program—Eligibility.

Removed strikeout from the following text and added other text as requested by stakeholders during the CR-102 stage:

(1)(e) Need family planning services but have:

(i) No family planning coverage through another medical assistance ~~administration~~ (MAA) program; or

(ii) Family planning coverage that does not cover one hundred percent of ~~all family planning methods or services; or~~ the applicant's chosen birth control.

Added the following underlined text to clarify that eligibility is also dependant upon continuation of the demonstration and research program by the Centers for Medicare and Medicaid (CMS):

(3) A client is authorized for TAKE CHARGE coverage for one year from the date the department determines eligibility or for the duration of the demonstration and research program as long as the criteria in subsection (1) and (2) of this section continue to be met**.**

WAC 388-532-740(1) TAKE CHARGE program—Covered services.

Moved (c) to (d), (d) to (e), (e) to (f), (f) to (g), and (g) to (h) and added a new (c) to match current language for the Family Planning Only program found in WAC 388-532-530(3).

(c) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter 388-538, Pharmacy Services);

Fixed the following typo:

(d) Education, counseling, and risk ~~education~~ reduction (ECRR) intervention, specifically intended for clients…

Removed the proposed text under subsection (1)(e)(vii) and replaced with the following text as requested by stakeholders during the CR-102 stage:

~~A client with a stable and successful contraceptive history who is not changing his or her contraceptive method(s) is not eligible for ECRR.~~ A client who does not have demonstrated risks of unintended pregnancy and who is not at increased risk of contraceptive failure is not eligible for ECRR.

WAC 388-532-780 TAKE CHARGE program.

Removed the proposed text under subsection (3) as requested by stakeholders during the CR-102 stage and the section was renumbered:

~~MAA reimburses for covered drugs, drug supplies, and devices as follows:~~

~~(a) For drugs purchased under the Public Health Service Act, providers must comply with Pharmacy Services WAC 388-530-1425;~~

~~(b) For other drugs, drug supplies and devices, providers must bill according to Pharmacy Services WAC 388-530-1700(4); and~~

~~(c) According to instructions in MAA's published fee s~~

A final cost-benefit analysis is available by contacting Casey Zimmer/Maureen Considine, Division of Program Support, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1664 or (360) 725-1652, e-mail zimmecl@dshs.wa.gov or consimc@dshs.wa.gov, fax (360) 586-9727.

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 1, Amended 22, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 22, Repealed 0.

Date Adopted: November 23, 2005.

Andy Fernando, Manager
Rules and Policies Assistant Unit

Chapter 388-532 WAC

((~~FAMILY PLANNING SERVICES~~)) REPRODUCTIVE HEALTH/FAMILY PLANNING ONLY/TAKE CHARGE

((~~FAMILY PLANNING~~)) REPRODUCTIVE HEALTH SERVICES

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-001 Reproductive health services - Purpose. The department of social and health services (DSHS) ((~~informs eligible clients about available family planning services. This chapter contains the medical assistance administration's (MAA) rules for family planning services~~)) defines reproductive health services as those services that:

(1) Assist clients to avoid illness, disease, and disability related to reproductive health;

(2) Provide related and appropriate, medically-necessary care when needed; and

(3) Assist clients to make informed decisions about using medically safe and effective methods of family planning.

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-050 Reproductive health services - Definitions. The following definitions and those found in WAC 388-500-005, Medical definitions, apply to this chapter.

"Complication" ((~~for the purposes of this chapter, means a~~)) - A condition occurring subsequent to and directly arising from the family planning services received under the rules of this chapter.

"Contraception" ((~~for the purposes of this chapter, means~~)) - Preventing pregnancy through the use of contraceptives.

"Contraceptive" ((~~for the purposes of this chapter, means~~)) - A device, drug ((~~or~~)), product, method, or surgical intervention used to prevent pregnancy.

"Department" - The Department of Social and Health Services.

((~~**"Family planning only program"** means the program providing an additional ten months of family planning services to eligible women who have just ended a pregnancy or completed a delivery. This benefit follows the sixty-day postpartum coverage for women who received medical benefits during the pregnancy.~~))

"Department-approved family planning provider" - A physician, advanced registered nurse practitioner (ARNP), or clinic that has:

• Agreed to the requirements of WAC 388-532-110;

• Signed a core provider agreement with the department;

• Assigned a unique family planning provider number by the department; and

• Signed a special agreement that allows the provider to bill for family planning laboratory services provided to clients enrolled in a department-managed care plan through an independent laboratory certified through the Clinical Laboratory Improvements Act (CLIA).

"Family planning services" ((~~means~~)) - Medically safe and effective medical care, educational services, and/or contraceptives((~~, and educational services which~~)) that enable individuals to plan and space the number of children and avoid unintended ((~~pregnancy~~)) pregnancies.

((~~**"MAA approved family planning provider"** means physician, ARNP or clinic that has been approved for and assigned a family planning provider number.~~))

"Medical identification card" ((~~means~~)) - The document ((~~MAA~~)) the department uses to identify a client's eligibility for a medical program.

"Natural family planning" - Also known as fertility awareness method, means methods such as observing, recording, and interpreting the natural signs and symptoms associated with the menstrual cycle to identify the fertile days of the menstrual cycle and avoid unintended pregnancies.

"Over-the-counter (OTC)" ((~~means available for sale without a prescription~~)) - See WAC 388-530-1050 for definition.

((~~**"Principal purpose diagnosis of family planning"** means the reason for the service or intervention is primarily for family planning purposes.~~))

"Sexually Transmitted Disease Infection (STD-I)" - Is a disease or infection acquired as a result of sexual contact.

((~~**"TAKE CHARGE"** means a five-year demonstration project that provides family planning to men and women with income at or below two hundred percent of the Federal Poverty Level. (Rules for the TAKE CHARGE demonstration project can be found immediately following these family planning services rules.)~~))

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-100 Reproductive health services - Client eligibility. (1) The ((~~medical assistance administration (MAA)~~)) department covers ((~~family planning~~)) limited reproductive health services for clients eligible for the following ((~~"scope of care" designations (see WAC 388-529-0100)~~)) medical assistance programs:

(a) Children's health insurance program (CHIP);

(b) Categorically needy program (CNP);

(c) ((~~Family planning only;~~

~~(d) TAKE CHARGE;~~

~~(e)~~)) General assistance unemployable (GAU)((~~, no out-of-state care; and~~

~~(f)~~)) (d) Limited casualty program-medically needy program (LCP-MNP); and

(e) Alcohol and drug abuse treatment and support act (ADATSA).

(2) ((~~Healthy Options enrollees~~)) Clients enrolled in a department managed care plan may self-refer outside their plan ((~~(HMO) or primary care case management~~)) for family planning services (excluding sterilizations for clients twenty-one years of age or older), abortions, and STD-I services to any of the following:

(a) ((~~An MAA~~)) A department-approved family planning provider; ((~~or~~))

(b) A department-contracted local health department/STD-I clinic; or

(c) ((~~A~~)) A department-contracted pharmacy for:

(i) Over-the-counter contraceptive supplies;

(ii) Contraceptives and STD-I related prescriptions from a department-approved family planning provider or department-contracted local health department/STD-I clinic.

((~~(3) MAA does not cover family planning services for clients in any program that does not meet the conditions of subsection (1) of this section.~~))

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-110 Reproductive health services - Provider requirements. ((~~In order~~)) To be reimbursed by ((~~MAA~~)) the department for ((~~family planning~~)) reproductive health services provided to eligible clients,((~~:~~

~~(1)~~)) physicians, ((~~and~~)) ARNPs, licensed midwives, and department-approved family planning providers must:

((~~(a)~~)) (1) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Provider rules; ((~~and~~

~~(b)~~)) (2) Provide only those services that are within the scope of their licenses((~~.~~

~~(2) Family planning providers must:~~

~~(a) Meet the requirements in chapter 388-502 WAC;~~

~~(b) Provide medical information and education about Food & Drug Administration (FDA) approved prescription birth control methods and over-the-counter birth control supplies, to eligible clients who request such services; and~~

~~(c) Sign a special agreement that allows the provider to bill for family planning laboratory services provided to Healthy Options enrollees through an independent laboratory certified through the Clinical Laboratory Improvements Act (CLIA). See WAC 388-532-140 (2)(c) for more information on handling laboratory services for managed care clients~~));

(3) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods and over-the-counter (OTC) birth control supplies and related medical services;

(4) Provide medical services related to FDA-approved prescription birth control methods and OTC birth control supplies upon request;

(5) Supply or prescribe FDA-approved prescription birth control methods and OTC birth control supplies upon request; and

(6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section.

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-120 Reproductive health - Covered services. ((~~MAA~~)) In addition to those services listed in WAC 388-531-0100 Physician's Related Services, the department covers the following ((~~family planning~~)) reproductive health services:

(1) **Services for women**

(a) ((~~Gynecological exam~~)) Cervical, vaginal, and breast cancer screening examination once per year as medically necessary.

(b) Food & Drug Administration (FDA) approved prescription contraception methods as identified in chapter 388-530 WAC, Pharmacy services.

(c) Over-the-counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

(d) Sterilization procedures that meet((~~s~~)) the requirements of WAC 388-531-1550((~~(1)~~)), if it is:

(i) Requested by the client; and

(ii) Performed in an appropriate setting for the procedure.

(e) ((~~Services such as laboratory exams, tests and procedures, and~~)) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures. ((~~when:~~

~~(i) Performed in conjunction with a principal purpose diagnosis of family planning; and~~

~~(ii) Required as part of the client's selected contraceptive method(s).~~))

(f) Education ((~~on all~~)) and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(g) Mammograms for clients forty years of age and older, once per year;

(h) Colposcopy and related medically necessary follow-up services;

(i) Maternity-related services as described in chapter 388-533 WAC; and

(j) Abortion.

(2) **Services for men**

(a) Office visits where the primary focus and diagnosis is contraceptive management and/or there is a medical concern;

(b) Over-the-counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

((~~(b) Surgical~~)) (c) Sterilization procedures that meet((~~s~~)) the requirements of WAC 388-531-1550(1), if it is:

(i) Requested by the client; and

(ii) Performed in an appropriate setting for the procedure.

((~~(c)~~)) (d) Screening and treatment for sexually transmitted diseases-infections (STD-I), ((~~when:~~

~~(i) Performed in conjunction with a principal purpose diagnosis of family planning; and~~

~~(ii) Required as part of the client's selected contraceptive method(s).~~

~~(d)~~)) including laboratory tests and procedures.

(e) Education ((~~on all~~)) and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(f) Prostate cancer screenings for men who are fifty years of age and older, once per year.

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-130 Reproductive health - Noncovered services. ((~~(1) The following are not considered family planning services and are not covered under this chapter.~~

~~(a) Infertility treatment services;~~

~~(b) Abortions;~~

~~(c) Mammograms;~~

~~(d) Menopausal treatment services;~~

~~(e) Cancer screenings (except for pap smears or other similar screenings as identified in published billing instructions for family planning services); and~~

~~(f) All other reproductive health care, health care services or primary care services and prenatal care services.~~

~~(2) See chapter 388-530 WAC, Pharmacy services and chapter 388-531 WAC, Physician-related services for coverage of items and services not provided under this chapter~~)) Noncovered reproductive health services are the same as shown in WAC 388-531-0150, Noncovered physician-related services—General and administrative.

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-140 Reproductive health services - Reimbursement and payment limitations. (1) ((~~MAA~~)) The department reimburses providers for covered ((~~family planning~~)) reproductive health services using ((~~MAA's~~)) the department's published fee schedules.

(2) ((~~For Healthy Options enrollees who have self-referred to an MAA-approved family planning provider outside their plan, all laboratory services must be billed through the family planning provider. See WAC 388-532-110 (2)(c), Provider requirements~~)) When a client enrolled in a department-approved managed care plan self-refers outside the plan to either a department-approved family planning provider or a department-contracted local health department STD-I clinic for family planning or STD-I services, all laboratory services must be billed through the family planning provider.

(3) When a client enrolled in a department managed care plan obtains family planning or STD-I services from a department-approved family planning provider or a department-contracted local health department/STD-I clinic which has a contract with the managed care plan, those services must be billed directly to the managed care plan.

FAMILY PLANNING ONLY PROGRAM

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-500 Family planning only program - Purpose ((~~and scope~~)). The purpose of the Family Planning Only Program is to provide((~~s an additional ten months of medical coverage for family planning services~~)) family planning services at the end of a pregnancy to women who received medical assistance benefits during their pregnancy. The primary goal of the Family Planning Only Program is to prevent an unintended, subsequent pregnancy. Women receive this benefit automatically regardless of how or when the pregnancy ends. This ten-month benefit follows the departments sixty-day ((~~postpartum~~)) postpregnancy coverage ((~~for women who received medical benefits during the pregnancy. Women receive this benefit regardless of how the pregnancy ends~~)). Men are not eligible for the Family Planning Only Program.

NEW SECTION

WAC 388-532-505 Family planning only program - Definitions. The following definition and those found in WAC 388-500-005, Medical definitions and WAC 388-532-050, apply to the Family Planning Only Program.

"Family Planning Only Program" - The program that provides an additional ten months of family planning services to eligible women who have just ended a pregnancy or completed a delivery. This benefit follows the sixty-day postpregnancy coverage for women who received medical assistance benefits during the pregnancy. This program's coverage is strictly limited to family planning services.

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-510 Family planning only program - Client eligibility. A woman is eligible for family planning only ((~~FPO~~)) services if:

(1) She received medical assistance benefits during her pregnancy; or

(2) She is determined eligible for a retroactive period as defined in WAC 388-500-0005 covering the end of the pregnancy.

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-520 Family planning only program - Provider requirements. ((~~In order~~)) To be reimbursed by ((~~MAA~~)) the department for ((~~family planning only~~)) services((~~:~~

(~~1~~)) provided to clients eligible for the family planning only program, physicians ((~~and~~)), ARNPs, and/or department-approved family planning providers must:

(((~~a~~))) (1) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Provider rules; ((~~and~~

(~~b~~))) (2) Provide only those services that are within the scope of their licenses((~~.~~

~~(2) Family planning providers must:~~

~~(a) Meet the requirements in chapter 388-502 WAC; and~~

~~(b) Provide medical information and education about Food and Drug Administration (FDA) approved prescription birth control methods and over-the-counter birth control supplies, to eligible clients who request such services~~));

(3) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods and over-the-counter birth control supplies and related medical services;

(4) Provide medical services related to FDA-approved prescription birth control methods and over-the-counter birth control supplies upon request;

(5) Supply or prescribe FDA-approved prescription birth control methods and over-the-counter birth control supplies upon request; and

(6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section.

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-530 Family planning only program - Covered services. The department covers the following services under the family planning only ((~~services are provided under this~~)) program:

(1) Gynecological ((~~exam as medically necessary~~)) examination that may include a cervical and vaginal cancer screening examination, one per year when it is:

(a) Provided according to the current standard of care; and

(b) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.

(2) Food & Drug Administration (FDA) approved prescription contraception methods meeting the requirements of chapter 388-530 WAC, Pharmacy services.

(3) Over-the-counter (OTC) contraceptive, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

(4) Sterilization procedure that meets the requirements of WAC 388-531-1550((~~(1)~~)), if it is:

(a) Requested by the client; and

(b) Performed in an appropriate setting for the procedure.

(5) ((~~Services such as laboratory exams, tests and procedures, and~~)) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory test and procedures only when the screening and treatment is:

(a) Performed in conjunction with ((~~a principal purpose~~)) an office visit that has a primary focus and diagnosis of family planning; and

(b) ((~~Required as part of the client's selected contraceptive method(s)~~)) Medically necessary for the client to safely, effectively, and successfully use, or to continue to use, her chosen contraceptive method.

(6) Education ((~~on all~~)) and supplies for FDA-approved contraceptives, natural family planning and abstinence.

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-540 Family planning only program - Noncovered services. ((~~Noncovered services for the family planning only program are the same as shown in the previous section for family planning services~~)) Medical services are not covered under the family planning only program unless those services are:

(1) Performed in relation to a primary focus and diagnosis of family planning; and

(2) Are medically necessary for the client to safely, effectively, and successfully use, or continue to use, her chosen contraceptive method. ((~~See WAC 388-532-130.~~))

AMENDATORY SECTION (Amending WSR 04-05-011, filed 2/6/04, effective 3/8/04)

WAC 388-532-550 Family planning only program - Reimbursement and payment limitations. (1) ((~~MAA~~)) The department limits reimbursement under the family planning only program to visits and services that:

(a) Have a ((~~principal purpose~~)) primary focus and diagnosis of family planning((~~.~~)) as determined by a qualified licensed medical practitioner ((~~must make the diagnosis~~)); and

(b) Are medically necessary for the client to safely, effectively, and successfully use, or continue to use, her chosen contraceptive method.

(2) ((~~Except as noted in subsection (3) of this section, MAA~~)) The department reimburses providers for covered family planning only services using ((~~MAA's~~)) the department's published fee schedules.

(3) ((~~MAA~~)) The department does not ((~~pay for~~)) cover inpatient services under the family planning only program ((~~rules~~)). However, inpatient ((~~costs~~)) charges may be incurred as a result of complications arising directly from a covered family planning service((~~s~~)). If this happens, providers of family planning-related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to the department a complete report of the circumstances and conditions that caused the need for the inpatient services. ((~~MAA will then make a determination of the circumstances and the potential payment sources (e.g., the family planning provider, the ancillary service provider(s) and/or MAA).~~))

TAKE CHARGE PROGRAM

AMENDATORY SECTION (Amending WSR 02-21-021, filed 10/8/02, effective 11/8/02)

WAC 388-532-700 TAKE CHARGE ((~~demonstration and research~~)) Program - Purpose. ((~~(1) The medical assistance administration (MAA) is conducting~~)) TAKE CHARGE is a five-year family planning demonstration and research program ((~~called "TAKE CHARGE." The program will~~)). The purpose of the TAKE CHARGE program is to make family planning services available to men and women with incomes at or below two hundred percent of the federal poverty level. TAKE CHARGE is approved by the federal government under a Medicaid program waiver and runs from July 1, 2001, through June 30, 2006 (unless terminated or extended prior to June 30, 2006). ((~~TAKE CHARGE is approved by the federal government under a Medicaid program waiver.~~

~~(2) The TAKE CHARGE program:~~

~~(a) Pays for family planning services for eligible men and women as described in WAC 388-532-720;~~

~~(b) Requires providers to meet all general MAA provider requirements and the requirements of WAC 388-532-730; and~~

~~(3) Contains a research and evaluation component for clients and providers as described in WAC 388-532-730 (1)(f)~~)) See WAC 388-532-710 for a definition of TAKE CHARGE.

AMENDATORY SECTION (Amending WSR 02-21-021, filed 10/8/02, effective 11/8/02)

WAC 388-532-710 TAKE CHARGE Program - Definitions. The following definitions ((~~and abbreviations~~)) and those found in WAC 388-500-0005 medical definitions and WAC 388-532-050 apply ((~~only~~)) to the medical assistance administration's (MAA's) TAKE CHARGE ((~~demonstration and research~~)) program.

"Ancillary services" ((~~means~~)) - Those family planning services ((~~that are given~~)) provided to TAKE CHARGE clients ((~~that are performed~~)) by ((~~the medical assistance administration's~~)) MAA's contracted providers who are not TAKE CHARGE providers. These services include, but are not limited to, family planning pharmacy services, family planning laboratory services and sterilization surgical services.

"Application assistance" ((~~means~~)) - The process a TAKE CHARGE provider follows in helping a client ((~~be determined eligible~~)) to complete and submit an application to MAA for the TAKE CHARGE ((~~demonstration and research~~)) program.

"Education, counseling and risk reduction ((~~service~~)) intervention" or **"ECRR"** ((~~means~~)) - A stand alone ((~~set of medical assistance administration~~)) department-designated service(((~~(s see WAC 388-532-740 (1)(c))~~)), specifically intended for clients at higher risk of contraceptive failure, that strengthen a client's decision-making skills to make the best choice of contraceptive method and reduce the risk of unintended pregnancy. ECRR services must include:

(1) Helping the client critically evaluate which contraceptive method is most acceptable and can be used most effectively by her/him.

(2) Assessing and addressing other client personal considerations, risk factors (including sexually transmitted infections), and behaviors that impact her/his use of contraception.

(3) Facilitating a discussion of the male role in successful use of chosen contraceptive method, as appropriate.

(4) Facilitating contingency planning (the back-up method) regarding the chosen contraceptive method, including planning for emergency contraception.

(5) Scheduling a follow-up appointment as medically necessary for birth control evaluation for the safe, effective and successful use of the client's chosen contraceptive method and to reinforce positive contraceptive and other self protective behaviors.

(6) If no contraceptive method is chosen, discussing the likelihood of a pregnancy and helping the client assess his/her emotional, physical, and financial readiness for pregnancy and/or parenting.

((~~**"Family planning services"** means medical care and educational services, which enable individuals to plan and space the number of children by using contraceptive methods to avoid an unintended pregnancy.~~

~~**"Good cause"** means that the medical assistance administration (MAA) has determined that an applicant for TAKE CHARGE has a valid reason for not using comprehensive third party family planning coverage that is available to the applicant for TAKE CHARGE. When good cause has been determined by MAA, the applicant is considered for TAKE CHARGE without regard to the available third party family planning coverage.~~))

"Intensive follow-up services" or **"IFS"** ((~~means~~)) - Those supplemental services specified in some TAKE CHARGE provider contracts that support clients in the successful use of contraceptive methods. ((~~DSHS~~)) Department-selected TAKE CHARGE providers perform IFS as part of the research component of the TAKE CHARGE ((~~demonstration and research~~)) program (see WAC 388-532-730 (1)(f)).

((~~**"Principal purpose diagnosis"** means the reason given by the licensed medical provider for the TAKE CHARGE service. The TAKE CHARGE program is limited to a principal purpose diagnosis of family planning.~~))

"TAKE CHARGE" ((~~means the medical assistance administration's~~)) - The department's five-year demonstration and research program approved by the federal government under a Medicaid program waiver to provide family planning services. ((~~See WAC 388-532-700.~~))

"TAKE CHARGE provider" ((~~means~~)) - A provider who is approved by ((~~the medical assistance administration (MAA)~~)) the department to participate in TAKE CHARGE by:

(1) ((~~Having a core provider agreement with MAA;~~

~~(2)~~)) Being a department-approved ((~~to participate in MAA's long-standing~~)) family planning ((~~programs~~)) provider; and

((~~(3)~~)) (2) Having a supplemental TAKE CHARGE agreement to provide TAKE CHARGE ((~~demonstration and research program~~)) family planning services to eligible clients under the terms of the federally-approved Medicaid waiver for the TAKE CHARGE ((~~demonstration and research~~)) program.

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

WAC 388-532-720 TAKE CHARGE Program -((~~Client~~)) Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, ((~~a client~~)) an applicant must:

(a) Be a United States citizen, U.S. national, or "qualified alien" as described in ((~~WAC 388-424-0001~~)) chapter 388-424 WAC;

(b) Be a resident of the state of Washington as described in WAC 388-468-0005;

(c) Have income at or below two hundred percent of the federal poverty level as described in WAC 388-478-0075;

(d) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(e) Need family planning services but have:

(i) No family planning coverage through ((~~health insurance or~~)) another medical assistance ((~~administration (MAA)~~)) program; or

(ii) Family planning coverage that does not cover ((~~all family planning methods or services; or~~

~~(iii) Good cause for not using family planning coverage through health insurance. See WAC 388-532-790 for information on good cause~~)) one hundred percent of the applicant's chosen birth control.

(2) ((~~To be eligible for the TAKE CHARGE program, a client must not be:~~

~~(a) Eligible for the requested TAKE CHARGE family planning services under another MAA medical program;~~

~~(b) Pregnant; or~~

~~(c) Currently sterilized~~)) A client who is currently pregnant or sterilized is not eligible for TAKE CHARGE.

(3) A client is authorized for TAKE CHARGE coverage for one year from the date ((~~MAA~~)) the department determines eligibility or for the duration of the demonstration and research program as long as the criteria in subsection (1) and (2) of this section continue to be met. Upon reapplication for TAKE CHARGE by the client, ((~~MAA~~)) the department may renew the coverage for additional periods of up to one year each, or for the duration of the demonstration and research program, whichever is shorter.

AMENDATORY SECTION (Amending WSR 02-21-021, filed 10/8/02, effective 11/8/02)

WAC 388-532-730 TAKE CHARGE Program - Provider requirements. (1) A TAKE CHARGE provider must:

(a) ((~~Have a current medical assistance administration (MAA) core provider agreement to provide family planning services to eligible MAA clients~~)) Be a department-approved family planning provider as described in WAC 388-532-050;

(b) Sign the supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE demonstration and research program according to ((~~MAA's~~)) the department's TAKE CHARGE program guidelines;

(c) Participate in ((~~MAA's~~)) the department's specialized training for the TAKE CHARGE demonstration and research program prior to providing TAKE CHARGE services. Providers must assure that each individual responsible for providing TAKE CHARGE services is trained on all aspects of the TAKE CHARGE program;

(d) Comply with the required general ((~~MAA~~)) department and TAKE CHARGE provider policies, procedures, and administrative practices as detailed in ((~~MAA's~~)) the department's billing instructions and provide referral information to clients regarding available and affordable non-family planning primary care services; and

(e) ((~~Obtain both:~~

~~(i) Authorization from clients for release of information related to this program; and~~

~~(ii) Informed consents as defined in WAC 388-531-0050 and as required by WAC 388-531-1550, as necessary.~~

~~(f)~~))If requested by ((~~MAA~~)) the department, participate in the research and evaluation component of the TAKE CHARGE demonstration and research program. If selected by ((~~DSHS~~)) the department for the research and evaluation component, the provider must accept assignment to either:

(i) A randomly selected group of providers that give intensive follow-up service (IFS) to TAKE CHARGE clients under a TAKE CHARGE research component client services contract. See WAC 388-532-740(((~~(3)~~)))(2) for a related limitation; or

(ii) A randomly selected control group of providers subject to a TAKE CHARGE research component client services contract.

(2) ((~~MAA~~)) Department providers (e.g., pharmacies, laboratories, surgeons performing sterilization procedures) who are not TAKE CHARGE providers may furnish family planning ancillary services, as defined in this chapter, to eligible TAKE CHARGE clients. ((~~MAA~~)) The department reimburses for these services under the rules and fee schedules applicable to the specific services provided under ((~~MAA's~~)) the department's other programs.

AMENDATORY SECTION (Amending WSR 02-21-021, filed 10/8/02, effective 11/8/02)

WAC 388-532-740 TAKE CHARGE Program - Covered services. (1) The ((~~medical assistance administration (MAA)~~)) department covers the following TAKE CHARGE services for men and women:

(a) One session of application assistance per client, per year;

(b) ((~~All~~)) Food and Drug Administration (FDA) approved prescription and nonprescription contraceptives as provided in chapter 388-530 WAC;

(c) ((~~One initial education, counseling, and risk reduction (ECRR) service to include the following elements:~~

~~(i) Assisting the client evaluate contraceptive methods;~~

~~(ii) Preconception counseling if no contraceptive method is chosen or planned;~~

~~(iii) Planning for contingencies including emergency contraception;~~

~~(iv) Evaluation of client risk factors;~~

~~(v) Scheduling of follow-up visits; and~~

~~(vi) Assisting male clients understand their role in contraception.~~

~~(d) Follow-up ECRR services as described above and at intervals specified in subsection (2) of this section;~~)) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter 388-538, Pharmacy Services);

(d) Gynecological examination that may include a cervical and vaginal cancer screening exam, one per year when it is:

(i) Provided according to the current standard of care; and

(ii) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.

(e) Education, counseling, and risk reduction (ECRR) intervention, specifically intended for clients at higher risk of contraceptive failure, that have identified or demonstrated risks of unintended pregnancy. MAA limits ECRR as follows:

(i) For women at risk of unintended pregnancy, limited to one ECRR service every ten months;

(ii) For men whose sexual partner is at risk of unintended pregnancy, limited to one ECRR service every twelve months;

(iii) Must be a minimum of thirty minutes in duration;

(iv) Must be appropriate and individualized to the client's needs, age, language, cultural background, risk behaviors, sexual orientation, and psychosocial history;

(v) Must be provided by one of the following TAKE CHARGE trained providers:

(A) An advanced registered nurse practitioner (ARNP);

(B) Registered nurse (RN), licensed practical nurse (LPN);

(C) Physician or physician's assistant (PA); or

(D) A trained and experienced health educator or medical assistant when used for assisting and augmenting the above listed clinicians.

(vi) Must be documented in the client's chart with detailed information that would allow for a well-informed follow-up visit;

(vii) A client who does not have identified or demonstrated risks of unintended pregnancy and who is not at increased risk of contraceptive failure is not eligible for ECRR.

(((~~e~~))) (f) ((~~One surgical~~)) Sterilization ((~~service~~)) procedure that meets the requirements of WAC 388-531-1550 (((~~(1)~~))), if the service is:

(i) Requested by the TAKE CHARGE client; and

(ii) Performed in an ((~~ambulatory surgery center or hospital outpatient setting only~~)) appropriate setting for the procedure.

(((~~f~~))) (g) ((~~Testing for sexually transmitted diseases/infections (STD-I) when performed in conjunction with a principle purpose diagnosis of family planning;~~

~~(g) Treatment of STD-I when medically required as part of the client's selected contraceptive method(s).~~

~~(2) MAA covers follow-up ECRR services under the TAKE CHARGE demonstration and research program at the following intervals:~~

~~(a) For women, one ECRR service ten months after the initial ECRR service and one every ten months thereafter; and~~

~~(b) For men, one ECRR service per calendar year, after the initial ECRR service.~~

~~(3)~~)) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is:

(i) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and

(ii) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

(h) Education and supplies for FDA-approved contraceptives, natural family planning and absinence.

(2) ((~~MAA~~)) The department covers intensive follow-up services (IFS) for certain clients as part of the research component of the TAKE CHARGE demonstration and research program. Only those clients served by ((~~MAA's~~)) the department's randomly selected research sites receive IFS (see WAC ((~~388-532-730 (1)(f)(i)~~))) 388-532-730 (1)(e)(i)). The specific elements of IFS are negotiated with each research site.

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

AMENDATORY SECTION (Amending WSR 02-21-021, filed 10/8/02, effective 11/8/02)

WAC 388-532-750 TAKE CHARGE Program - Noncovered services. The ((~~medical assistance administration (MAA)~~))) department does not cover ((~~certain services under the TAKE CHARGE demonstration and research program. These services include, but are not limited to, the following:~~

~~(1) Hospital inpatient services of any kind (see WAC 388-532-780(8) for related information);~~

~~(2) Pregnancy services, with the exception of an initial pregnancy test performed by a TAKE CHARGE provider to rule out an existing pregnancy. Excluded pregnancy services include:~~

~~(a) Services that are ancillary to an existing pregnancy; or~~

~~(b) Abortions, services related to pregnancy termination, or services required due to complications from pregnancy termination.~~

~~(3) Reproductive health services not performed in relation to a principal purpose diagnosis of family planning, such as:~~

~~(a) Infertility diagnosis, treatments, or drugs;~~

~~(b) Hysterectomies;~~

~~(c) Treatment for menopause; or~~

~~(d) Cancer screening or treatment, other than those services that are related to a contraceptive method or other service with a principal purpose diagnosis of family planning.~~

~~(4) Testing or treatment for sexually transmitted diseases/infections (STD-I), AIDS, or HIV unless the testing and/or treatment is:~~

~~(a) Done in conjunction with a principal purpose diagnosis of family planning; and~~

~~(b) Required as an essential component of the family planning services being delivered to the client.~~

~~(5) Genetic counseling; and~~

~~(6) Any service not specifically listed in MAA's TAKE CHARGE program billing instructions unless MAA's specific advance approval is obtained in writing~~)) medical services under the TAKE CHARGE program unless those services are:

(1) Performed in relation to a primary focus and diagnosis of family planning; and

(2) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

AMENDATORY SECTION (Amending WSR 02-21-021, filed 10/8/02, effective 11/8/02)

WAC 388-532-760 TAKE CHARGE Program - Documentation requirements. In addition to the documentation requirements in WAC 388-502-0020, ((~~the medical assistance administration (MAA) requires a~~)) TAKE CHARGE providers ((~~to~~)) must keep the following records:

(1) TAKE CHARGE preapplication worksheet form(s) and application(s);

(2) ((~~The reason for the visit (~~)) Signed supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE program;

(3) Documentation of the department's specialized TAKE CHARGE training and/or in-house in-service TAKE CHARGE training for each individual responsible for providing TAKE CHARGE.

(4) Chart notes that reflect the ((~~principal reason for~~)) primary focus and diagnosis of the visit ((~~must be for~~)) was family planning ((~~to be covered under TAKE CHARGE~~)));

(((~~3~~))) (5) Contraceptive methods discussed with the client;

(((~~4~~))) (6) Notes on any discussions of emergency contraception and needed prescription(s);

(((~~5~~))) (7) The client's plan for the contraceptive method to be used, or the reason for no ((~~client plan~~)) contraceptive method and plan;

(((~~6~~))) (8) Documentation of the education, counseling and risk reduction (ECRR) service, if provided, including all ((~~elements~~)) of the required components as defined in WAC ((~~388-532-740 (1)(c)~~))) 388-532-710 with sufficient detail that allows for follow-up;

(((~~7) Copies~~)) (9) Documentation of referrals to or from other providers ((~~as necessary~~));

(((~~8) An MAA approved~~)) (10) A form signed by the client authorizing release of information for referral purposes, as necessary; and

(((~~9) Copies~~)) (11) If applicable, a copy of the ((~~informed consent for~~)) completed DSHS sterilization consent form [DSHS 13-364 - available for download at http://www.dshs.wa.gov/msa/forms/eforms.html] (see WAC 388-531-1550) ((~~signed by the client, as necessary~~)).

AMENDATORY SECTION (Amending WSR 02-21-021, filed 10/8/02, effective 11/8/02)

WAC 388-532-780 TAKE CHARGE Program - Reimbursement and payment limitations. (1) The ((~~medical assistance administration (MAA)~~)) department limits reimbursement under the TAKE CHARGE program to those services that ((~~are the result of client visits having a principal purpose~~));

(a) Have a primary focus and diagnosis of family planning((~~. The diagnosis must be made~~)) as determined by a qualified licensed medical practitioner; and

(b) Are medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

(2) ((~~Except as noted in subsection (3) of this section, MAA~~)) The department reimburses providers for covered TAKE CHARGE services according to ((~~the same fee schedules used under MAA's primary programs (e.g., resource based relative value system (RBRVS), pharmacies, laboratories)~~)) the department's published TAKE CHARGE fee schedule.

(3) ((~~For those TAKE CHARGE services not listed in MAA's primary fee schedules described in subsection (2) of this section, MAA provides a TAKE CHARGE fee schedule.~~))

(((~~(4) MAA~~)) (3) The department limits reimbursement for TAKE CHARGE intensive follow-up services (IFS) to those randomly selected research sites described in WAC ((~~388-532-740(3)~~)) 388-532-740(2). See WAC ((~~388-532-730 (1)(f)(i)~~)) 388-532-730 (1)(e)(i) for related information.

(((~~(5)~~)) (4) Federally qualified health centers (FQHCs), rural health centers (RHCs), and Indian health providers who choose to become TAKE CHARGE providers must bill ((~~MAA~~)) the department for TAKE CHARGE services without regard to their special rates and fee schedules. ((~~MAA~~)) The department does not reimburse FQHCs, RHCs or Indian health providers under the encounter rate structure for TAKE CHARGE services.

(((~~(6) MAA~~)) (5) The department requires TAKE CHARGE providers to meet the billing requirements of WAC 388-502-0150 (billing time limits). In addition, all final billings and billing adjustments related to the TAKE CHARGE ((~~demonstration and research~~)) program must be completed no later than June 30, 2008, or no later than two years after the demonstration and research program terminates, whichever occurs first. ((~~MAA~~)) The department will not accept ((~~any~~)) new billings or ((~~any~~)) billing adjustments that increase expenditures for the TAKE CHARGE ((~~demonstration and research~~)) program after the cut-off date in this subsection.

(((~~(7)~~)) (6) ((~~Providers are responsible to identify and refund to MAA any erroneous, excessive, or inappropriate payments. The time limits in subsection (6) of this section do not apply to overpayments owed to MAA.~~)

(~~(8) MAA~~)) The department does not cover inpatient services under the TAKE CHARGE program. However, inpatient charges may be incurred as a result of complications arising directly from a covered TAKE CHARGE service. If this happens, providers of TAKE CHARGE related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to ((~~MAA~~)) the department a complete report of the circumstances and conditions that caused the need for inpatient services((~~. From the complete report, MAA makes a determination of the extenuating circumstances and the potential payment sources (e.g., the TAKE CHARGE provider, the ancillary service provider(s) and/or MAA)~~)) for the department to consider payment under WAC 388-501-0165.

(7) The department requires a provider under WAC 388-501-0200 to seek timely reimbursement from a third party when a client has available third party resources. The exceptions to this requirement are described under WAC 388-501-0200(2) and (3) and WAC 388-532-790.

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 02-21-021, filed 10/8/02, effective 11/8/02)

WAC 388-532-790 TAKE CHARGE Program - Good cause ((~~for coverage despite~~)) exemption from billing third party ((~~availability~~)) insurance. (1) ((~~The medical assistance administration (MAA) requires applicants for TAKE CHARGE who have comprehensive third party family planning coverage but who choose not to use that third party coverage to demonstrate to MAA good cause for MAA not to consider that third party coverage in determining eligibility for TAKE CHARGE.~~)

(~~2) Applicants may apply for a good cause exclusion of available and comprehensive third party coverage by demonstrating that the use of the third party coverage would violate the applicant's privacy. Privacy is violated if:~~

(~~a) The third party routinely or randomly sends verification of services to the third party subscriber and that subscriber is other than the applicant;~~

(~~b) The third party requires the applicant to use a primary care provider who is likely to report the applicant's request for family planning services to another party~~)) TAKE CHARGE applicants who are either adolescents or young adults and who depend on their parents' medical insurance, or individuals who are domestic violence victims may request an exemption of available third party family planning coverage due to "good cause." Under the TAKE CHARGE program, "good cause" means that use of the third party coverage would violate his or her privacy because the third party:

(a) Routinely or randomly sends verification of services to the third party subscriber and that subscriber is other than the applicant; and/or

(b) Requires the applicant to use a primary care provider who is likely to report the applicant's request for family planning services to another party.

(2) If subsection (1)(a) or (1)(b) of this section applies, the applicant is considered for TAKE CHARGE without regard to the available third party family planning coverage.

WSR 06-01-005
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed December 8, 2005, 11:25 a.m., effective January 8, 2006]

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

Purpose: WAC 458-20-196 (Rule 196) provides information about the tax treatment of bad debts and credit losses under the business and occupation (B&O), public utility, retail sales, and use taxes.

Part I of chapter 514, Laws of 2005 (ESHB 2314), made sales of "extended warranties" retail sales subject to retail sales tax and the retailing classification of B&O tax. Sales of these warranties were previously subject to the service and other activities B&O tax. Several of the examples in WAC 458-20-196 are premised on the previous tax treatment of certain warranties. The rule revision updates the examples to reflect current law.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-196 Bad debts.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 05-20-039 on September 29, 2005.

Changes Other than Editing from Proposed to Adopted Version: Language in the subsection (9)(f) example has been added to more accurately reflect the statutory language and to match the proposed changes in subsection (9)(g). The fifth sentence now reads "Six months after that, Seller receives a $200 payment from the buyer. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and the sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules.

The phrase "or service" has been added in subsection (2)(b) to more accurately reflect the statutory language. The last sentence now reads "The amount of tax that must be repaid is determined by applying the recovered amount first proportionally to the taxable price of the property or service and the sales or use tax thereon and secondly to any interest, service charges, and any other charges."

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: December 8, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

AMENDATORY SECTION (Amending WSR 05-04-048, filed 1/27/05, effective 2/27/05)

WAC 458-20-196 Bad debts. (1) **Introduction.**

(a) **New laws effective July 1, 2004.** This rule provides information about the tax treatment of bad debts under the business and occupation (B&O), public utility, retail sales, and use taxes, and reflects legislation enacted in 2003 and 2004 conforming Washington law to provisions of the national Streamlined Sales and Use Tax Agreement. See chapter 168, Laws of 2003 and chapter 153, Laws of 2004. The new laws related to bad debts are effective July 1, 2004.

(b) **Bad debt deduction for accrual basis taxpayers.** Bad debt credits, refunds, and deductions occur when income reported by a taxpayer is not received. Taxpayers who report using the cash method do not report income until it is received. For this reason, bad debts are most relevant to taxpayers reporting income on an accrual basis. However, some transactions must be reported on an accrual basis by all taxpayers, including installment sales and leases. These transactions are eligible for a bad debt credit, refund, or deduction as described in this rule. For information on cash and accrual accounting methods, refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods). Refer to WAC 458-20-198 (Installment sales, method of reporting) and WAC 458-20-199(3) for information about reporting installment sales.

(c) **Relationship between retailing B&O tax deduction and retail sales tax credit.** Generally, a retail sales tax credit for bad debts is reported as a deduction from the measure of sales tax on the excise tax return. The amount of this deduction, or the measure of a recovery of sales tax that must be reported, is the same as the amount reported as a deduction or recovery under the retailing B&O tax classification.

(d) **Relationship to federal income tax return.** Washington credits, refunds, and deductions for bad debts are based on federal standards for worthlessness under section 166 of the Internal Revenue Code. If a federal income tax return is not required to be filed (for example, where the taxpayer is an exempt entity for federal purposes), the taxpayer is eligible for a bad debt credit, refund, or deduction on the Washington tax return if the taxpayer would otherwise be eligible for the federal bad debt deduction.

(2) **Retail sales and use tax.**

(a) **General rule.** Under RCW 82.08.037 and 82.12.037, sellers are entitled to a credit or refund for sales and use taxes previously paid on "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003. Taxpayers may claim the credit or refund for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, the amount of any credit or refund must be adjusted to exclude amounts attributable to:

(i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(ii) Expenses incurred in attempting to collect debt; and

(iii) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** If a taxpayer takes a credit or refund for sales or use taxes paid on a bad debt and later collects some or all of the debt, the amount of sales or use tax recovered must be repaid in the tax-reporting period during which collection was made. The amount of tax that must be repaid is

determined by applying the recovered amount first proportionally to the taxable price of the property or service and the sales or use tax thereon and secondly to any interest, service charges, and any other charges.

(3) **Business and occupation tax.**

(a) **General rule.** Under RCW 82.04.4284, taxpayers may deduct from the measure of B&O tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, the amount of the deduction must be adjusted to exclude amounts attributable to:

(i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(ii) Sales or use taxes payable to a seller;

(iii) Expenses incurred in attempting to collect debt; and

(iv) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** Recoveries received by a taxpayer after a bad debt is claimed are applied under the rules described in subsection (2)(b) ((~~above~~)) of this section if the transaction involved is a retail sale. The amount attributable to "taxable price" is reported under the retailing B&O tax classification. If the recovery of debt is not related to a retail sale, recovered amount is applied proportionally against the components of the debt (e.g., interest and principal remaining on a wholesale sale).

(c) **Extracting and manufacturing classifications.** Bad debt deductions are only allowed under the extracting or manufacturing classifications when the value of products is computed on the basis of gross proceeds of sales.

(4) **Public utility tax.** Under RCW 82.16.050(5), taxpayers may deduct from the measure of public utility tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. No deduction is allowed for collection or other expenses.

(5) **Application of payments - general rule.** The special rules for application of payments received in recovery of previously claimed bad debts described in subsections (2)(b) and (3)(b) ((~~above~~)) of this section are not used for other payments. Payments received before a bad debt credit, refund, or deduction is claimed should be applied first against interest and then ratably against other charges. Another commercially reasonable method may be used if approved by the department.

(6) **Assigned debt and installment sales.**

(a) **General rule.** If a person makes a retail sale under an installment sales contract and then legally assigns his or her rights under the contract to another party, the assignee "steps into the shoes" of the person making the sale and may claim a bad debt credit or refund for unpaid retail sales tax to the extent a credit or refund would have been available to the original seller and to the extent that the assignee actually incurs a loss. The seller's B&O tax deduction for bad debt may not be claimed by an assignee. A retail sales tax bad debt credit or refund for unpaid sales tax is available only to the person who makes the retail sale or an assignee under the contract. For example, a bank that loans money to the purchaser of a vehicle may not claim a retail sales tax bad debt credit or refund. The bank did not sell the vehicle and is not an assignee of the dealer who made the retail sale.

(b) **Discounts.** A person who makes a retail sale on credit and then assigns the sales contract in exchange for less than the face value of the contract may not claim a bad debt credit, refund, or deduction for the difference between the face value and the amount received. The discount is a nondeductible cost of doing business, not a bad debt. An assignee of a retail sales contract that pays less than face value for the contract is not required to reduce the amount of a retail sales tax bad debt credit or refund in proportion to the amount of the discount. The assignee may take a credit or refund for the amount that would have been available to the original seller if the original seller had retained the contract and received the payments made by the buyer.

(c) **Recourse financing.** An assignee who receives payment on a bad debt from the assignor must reduce the sales tax credit in proportion to the payment. The assignor may claim a sales tax credit and retailing B&O tax deduction in proportion to the payment if obligated to make the payment and otherwise qualified under this rule.

(d) **Documentation.** All persons claiming a bad debt credit for installment contracts must retain appropriate documentation, including documentation establishing:

(i) The amount of the original sale by the seller, and component amounts necessary to determine that amount, such as credits for trade-ins, down payments, and individual amounts charged for different products;

(ii) The buyer's equity in any trade-in property;

(iii) The contract principal owed at the time of repossession, if any; and

(iv) The deductibility of the debt as worthless for federal income tax purposes.

(7) **Reserve method.** Ordinarily, taxpayers must report bad debt refunds, credits or deductions for specifically identified transactions. However, taxpayers who are allowed by the Internal Revenue Service to use a reserve method of reporting bad debts for federal income tax purposes, or who secure permission from the department to do so, may deduct a reasonable addition to a reserve for bad debts. What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. An addition to a reserve allowed as a deduction by the Internal Revenue Service for federal income tax purposes, in the absence of evidence to the contrary, will be presumed reasonable. When the reserve method is employed, an adjustment to the amount of loss deducted must be made annually to make the total loss claimed for the tax year coincide with the amount actually sustained.

(8) **Statute of limitations for claiming bad debts.** No credit, refund, or deduction, as applicable, may be claimed for debt that became eligible for a bad debt deduction for fed-

eral income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

In all cases, an eight percent combined state and local sales tax rate is assumed. Figures are rounded to the nearest dollar. Payments are applied first against interest and then ratably against the taxable price, sales tax, and other charges except when the special rules for subsequent recoveries on a bad debt apply (see subsections (2) and (3) of this ((~~rule~~)) section). It is assumed that the income from all retail sales described has been properly reported under the retailing B&O tax classification and that all interest or service fees described have been accrued and reported under the service and other activities B&O tax classification.

(a) Seller makes a retail sale of goods with a selling price of $500 and pays $40 in sales tax to the department. No payment is received by Seller at the time of sale. One and a half years later, no payment has been received by Seller, and the balance with interest is $627. Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller is entitled to claim a bad debt sales tax credit or refund in the amount of $40, a B&O tax deduction of $500 under the retailing B&O tax classification, and a B&O tax deduction of $87 under the service and other activities B&O tax classification.

(b) The facts are the same as in (a) of this subsection ((~~(9)(a) above~~)), except that six months after the credit and deduction are claimed, a $50 payment is received on the debt. Recoveries received on a retail sale after a credit and deduction have already been claimed must be applied first proportionally to the taxable price and sales tax thereon in order to determine the amount of tax that must be repaid. Therefore, Seller must report $4, or $50 x ($40/$540), of sales tax on the current excise tax return and $46, or $50 x ($500/$540) under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original $40 credit is reduced to zero.

(c) Seller makes a retail sale of goods on credit for $500 and pays $40 in sales tax to the department. No payment is received at the time of sale. Over the following year, regular payments are received and the debt is reduced to $345, exclusive of any interest or service charges. The $345 represents sales tax due to Seller in the amount of $26, or $345 x ($40/$540), and $319 remaining of the original purchase price, or $345 x ($500/$540). Payments cease. Six months later the balance with interest and service fees is $413. Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller is entitled to claim a sales tax refund or credit on the current excise tax return of $26, a deduction under the retailing B&O tax classification of $319, and a deduction under the service and other activities B&O tax classification of $68.

(d) The facts are the same as in (c) of this subsection ((~~(9)(c) above~~)), except that before Seller charges off the debt, Seller repossesses the goods. At that time, the goods have a fair market value of $250. No credit is allowed for repossessed property, so the value of the collateral must be applied against the outstanding balance. After the value of the collateral is applied, Seller has a remaining balance of $163, or $413 - $250. The allocation rules for recoveries do not apply because a bad debt credit or refund has not yet been taken. The value is applied first against the $68, or $413 - $345, of interest, so the $163 remaining is attributable entirely to taxable price and sales tax. Any costs Seller may incur related to locating, repossessing, storing, or selling the goods do not offset the value of the collateral because no credit is allowed for collection costs. Seller is entitled to a sales tax refund or credit in the amount of $12, or $163 x ($40/$540) and deduction of $151, or $163 x ($500/$540) under the retailing B&O tax classification. If Seller later sells the repossessed goods, Seller must pay B&O tax and collect retail sales tax as applicable. If the sales price of the repossessed goods is different from the fair market value previously reported and the statute of limitations applicable to the original transaction has not expired, Seller must report the difference between the selling price and the claimed fair market value as an additional bad debt credit or deduction or report it as an additional recovery, as appropriate.

(e) Seller sells a car at retail for $1000((~~, Seller's extended service warranty for $200,~~)) and charges the buyer an additional $50 for license and registration fees. (((~~The amount received for the warranty is subject to service and other activities B&O tax. Refer to WAC 458-20-257 for information about the tax treatment of warranties.~~))) Seller accepts trade-in property with a value of $500 in which the buyer has $300 of equity. (The value of trade-in property of like kind is excluded from the selling price for purposes of the retail sales tax. Refer to WAC 458-20-247 for further information.) Seller properly bills the buyer for $40 of sales tax, for a total of ((~~$1290~~)) $1090 owed to Seller by the buyer. Seller pays the department the $40 in sales tax. No payment other than the trade-in is received by Seller at the time of sale. Eight months later, Seller has not received any payment. Seller is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to ((~~$990, or $1290~~)) $790, or $1090 - $300. Seller is entitled to claim a sales tax credit or refund of ((~~$31, or $990 x ($40/$1290)~~)) $29, or $790 x ($40/$1090) of sales tax, and a deduction of ((~~$767, or $990 x ($1000/$1290)~~)) $725, or $790 x ($1000/$1090) under the retailing B&O tax classification((~~, and a deduction of $153, or $990 x ($200/$1290) under the service and other activities B&O tax classification~~)), exclusive of any deduction for accrued interest.

(f) Seller sells a car at retail for $1000, ((~~Seller's extended warranty for $200,~~)) and charges the buyer an additional $50 for license and registration fees. (((~~The amount received for the warranty is subject to service and other activities B&O tax. Refer to WAC 458-20-257 for information about the tax treatment of warranties.~~))) Seller properly bills the buyer for $80 of sales tax and remits it to the department. No money is received from the buyer at the time of sale. Eight months later Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller claims an $80 sales tax credit, a $1000 retailing B&O tax deduction, ((~~a~~

~~$200 deduction under the service and other activities B&O tax classification,~~)) and an additional amount under the service and other activities classification for accrued interest. Six months after that, Seller receives a $200 payment from the buyer. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and the sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Seller must report $15, or $200 x ($80/$1080) of sales tax and $185, or $200 x ($1000/$1080) of income under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original $80 sales tax credit is reduced to zero.

(g) Seller sells a car at retail for $1000, ((~~Seller's extended warranty for $200,~~)) and charges the buyer an additional $50 for license and registration fees. Seller accepts trade-in property with a value of $500 in which the buyer has $300 of equity. Seller properly bills the buyer for $40 of sales tax for a total of ((~~$1290~~)) $1090 owed to Seller by the buyer. No payment other than the trade-in is received by Seller at the time of sale. Eight months later, no payment has been received by Seller. Seller is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to ((~~$990, or $1290~~)) $790, or $1090 - $300. Seller is entitled to claim a sales tax credit or refund of ((~~$31, or $990 x ($40/$1290)~~)) $29, or $790 x ($40/$1090) of sales tax, and a deduction of ((~~$767, or $990 x ($1000/$1290)~~)) $725, or $790 x ($1000/$1090) under the retailing B&O tax classification, ((~~and a deduction of $153, or $990 x ($200/$1290) under the service and other activities B&O tax classification,~~)) exclusive of any deduction for accrued interest. Six months after that, Seller receives a $200 payment from the buyer. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Seller must report $15, or $200 x ($40/$540) in sales tax, and $185, or $200 x ($500/$540) under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original ((~~$31~~)) $29 sales tax credit is reduced to zero.

(h) The facts are the same as in (e) of this subsection (((~~(9)(e) above~~)), except that immediately after the sale, Seller assigns the contract to a finance company without recourse, receiving face value for the contract. The finance company may claim the retail sales tax credit or refund of ((~~$31~~)) $29. The finance company may not claim any deductions for Seller's B&O tax liability. No bad debt deduction or credit is available to Seller.

(i) The facts are the same as in (h) of this subsection (((~~(9)(h) above~~)), except that the Seller receives less than face value for the contract. The result is the same as in (h) of this subsection (((~~(9)(h) above~~)) for both parties. The finance company may claim a ((~~$31~~)) $29 retail sales tax bad debt credit or refund, but may not claim a B&O bad debt deduction for Seller's B&O tax liability. No bad debt deduction or credit is available to Seller.

WSR 06-01-011
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket Nos. UT-051261 and UW-051287, General Order No. R-525—Filed December 9, 2005, 1:17 p.m., effective January 9, 2006]

In the matter of amending WAC 480-140-020 relating to Budgets—Who must file.

1 **STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (WUTC) takes this action under Notice No. WSR 05-22-094, filed with the code reviser on November 1, 2005. The commission brings this proceeding pursuant to RCW 80.01.040(4), 80.04.160, and 80.40.320.

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

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

WAC 480-140-020 Who must file. Subsections (3) and (4) are deleted to eliminate the requirement that large telecommunications companies and water companies must file annual budges [budgets] with the commission.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on September 7, 2005, at WSR 05-18-087. The statement advised interested persons that the commission was considering entering a rule making to consider eliminating the requirement that large telecommunications companies and water companies file annual budgets with the WUTC according to WAC 480-140-020.

8 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's

list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending a notice to all registered telecommunications, water companies, the commission's list of telecommunications attorneys and water company attorneys, and posting all information on the commission's web site.

9 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on November 1, 2005, at WSR 05-22-094. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 05-22-094 at 9:30 a.m., Tuesday, December 6, 2005, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

10 **COMMENTERS (WRITTEN COMMENTS):** The commission received written comments from Verizon Northwest Inc. supporting the proposed amendment to WAC 480-140-020.

11 **RULE-MAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice in WSR 05-22-094, at a rule-making hearing on Tuesday, December 6, 2005, before Chairman Mark H. Sidran and Commissioner Patrick J. Oshie. The commission received no comments.

12 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend the rule as proposed in the CR-102 at WSR 05-22-094.

13 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-140-020 should be amended to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on 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 1, Repealed 0.

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

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

ORDER

14 **THE COMMISSION ORDERS:**

15 (1) The commission amends and adopts WAC 480-140-020 to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

16 (2) This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 7th day of December, 2005.

Washington utilities and transportation commission.

Mark H. Sidran, Chairman

Patrick J. Oshie, Commissioner

AMENDATORY SECTION (Amending Order No. R-466, Docket No. A-990298, filed 11/15/99, effective 12/16/99)

WAC 480-140-020 Who must file. The following public service companies with annual gross operating revenues exceeding two hundred fifty thousand dollars must file budgets with the commission:

(1) Gas companies; and

(2) Electrical companies((~~;~~

~~(3) Telecommunications companies that serve more than two percent of the access lines in the state of Washington, except those companies classified as competitive by the commission; and~~

~~(4) Water companies that are not required to file water system plans with the department of health in compliance with WAC 246-290-100. Water companies required to file water system plans with the department of health must concurrently file a copy with the commission~~)).

WSR 06-01-012
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-273—Filed December 9, 2005, 3:19 p.m., effective January 9, 2006]

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

Purpose: Amend point-of-sale transaction fee rule.

Citation of Existing Rules Affected by this Order: Amending WAC 220-55-180.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 05-21-108 on October 18, 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 Mak-

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

Date Adopted: December 2, 2005.

Susan Yeager
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 03-311, filed 12/16/03, effective 1/16/04)

WAC 220-55-180 Point-of-sale transaction fee. The point-of-sale transaction fee shall be used to operate an automated recreational licensing system. This fee shall be applied to all automated licensing system purchases of recreational documents. The transaction fee shall be ten percent of the value of the document transaction, excluding any applicable dealer fees except ((~~that for the period July 1, 2000,~~)) through June 30, ((~~2006~~)) 2007, the transaction fee shall be nine and one-half percent of the value of the document transaction, excluding any applicable dealer fee.

WSR 06-01-013
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-275—Filed December 9, 2005, 3:20 p.m., effective January 9, 2006]

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

Purpose: Amend commercial shellfish rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-16-260, 220-52-043, 220-52-046, 220-52-051, and 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 05-21-108 [05-20-071] on October 18, 2005 [October 4, 2005].

Changes Other than Editing from Proposed to Adopted Version: Delete amendatory language in WAC 220-52-046 (5)(d).

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

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

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

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

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

Date Adopted: December 2, 2005.

Susan Yeager
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 00-271, filed 1/5/01, effective 2/5/01)

WAC 220-16-260 Puget Sound ((~~Crustacean~~)) Crab Management Regions. The following areas are defined as Puget Sound ((~~Crustacean~~)) Crab Management Regions:

(1) ((~~Crustacean~~)) Crab Management Region ((~~1A~~)) 1 - (((~~Western San Juan Islands~~)) North Puget Sound). ((~~The portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B west of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary due north of Waldron Island, and the portion of Marine Fish-Shellfish Management and Catch Reporting Area 22A west of the following line: Beginning at Steep Point on Orcas Island to Neck Point on Shaw Island, then southerly following the west coast of Shaw Island to the southernmost point of Shaw Island, then to the western entrance to Fisherman's Bay on Lopez Island, then southerly and easterly following the west coast of Lopez Island to Point Colville.~~)) All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

(2) ((~~Crustacean Management Region 1B - (Eastern San Juan Islands). The portions of Marine Fish-Shellfish Management and Catch Reporting Areas 20B and 22A to the east of Crustacean Management Region 1A and the portion of Marine Fish-Shellfish Management and Catch Reporting Area 21A north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.~~

~~(3) Crustacean Management Region 1C - (Gulf of Georgia/North Puget Sound Bays). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 21B, and 22B, and the portion of Marine Fish-Shellfish Management and Catch Reporting Area 21A outside of Crustacean Management Region 1B.~~

~~(4) Crustacean~~)) Crab Management Region 2-East - (Eastern Central Puget Sound). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, ((~~25B, 25D,~~)) and ((~~26A~~)) 26A-E (see WAC 220-52-046).

(((~~(5) Crustacean~~)) (3) Crab Management Region ((~~3~~)) 2-West - (((~~Strait of Juan de Fuca~~)) Western Central Puget Sound). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas ((~~23A, 23B, 23C, 23D, 25A, 25E, and 29~~)) 25B, 25D, and 26A-W (see WAC 220-52-046).

(4) Crab Management Region 3, subarea 3-1 - (Eastern Strait of Juan de Fuca). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B.

(5) Crab Management Region 3, subarea 3-2 - (Central Strait of Juan de Fuca). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A, and 25E.

(6) Crab Management Region 3, subarea 3-3 - (Western Strait of Juan de Fuca). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29.

(((~~(6) Crustacean~~)) (7) Crab Management Region 4 - (Southern Central Puget Sound). All waters of Marine Fish-

Shellfish Management and Catch Reporting Areas 26B((,)) and 26C.

(((~~(7) Crustacean~~))) (8) Crab Management Region 5 - (Hood Canal). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25C, 27A, 27B, and 27C.

(((~~(8) Crustacean~~))) (9) Crab Management Region 6 - (South Puget Sound). All waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26D, 28A, 28B, 28C, and 28D.

AMENDATORY SECTION (Amending Order 01-180 [05-246], filed 8/22/01 [10/14/05], effective 9/22/01 [11/14/05])

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 gear tagging requirements.**

(a) In Puget Sound, all crab pots must have a durable, nonbiodegradable tag permanently and legibly marked with the license owner's name or license number, and telephone number 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.

(b) In Puget Sound all crab buoys must have a buoy tag issued to the license owner by the department attached to the outermost end of the buoy line. 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~~)) commercial crab pots.** ((~~The maximum volume of~~)) It is unlawful to commercially fish a crab pot greater than thirteen cubic feet in volume used to fish for or take Dungeness crab from ((~~the~~)) state or offshore 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.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

AMENDATORY SECTION (Amending Order 01-74, filed 5/3/01, effective 6/3/01)

WAC 220-52-046 Crab fishery—Seasons and areas. "Commercial crab fishing" means any taking, fishing, use, or operation of gear to fish for crabs for commercial purposes, and shall include the possession of crab on the water for commercial purposes, and the landing or initial delivery of crab for commercial purposes.

The lawful open times and areas for commercial crab fishing are as follows:

(1) All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas are open for commercial crab fishing beginning 8:00 a.m. October 1st through the following April 15th and, after 8:00 a.m. October 1st, from one-half hour before sunrise to one-half hour after sunset, except as provided by other subsections below.

(2) For purposes of crab harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (Catch Areas) are modified as follows:

(a) Catch Area 26A-E shall include those waters of Puget Sound south of a line from Sandy Point (on Whidbey Island) to Camano Head and from Camano Head to the north tip of Gedney Island, and from the southern tip of Gedney Island east to the mainland, and north and east of a line that extends from Possession Point to the shipwreck located .8 nautical miles north of Picnic Point.

(b) Catch Area 26A-W shall include those waters of Puget Sound south and east of a line from Foulweather Bluff to Double Bluff, and northerly of a line from Apple Cove Point to Point Edwards, and south and west of a line that

extends from Possession Point to the shipwreck located .8 nautical miles north of Picnic Point.

(3) The following areas are closed to commercial crab fishing except for treaty Indian commercial crab fishing where the treaty Indian crab fisher is following tribal openings that are in accordance with provisions of court orders in United States v. Washington:

(a) Areas 25C, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from the entrance buoy at Sandy Point to Gooseberry Point.

(((~~b~~))) (c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder at Point Francis to the pilings at Stevie's Point.

(((~~c~~))) (d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line((~~s~~)) projected north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(((~~d~~))) (e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore.

(((~~e~~))) (f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the ((~~outermost tip of the~~)) abandoned dock at the Three Crabs Restaurant.

(((~~f~~))) (g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.

(((~~3~~))) (4) The following areas are closed to commercial crab fishing during the periods indicated:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point are closed October 1 through October 31 and March 1 through April 15.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley are closed October 1 through October 15((~~, and March 15 through April 15 of each year~~)).

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W) are closed from October 1 through October 15 ((~~through October 31, and March 15 through April 15 of each year~~)).

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cap Sante Marina to the northern end of the eastern most oil dock are closed October 1 through October 31, and March 1 through April 15 of each year.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass are closed October 1 through October 31 and March 1 through April 15 ((~~of each year~~)).

(((~~4~~))) (f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green No. 1 buoy at Possession Point to Possession Point and west of a line from the green No. 1 buoy at Possession Point northward along the 200-foot depth contour to the Glendale Dock are closed October 1 through October 15.

(5) The following areas are closed to commercial crab fishing until further notice:

(a) ((~~Areas 25C, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, 28D and~~)) Those waters of Area 25E south of a line from Contractors Point to Tukey Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected from Rocky Point northeast to the red number 2 buoy north of Ustalady Point, thence to Brown Point on the northeast corner of Ustalady Bay.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from the point at the southern end of Honeymoon Bay (48°03.047'N, 122°32.306'W) to the point just north of Beverly Beach.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River and west of a line projected from the #3 buoy southward to the oil boom pier on the shoreline.

(e) ((~~Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A within a line from the green number 1 buoy at Seatchet Head to the green number 1 buoy at Possession Point thence following the 200 foot contour to a point due east from the Glendale Dock.~~

(~~f~~))) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(((~~g~~))) (f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(((~~h~~))) (g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.

(((~~i~~))) (h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut

Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island thence to Chuckanut Rock thence to the most southerly tip of Clark's Point.

(((~~j~~))) (i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(((~~k~~))) (j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(((~~l~~))) (k) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected ((~~from Lopez Island~~)) through Crab and Fortress Islands ((~~to~~)) intersecting Lopez Island at either end.

(((~~m~~))) (l) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.

(((~~n~~))) (m) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A in Cornet Bay south of a line projected true east and west from the northernmost tip of Ben Ure Island.

(((~~o~~))) (n) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(((~~p~~))) (o) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

(((~~5~~))) (6) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are open to commercial crab fishing December 1 through September 15 except that it is lawful to set baited crab gear beginning at 8:00 a.m. November 28. However, the department may delay opening of the coastal crab fishery due to softshell crab conditions, in which case the following provisions will apply:

(a) After consultation with the Oregon Department of Fish and Wildlife, the director may, by emergency rule, establish a softshell crab demarcation line.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area for which the season opening has been delayed due to softshell crab for the first thirty days following the opening of such an area if the vessel was employed in the coastal crab fishery during the previous forty-five days.

(c) Fishers may not set crab gear in any area where the season opening has been delayed, except that gear may be set as allowed by emergency rule and shall allow setting sixty-four hours in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California except during the lawful open seasons, areas and times specified by the individual states.

(((~~(6) The following areas (Special Management Area; SMA's) are closed to commercial crab fishing during the periods indicated, except for treaty Indian commercial crab fishing where the treaty Indian crab fisher is following tribal openings that are in accordance with provisions of court orders in United States v. Washington:~~

~~(a) Those waters bounded by lines projected between the following coordinates:~~

~~Southern SMA Description:~~

~~NW corner:~~	~~47×09.00'N~~	~~124×23.80'W (LORAN 41885)~~
~~NE corner:~~	~~47×09.00'N~~	~~124×16.30'W~~
~~SW corner:~~	~~46×58.00'N~~	~~124×22.00'W (LORAN 41885)~~
~~SE corner:~~	~~46×58.00'N~~	~~124×15.30'W~~

~~Northern SMA Description:~~

~~NW corner:~~	~~47×32.00'N~~	~~124×34.00'W (LORAN 41865)~~
~~NE corner:~~	~~47×32.00'N~~	~~124×29.50'W (LORAN 41880)~~
~~SW corner:~~	~~47×27.00'N~~	~~124×33.00'W (LORAN 41865)~~
~~SE corner:~~	~~47×27.00'N~~	~~124×28.60'W (LORAN 41880)~~

~~The non-Indian fishery will be closed within these areas December 1, 1998, through January 4, 1999. The areas will open to the non-Indian fishery on January 5, 1999, and remain open through September 15, 1999, except as provided for in (d) of this subsection.~~

~~(b) Those waters between 47×40.50'N (Destruction Island) north to 48×02.25'N, east of a line (to the coastline) described by the following points:~~

~~Southern point:~~	~~47×40.50'N~~	~~124×37.50'W~~
~~Central point:~~	~~48×00.00'N~~	~~124×49.50'W~~
~~Northern point:~~	~~48×02.25'N~~	~~124×50.00'W~~

~~This area is closed to non-Indian fishing from December 1, 1998, through January 7, 1999. It will reopen to non-Indian fishing on January 8, 1999, and close on February 5, 1999. This area will reopen on March 28, 1999, and remain open through September 15, 1999, except as provided for in (d) of this subsection.~~

~~(c) Those waters east of a line approximating the 25 fathom curve, from 48×02.15'N 124×50'00"W to 48×07'36"N 124×51'24"W to 48×20'00"N 124×50'00"W to Cape Flattery. This area will close to non-Indian fishing December 29, 1997, (after 28 days of fishing) and remain closed through March 31, 1998. The area will reopen on April 1, 1998, and remain open through September 15, 1998.~~

~~(d) It is unlawful to place gear, fish for or take Dungeness crab for commercial purposes in the following area from July 1 through September 15:~~

~~Those waters west of straight lines drawn in sequence from south to north between the following coordinates:~~

	~~Land description~~	~~Coordinate~~
~~(i)~~	~~Washington - Oregon border~~	~~46×15.00'N 124×10.00'W~~
~~(ii)~~	~~Seaview~~	~~46×20.00'N 124×10.00'W~~

	~~Land description~~	~~Coordinate~~
~~(iii)~~	~~Willapa Bay entrance~~	~~46×40.00'N 124×10.00'W~~
~~(iv)~~	~~N. Willapa Bay spits~~	~~46×43.50'N 124×11.50'W~~
~~(v)~~	~~Grayland~~	~~46×50.00'N 124×12.30'W~~
~~(vi)~~	~~Grays Harbor~~	~~46×54.70'N 124×16.00'W~~
~~(vii)~~	~~Ocean Shores~~	~~47×00.00'N 124×16.00'W~~
~~(viii)~~	~~Moclips~~	~~47×15.00'N 124×19.00'W~~
~~(ix)~~	~~Cape Elizabeth~~	~~47×20.00'N 124×25.00'W~~
~~(x)~~	~~Raft River~~	~~47×27.00'N 124×28.60'W (follow TD 41880 to waypoint # 11 N. Destruction Island)~~
~~(xi)~~	~~N. Destruction Island~~	~~47×42.40'N 124×31.50'W~~
~~(xii)~~	~~Lapush~~	~~47×55.00'N 124×46.00'W~~
~~(xiii)~~	~~Carol Island~~	~~48×00.00'N 124×49.50'W~~
~~(xiv)~~	~~N. Lake Ozette~~	~~48×07.60'N 124×51.40'W~~
~~(xv)~~	~~Makah Bay~~	~~48×20.00'N 124×50.00'W~~
~~(xvi)~~	~~Cape Flattery~~	~~Point on land~~))

AMENDATORY SECTION (Amending Order 03-28, filed 2/18/03, effective 3/21/03)

WAC 220-52-051 Shrimp fishery—Puget Sound. (1) A Puget Sound shrimp pot license or a Puget Sound shrimp trawl license will only be issued to an individual who is a natural person, and this person shall be the primary operator. Holders of Puget Sound shrimp pot licenses and Puget Sound shrimp trawl licenses may designate a single alternate operator per license.

(2) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear except during seasons opened by emergency rule:

(a) Gear restrictions -

(i) In all areas, maximum 100 pots per fisher except for dual licensees as provided for in RCW 77.70.410.

(ii) In all areas:

(A) Buoys must be orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.

(B) The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.

(C) The maximum perimeter of shrimp pots must not exceed ten feet and the maximum height must not exceed two feet.

(D) It is unlawful to set or pull shrimp pot gear from one hour after official sunset to one hour before official sunrise.

(b) Spot shrimp size restriction: It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1 and 3/16 inches. Carapace length is defined as the length between the posterior mid-dorsal margin to the posterior-most part of the eye-stalk orbit.

(c) Area restrictions:

(i) Pot gear closed in all Puget Sound Shrimp Districts except the Port Townsend Shrimp District.

(ii) Pot gear closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island from the season opening through July 9th.

(3) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except during seasons opened by emergency rule:

(a) Gear restrictions - Beam trawl gear only. Otter trawl gear may not be used.

(i) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, and 22A is 25 feet.

(ii) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 25A, 25B, and 29 is 60 feet.

(b) It is unlawful to retain spot shrimp.

(c) Area restrictions:

(i) Shrimp trawl fishing closed in all Puget Sound Shrimp Districts.

(ii) Shrimp trawl fishing closed in Lopez Sound south of a line projected true east-west from the northern tip of Trump Island from the season opening through July 9th.

(d) It is unlawful to fish for shrimp in Puget Sound with beam trawl gear in waters shallower than 100 feet.

(e) It is lawful to fish for shrimp in Puget Sound with beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Area 21A only in those waters north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.

(f) The following restrictions apply to shrimp beam trawl harvest in Marine Fish-Shellfish Management and Catch Reporting Area 20A:

(i) Closed in waters east of a line from the southwest corner of Point Roberts to Sandy Point.

(ii) Closed in waters shallower than 20 fathoms.

(g) It is unlawful to operate shrimp beam trawl gear in Puget Sound from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken in the Puget Sound commercial shrimp fishery must be landed and recorded on Washington state fish receiving tickets within 24 hours of harvest. No fisher may land shrimp without immediate delivery to a licensed wholesale dealer, or if transferred at sea, without transfer to a licensed wholesale dealer. A fisher who is a licensed wholesale dealer may complete and return a fish receiving ticket to satisfy the requirements of this subsection.

(5) For purposes of shrimp pot harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (catch areas) are modified as follows:

(a) That portion of Catch Area 22A south of a line due east from the international boundary to Lime Kiln Point light on San Juan Island, then south of the shores of San Juan Island, then south of a line from Cattle Point on San Juan Island to Davis Point on Lopez Island, then south of the shores of Lopez Island to Point Colville shall be considered to be part of Catch Area 23A.

(b) Catch Area 23A is divided into ((~~three~~)) four subareas:

(i) 23A-E (east) is those waters of Catch Area 23A east of ((~~a line projected 122.59 N longitude~~)) 122°57'W. Long. and north of 48°22.5'N. Lat.

(ii) 23A-W (west) is those waters of Catch Area 23A ((~~east of a line projected 335 degrees true from the Dungeness lighthouse and~~)) west of ((~~a line projected 122.59 N longitude~~)) 122°57'W. Long. and north of 48°22.5'N. Lat.

(iii) 23A-C (central) is those waters of Catch Area 23 south of 48°22.5'N. Lat. and east of a line projected 335° true from the Dungeness lighthouse.

(iv) 23A-S (south) is those waters of Catch Area 23A west of a line projected 335° ((~~degrees~~)) true from the Dungeness lighthouse.

(c) Catch Area 26A is divided into two subareas:

(i) 26A-E (east)((~~:~~)) is those waters of Catch Area 26A north and east of a line projected 110 degrees true from the southern tip of Possession Point on Whidbey Island to the shipwreck on the opposite shore.

(ii) 26A-W (west)((~~:~~)) is those waters of Catch Area 26A south and west of a line projected 110 degrees true from the southern tip of Possession Point on Whidbey Island to the shipwreck on the opposite shore.

(d) Catch Area 26B is divided into two subareas:

(i) 26B-1((~~:~~)) is those waters of Catch Area 26B westerly of a line projected from West Point to Alki Point.

(ii) 26B-2((~~:~~)) is those waters easterly of a line projected from West Point to Alki Point.

(6) For purpose of shrimp trawl harvest allocation and catch reporting, 23A East is that portion of Catch Area 23A, east of a line projected true north from the Dungeness lighthouse. 23A West is that portion of Catch Area 23A, west of the line described herein.

(7) The following areas are defined as Puget Sound Shrimp Management Areas:

(a) Shrimp Management Area 1A: ((~~The portion of Crustacean Management Region 1 which includes all~~)) Waters of Catch Area 20B west of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary, and all waters of Catch Area 22A west of a line projected true north and south from the western tip of Crane Island, west of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island.

(b) Shrimp Management Area 1B: ((~~That portion of Crustacean Management Region 1 which includes all~~)) Waters of Catch Area 20B east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary, and ((~~all~~)) waters of Catch Area 22A east of a line projected true north and south from the western tip of Crane Island, east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, and east of a line projected true south from Point Colville, and all waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island.

(c) Shrimp Management Area 1C: ((~~That portion of Crustacean Management Region 1 which includes all~~)) Waters of Catch Areas 20A, 21B, 22B, and ((~~all~~)) waters of Catch Area 21A not included in Management Area 1B.

(d) Shrimp Management Area 2E: ((~~That portion of Crustacean Management Region 2 which includes all~~)) Waters of Catch Areas 24A, 24B, 24C, 24D, and 26A-E (east).

(e) Shrimp Management Area 2W: ((~~That portion of Crustacean Management Region 2 which includes all~~)) Waters of Catch Areas 25B, 25C, 25D, and 26A-W (west).

(f) Shrimp Management Area 3: Waters of Catch Areas 23A, 23B, 23C, 23D, 25A, 25E, and 29.

(g) Shrimp Management Area 4: Waters of Catch Areas 26B and 26C.

(h) Shrimp Management Area 5: Waters of Catch Areas 27A, 27B, and 27C.

(i) Shrimp Management Area 6: Waters of Catch Areas 26D, 28A, 28B, 28C, and 28D.

(8) In Shrimp Management Areas 1A, 1B and 1C, all catch ((~~will~~)) must be reported by Management Area and Catch Area combined, either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, ((~~or~~)) 1C-20A, 1C-21A, 1C-21B, or 1C-22B.

AMENDATORY SECTION (Amending Order 04-210, filed 8/17/04, effective 9/17/04)

WAC 220-69-240 Duties of commercial purchasers and receivers. (1) It is unlawful for any person originally receiving fresh or iced fish or shellfish or frozen fish or shellfish that have not been previously delivered in another state, territory, or country, except purchases or receipts made by individuals or consumers at retail, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket regarding each and every purchase or receipt of such commodities. Each delivery must be recorded on a separate fish receiving ticket.

It is unlawful for any original receiver of crab or spot shrimp to fail to record all crab or spot shrimp aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish deemed to be unmarketable, discards, or weighbacks must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for such fish or shellfish.

(a) Failure to be licensed under this subsection is punishable under RCW 77.15.620.

(b) Failure to prepare a fish receiving ticket under this subsection in punishable under RCW 77.15.630.

(2) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its branch plant locations shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business or firm shall be responsible for the accuracy and legibility of all such documents initiated in its name.

(3) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. Should the delivery of the catch take more than one day, the date that the delivery is completed is required to be entered on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the current date on the fish receiving

ticket. Violation of this subsection is punishable under RCW 77.15.630.

(4) Forage fish: It is unlawful for any person receiving forage fish to fail to report the forage fish on fish receiving tickets that are initiated and completed on the day the forage fish are delivered. Herring are also required to be reported on herring harvest logs. The harvested amount of forage fish is to be entered upon the fish ticket when the forage fish are offloaded from the catcher vessel. An estimate of herring, candlefish, anchovy, or pilchards caught but not sold due to mortality must be included on the fish ticket as "loss estimate."

Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(5) Geoduck: It is unlawful for any person receiving geoducks, regardless of whether or not the receiver holds a license as required under Title 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual delivery of geoducks from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoducks from the department of natural resources harvest tract to the point of delivery. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(6) Pacific whiting: It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the delivery. The exact weights of whiting, by grade, and all incidental species in the delivery must be entered on the fish receiving ticket within twenty-four hours of the landing. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(7) Puget Sound shrimp - Pot gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by voice 360-466-4345 extension 245, or facsimile 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by voice 1-866-859-8439, extension ((~~600~~)) 800, or facsimile 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, and the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(a) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 23A, to fail to record either 23A-C, 23A-E, 23A-W or 23A-S on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(b) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26A, to fail to record either 26A-E or 26A-W on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(c) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26B, to fail to record either 26B-1 or 26B-2 on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(d) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, to fail to record either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(8) Puget Sound shrimp - Trawl gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by voice 360-466-4345 extension 245, or facsimile 360-466-0515. For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by voice 1-866-859-8439, extension 600, or facsimile 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, and the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area, and species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(9) Puget Sound crab: It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by nontreaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following ((~~morning~~)) business day. Reports must be made to the ((~~Point Whitney Shellfish Laboratory~~)) La Conner District Office by facsimile ((~~360-586-8408~~)) 360-466-0515 or by telephone number 1-866-859-8439 extension 500 and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by nontreaty fishers by ((~~Crustacean~~)) Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(10) Salmon and sturgeon: During any fishery opening designated by rule as "quick reporting required," it is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement holder to fail to report all salmon offered for retail sale on the previous calendar day. The report must include dealer or holder name and purchasing location, date of purchase, each fish ticket number used on the purchasing

date, and the following catch data for each species purchased: Gear, catch area, species, number and total weight of fish. When quick reporting is required, it is unlawful to fail to comply with the following reporting requirements:

(a) Puget Sound reports must be reported by 10:00 a.m. on the day after the purchase date by either:

(i) Fax transmission to 360-902-2949

(ii) E-mail to psfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1279

(b) Coastal troll reports must be reported by 10:00 a.m. on the day after the purchase date by either:

(i) Fax transmission to 360-902-2949

(ii) E-mail to trollfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1279

(c) Grays Harbor and Willapa Bay reports must be reported by 10:00 a.m. on the day after the purchase date by either:

(i) Fax transmission to 360-664-0689

(ii) E-mail to harborfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1280

(d) Columbia River reports must be reported by 10:00 a.m. on the day after the purchase date by either:

(i) Fax transmission to 360-906-6776 or 360-906-6777

(ii) E-mail to crfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1281

(e) Faxing a copy of each fish receiving ticket used on the previous day satisfies the reporting requirement.

(f) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(11) Sea urchins and sea cucumbers: It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day. For red sea urchins the report must specify the number of pounds received from each sea urchin district. For green sea urchins and sea cucumbers the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area. For sea cucumbers the report must specify whether the landings were "whole-live" or "split-drained." The report must be made by facsimile (fax) transmission to 360-902-2943 or by toll-free telephone to 866-207-8223. Additionally, it is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken, and it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket the name of the port of landing where the sea urchins were landed ashore. Additionally, it is unlawful for the original receiver of sea cucumbers to fail to record on the fish receiving ticket whether the sea cucumbers were delivered "whole-live" or "split-drained." Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(12) Coastal spot shrimp: It is unlawful for any original receiver of spot shrimp taken from Marine Fish Management and Catch Reporting Area 60A-1 to fail to record separately on the fish receiving ticket spot shrimp taken north or south of 47°04.00' north latitude. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

WSR 06-01-015
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-272—Filed December 9, 2005, 3:57 p.m., effective January 9, 2006]

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

Purpose: Amend Denman Island Disease prohibited areas.

Citation of Existing Rules Affected by this Order: Amending WAC 220-72-089.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 05-20-064 on October 3, 2005.

Changes Other than Editing from Proposed to Adopted Version: Delete Oakland Bay prohibited area (Section 7).

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

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

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

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

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

Date Adopted: December 2, 2005.

Susan Yeager
for Ron Ozment, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 04-318, filed 12/15/04, effective 1/15/05)

WAC 220-72-089 Denman Island Disease prohibited area. An area where *Mikrocytos mackini*, the causative agent of Denman Island Disease, has been confirmed with department approved histological methods by a department approved shellfish pathologist or reported in peer-reviewed scientific journal and accepted by the department. All waters, tidelands, shellfish handling facilities and equipment (including aquaculture vehicles and vessels) operated in conjunction with said waters and tidelands within the following areas are designated as Denman Island Disease prohibited areas:

(1) Strait of Juan de Fuca, Dungeness Bay—inside and westerly of a line projected from the tip of Dungeness Spit due south to the mainland.

(2) Orcas Island—

(a) Deer Harbor—inside and northerly of a line projected between Pole Pass Point and Steep Point.

(b) West Sound—inside and northerly of a line projected between Caldwell Point and the most southerly point of land west of the community of Orcas.

(c) East Sound—inside and northerly of a line projected between Diamond Point and the most southwesterly point on Orcas Island at Obstruction Pass.

(3) Westcott Bay—inside and westerly of a line projected between the most southerly point of White Point and the most northerly point of Delacombe Point.

(4) Bellingham and Samish Bays—southerly and inside of a line projected between Lummi Point and Gooseberry Point and easterly and inside of a line projected between Carter Point and William Point.

(5) Minter Creek—inside and westerly of a line projected from:

The mainland at 122°41'00" W. Long. due south to

47°21'00" N. Lat., 122°41'00" W. Long.; thence to

47°21'00" N. Lat. where it intersects the mainland.

(6) McMicken Island—inside and westerly of a line projected between the following two points on the east shore of Hartstene Island:

47°14.084' N. Lat., 122°51.316' W. Long. and 47°16.224' N. Lat., 122°51.746' W. Long.

(7) ((~~Oakland Bay—inside and northerly of a line projected across Oakland Bay at 47×14'30" N. Lat. and inside and southerly of a line projected from:~~

~~The mainland on the west side of Oakland Bay at 47×15'00" due east to~~

~~47×15'00" N. Lat., 123×04'00" W. Long.; thence to~~

~~123×04'00" N. Lat. where it intersects the mainland.~~)) Carr Inlet—northerly of a line projected from the northern tip of South Head on Key Peninsula to the most western point of Green Point.

(8) Eld Inlet—southerly of a line projected due north from the northern most point of Cooper Point to the mainland at Edgewater Beach.

(9) Port Orchard—southerly of a line projected from Battle Point projected due west to the mainland; westerly of a line projected from Point White due south to the mainland; and easterly of a line projected from the southern most point of Point Herron due south to the mainland.

(10) Kilisut Harbor—southerly of a line projected from the northeasterly most point on Indian Island north to the most northwesterly point of Marrowstone Island.

WSR 06-01-017
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 9, 2005, 4:28 p.m., effective January 9, 2006]

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

Purpose: The purpose of this rule-making order is to reflect legislative changes and policy changes by the state oversight committee (SOC) for 2005-06 school year regarding the special education safety net procedure. Legislative changes require removal of language requiring consideration of "other" available revenue when determining financial need on Worksheet A, addition of the federal definition of high need student to the safety net rules, establishment of a common high need threshold and change in voting status of the state auditor representative on the SOC.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-600, 392-140-602, 392-140-605, 392-140-609, 392-140-616, 392-140-626, 392-140-640, 392-140-643, 392-140-646, 392-140-660, 392-140-675, and 392-140-685.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 05-21-082 on October 17, 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 1, Amended 12, 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: November 22, 2005.

November 30, 2005
Marty Daybell
for Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-600 Special education safety net—Applicable provisions. The provisions of WAC 392-140-600 through 392-140-685 apply to the determination of safety net allocations of Individuals with Disabilities Education Act (IDEA) federal funds for the ((~~2003-04~~)) 2005-06 school year and thereafter.

NEW SECTION

WAC 392-140-60105 Definition—High need student. A student with a disability whose program cost is greater than three times the statewide average per pupil expenditures as defined in section 9101 of the Elementary and Secondary Education Act of 1965 or a multiple of the statewide average per pupil expenditures as established by the superintendent of public instruction and published in the *Safety Net Bulletin* shall be considered a high need student for purposes of this chapter.

AMENDATORY SECTION (Amending Order 98-05, filed 3/18/98, effective 4/18/98)

WAC 392-140-602 Special education safety net—Eligible applicants. (1) An individual school district of the state

of Washington is eligible to apply for special education safety net moneys on behalf of its resident students. Resident students include those defined as resident pursuant to WAC 392-137-115, those enrolled through choice (RCW 28A.225.225) and those from nonhigh districts (RCW 28A.225.210). Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(2) An interdistrict cooperative of at least fifteen districts in which all excess cost services for special education students of the districts are provided by the cooperative is eligible to apply for special education safety net moneys. The cooperative and the participating school districts shall be treated as a single school district for the purposes of this chapter. Participating school districts are not eligible to apply for safety net moneys individually.

(3) The Washington ((~~state~~)) school for the deaf and the Washington state school for the blind are eligible to apply for high ((~~cost individual~~)) need students under WAC 392-140-616.

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-605 Special education safety net—Application type, certification, worksheets. Application for safety net funding shall be made on Form SPI 1381 - Certification published by the superintendent of public instruction as follows:

(1) School districts may make application for safety net funding for ((~~high-cost individual~~)) high need student(s). The school district making application for safety net funding shall certify that:

(a) The district recognizes that differences in costs attributable to district philosophy, service delivery choice, or accounting practice are not a legitimate basis for safety net awards.

(b) The application complies with the respective safety net application standards of WAC 392-140-616;

(c) The application provides true and complete information to the best of the school district's knowledge;

(d) The district understands that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, must be expended in program 21 or program 24 as specified in the award letter, and certifies that federal Medicaid has been billed for all services to eligible students;

(e) The district is making reasonable effort to provide appropriate services for students in need of special education using state funding generated by the basic education apportionment and special education funding formulas and federal funding;

(f) The district's special education services are operated in a reasonably efficient manner;

(g) Indirect costs included for purposes of determining safety net allocations do not exceed the allowable percent for federal special education program plus one percent;

(h) Any available state and federal funding is insufficient to address the additional needs;

(i) The costs of any supplemental contracts are not included for purposes of determining safety net awards. Supplemental contracts are those contracts made pursuant to RCW 28A.400.200(4) excluding extended school year contracts (ESY) required by an IEP; and

(j) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by an IEP.

(2) Worksheet A shall be included with the application and must demonstrate the need for safety net funding. Worksheet A is used to determine a maximum amount of eligibility for a school district. Award amounts may be less than the maximum amount of eligibility determined on Worksheet A. School districts are encouraged and may be required to submit additional information designed to assist the state oversight committee in analyzing the application.

(3) All ((~~high-cost individual~~)) high need student applications shall include worksheets "A" and "C" and summary published in the safety net application, and certification of standards and criteria pursuant to WAC 392-140-616.

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-609 Special education safety net—Standards and criteria—Appropriate and properly and efficiently prepared and formulated IEPs. Individualized education programs (IEPs) which are appropriate, properly and efficiently prepared and formulated are those IEPs that meet all of the following criteria:

(1) The IEPs comply with federal and state procedural requirements.

(2) The delivery of specially designed instruction identified on the IEP complies with state ((~~standards~~)) and federal requirements (regularly scheduled teaching or training activities provided or designed by special education qualified staff).

(3) The provision of special education services conforms with areas of need identified in the student's evaluation and/or reevaluation made pursuant to chapter 392-172 WAC.

AMENDATORY SECTION (Amending WSR 03-02-053, filed 12/26/02, effective 1/26/03)

WAC 392-140-616 Special education safety net—Standards—((~~High-cost individual~~)) High need student applications. For districts requesting safety net funding to meet the extraordinary needs of an eligible ((~~high-cost individual~~)) high need special education student, the district shall demonstrate at a minimum that:

(1) The IEP for the eligible special education student is appropriate, and properly and efficiently prepared and formulated.

(2) All of the following criteria apply to the ((~~high-cost individual~~)) high need student:

(a) Costs eligible for safety net consideration must be associated with providing direct ((~~expenditures for~~)) special education and related services ((~~required~~)) identified in the IEP.

(b) In order to deliver appropriate special education and related services to the student, the district must be providing services which incur ((~~additional~~)) costs ((~~which exceed available district annual average per-pupil revenues, including state, federal and local revenues, by the published threshold. The threshold amount shall be adjusted annually thereafter based upon the increase in base salary and NERCs as budgeted in the Biennial Operating Appropriations Act and published in the safety net application. This~~)) exceeding:

(i) The annual threshold as established by the office of superintendent of public instruction for state funding; then

(ii) Three times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act of 1965) for the state of Washington for federal funding. Threshold amounts shall be adjusted pro rata for students not counted or expected to be counted for special education services on all eight enrollment count dates (October through May). For example, for a student served and reported for only six of the eight count dates, the threshold amount shall be reduced to three-quarters of the full amount. ((~~The state safety net oversight committee may set a lower threshold for small school districts.~~))

(c) The total cost of educational services must exceed any carryover of federal flow-through special education funding as of August 31 of the prior school year.

(((~~(d) The cost of providing special education services, as directed in the IEP, for this student would be detrimental to the school district's ability to provide necessary services to the other students being provided special education in the district.~~))

(3) The state safety net oversight committee shall adapt the high ((~~cost individual~~)) need student application as appropriate for applications prepared by the Washington state school for the blind and the Washington ((~~state~~)) school for the deaf.

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-626 Special education safety net—Worksheet A—Demonstration of need. Applications for ((~~high-cost individual~~)) high need students shall demonstrate district financial need as follows:

(1) Application worksheet "A" shall demonstrate a fiscal need in excess of:

(a) Any previous safety net awards for the current school year; and

(b) All ((~~other~~)) available revenue for special education, including all carryover of state and federal special education revenue.

(2) Awards shall not exceed the amount of need demonstrated on the worksheet "A."

(3) Worksheets submitted with safety net applications are to reflect the state adopted excess cost method of accounting, consistently applied for both years presented.

(4) The safety net oversight committee may revise the district's worksheet "A" submitted for errors or omissions or more current information.

(5) The school district shall provide clarifying information as requested by the state oversight committee.

(6) After the close of the school year, the safety net oversight committee may review the worksheet "A" used to determine need for a district's award against the actual final school year enrollments, revenues, and expenditures reported by the district. Based upon the results of this review:

(a) The safety net allocation for the school year may be adjusted or recovered; or

(b) If the committee finds that a portion of the safety net allocation was not needed to balance revenues and expenditures, the committee may consider that portion of the allocation available to meet the needs of the ensuing school year.

(7) The state safety net oversight committee shall adapt the worksheet "A" - Demonstration of Need as appropriate for applications prepared by districts participating in the pilot program according to the provisions of RCW 28A.630.015 (4).

(8) In accordance with the state of Washington *Accounting Manual for Public School Districts* and ((~~proposed~~)) statutory federal language, demonstrated need shall not include legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child to ensure a free appropriated public education.

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-640 Special education safety net—State oversight committee—Membership, structure. Membership of the state oversight committee shall consist of: Staff of the office of superintendent of public instruction, staff of the office of state auditor who shall be nonvoting, one or more representatives from a school district(s), and one or more representatives from an educational service district.

(1) The state oversight committee members will be appointed by the office of superintendent of public instruction.

(2) The state director of special education shall serve as an ex officio, nonvoting committee member and act as the state oversight committee manager.

(3) Members of the state oversight committee from school districts and/or educational service districts will be appointed based on their knowledge of special education program service delivery and funding, geographical representation, size of district(s) served, and other demographic considerations which will guarantee a representative state committee.

(4) Alternate members shall be appointed. In the event a member is unable to attend a committee meeting, an alternate member shall attend.

(5) Membership appointments shall be made for a period of one year. The oversight committee manager may replace a portion of the committee each year in order to enhance representation.

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-643 Special education safety net—Definition—State oversight committee—Procedures. (1) The state oversight committee will review applications as

deemed necessary by the superintendent of public instruction pursuant to WAC 392-140-608.

(2) All applications received by the state oversight committee will be reviewed for completeness by the state oversight committee manager or designee. Applications must include all necessary forms, worksheets, and attachments described in the instruction bulletin published by the superintendent of public instruction. If applications are not complete, they will not be considered by the committee.

(3) The state oversight committee manager will forward to the committee members copies of the applications in a timely manner.

(4) The state oversight committee manager or designee will be responsible for presenting each application for consideration to the committee.

(5) Committee members shall ((~~question~~)) review and discuss the application content for completeness, accuracy, and understanding of the reason(s) for the applicant's need for safety net funding.

(6) The committee may request that a submitting school district provide clarifying information.

(7) Committee members will individually indicate their agreement ((~~or~~)), disagreement, or abstention with the action of the committee pursuant to WAC 392-140-646.

(8) A majority vote by the committee members will be sufficient to determine the committee action.

(9) The state oversight committee manager will ensure that notes are taken which summarize the questions and discussion related to each application. A decision summary for each application shall include the amount of the initial request, funding adjustments recommended by the committee, the amount of any award to be made, and the reasons for and against the action taken by the committee.

(10) Committee members shall each sign the decision summary.

(11) The state oversight committee manager, on behalf of the committee, will notify the applicant school district in writing of the determination of the committee. The school district will be provided a copy of the decision summary.

(12) All applications received by the state oversight committee will be retained by the superintendent of public instruction for use in the evaluation of the safety net funding process and to provide the superintendent of public instruction with information with which to make future decisions regarding the safety net process.

AMENDATORY SECTION (Amending WSR 04-08-118, filed 4/6/04, effective 5/7/04)

WAC 392-140-646 Special education safety net—State oversight committee actions. The state oversight committee shall take the following actions:

(1) After the state oversight committee determines:

(a) There are no unresolved audit examination issues related to special education that are material in nature;

(b) There are no unresolved ((~~state~~)) child count verification issues which are material in nature; and

(c) All corrections to state enrollment reporting, required for resolution of (a) and (b) of this subsection, are completed.

(2) An application reviewed during an application cycle may be:

(a) Approved;

(b) Disapproved; or

(c) Returned to the submitting school district, for possible resubmission at a later date during the school year, because information contained in the application is insufficient to establish a need for safety net funding.

(3) The amount approved shall be equal to or less than the amount for which application was made.

(4) The approval may be contingent on additional requirements imposed by the committee such as development of an action plan to resolve a specified problem prior to submission of any future safety net application to assure school district compliance with the criteria and standards set forth in these safety net regulations.

(5) The approvals are subject to adjustment and recovery pursuant to WAC 392-140-675 through 392-140-685.

AMENDATORY SECTION (Amending WSR 03-02-053, filed 12/26/02, effective 1/26/03)

WAC 392-140-660 Special education safety net—Approved application—Special education safety net allocations.

(1) The special education safety net allocation for an individual district shall be the smaller of:

(a) The amount requested by the school district; or

(b) The amount authorized by the state oversight committee.

(2) Special education safety net allocations for ((~~high-cost individual~~)) high need students under WAC 392-140-605 (1) shall use appropriated federal moneys. If safety net awards to meet the extraordinary needs of one or more individual special education students exceed the general fund—federal appropriation, the superintendent shall expend all available and otherwise uncommitted federal discretionary funds necessary to meet this need.

AMENDATORY SECTION (Amending WSR 03-02-053, filed 12/26/02, effective 1/26/03)

WAC 392-140-675 Special education safety net—Adjustments to special education safety net allocations. Safety net allocations may be adjusted as follows:

(1) For those districts not maximizing Medicaid billing for special education students under RCW 74.09.5255, special education safety net allocations shall be reduced by the estimated potential additional incentive payments for the school year if the district maximized Medicaid incentive payments. Potential additional incentive payments shall be estimated by the superintendent of public instruction based on the district's percent of Medicaid eligible students billed and a statewide average incentive payment per student determined by the superintendent in October of the school year. The average incentive payment per student shall be determined using the prior school year's statewide Medicaid billing data assuming fifty percent incentive payments for all school districts. The superintendent of public instruction shall update Medicaid billing adjustments to safety net allo-

cations periodically during the school year and again in January following the close of the school year.

(2) Special education safety net allocations for a school district may be adjusted to reflect changes in factors for which additional or revised information becomes available after the awarding of the initial safety net allocation. This means:

(a) ((~~High-cost~~)) High need awards may be reduced or nullified when the school district's actual revenues and expenditures for the school year differ significantly from the estimates on which the initial safety net award was based.

(b) A school district's safety net award may be adjusted by the safety net oversight committee based on the results of the review conducted by the special education program audit team pursuant to WAC 392-140-630.

AMENDATORY SECTION (Amending Order 98-05, filed 3/18/98, effective 4/18/98)

WAC 392-140-685 Special education safety net—Recovery of state and/or federal allocations to school districts. High ((~~cost individual~~)) need student state and/or federal special education safety net allocations:

(1) Shall be recovered or awards reduced for the following reasons:

(a) The application contains a falsification or deliberate misrepresentation, including omission of a material fact.

(b) The allocation is unexpended for the purpose allocated including but not limited to situations where the student leaves the district or has a change in services. For students who transfer to another Washington public school district, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district transfers the equipment to the other school district.

(c) The IEP is determined at a later date, through state audit or child count verification, to be inappropriate or improperly prepared and appropriate and proper preparation would materially affect the justification or amount of need for safety net funding.

(2) May be recovered or awards reduced for the following reasons:

(a) The school district has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.

(b) The district's actual revenues are significantly higher than estimated revenues on which the award was based or the district's actual expenditures are significantly lower than the estimated expenditures on which the award was based.

(c) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

Recovery adjustments not made in the current school year shall be added to the amount calculated pursuant to WAC 392-140-616 (2)(c) for the following school year. Such amounts reduce state and/or federal safety net awards in the following year.

WSR 06-01-020
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 12, 2005, 12:01 p.m., effective January 12, 2006]

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

Purpose: To amend the recently adopted WAC 246-272A-0130. This rule contains the protocol to be used by manufacturers when demonstrating the bacteriological reduction capabilities of their onsite sewage (septic) treatment products. The protocol adopted in July 2005, was discovered to be overly burdensome and potentially unreliable. The state board of health adopted an emergency rule to address this issue on September 6, 2005, and delegated permanent rule making to the department of health. This rule adoption permanently amends the previous protocol to one that is workable and less burdensome.

Citation of Existing Rules Affected by this Order: Amending WAC 246-272A-0130.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 05-21-123 on October 19, 2005.

A final cost-benefit analysis is available by contacting Kelly Cooper, P.O. Box 47820, phone (360) 236-3012, fax (360) 236-2250, e-mail kelly.cooper@doh.wa.gov.

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: December 12, 2005.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

WAC 246-272A-0130 Bacteriological reduction. This section establishes the requirements for registering bacteriological reduction processes.

(1) Manufacturers shall, for the purpose of product registration as described in WAC 246-272A-0110 and 246-272A-0120 for meeting treatment levels A, B, or C, verify bacteriological reduction performance by sampling for fecal coliform.

(a) For products not yet tested according to ANSI/NSF Standard 40 testing protocol dated July 1996 or later, the requirements of both ANSI/NSF Standard 40 and the protocol specified in subsection (2) of this section for verifying bacteriological reduction must be met.

(b) For products that have been tested according to ANSI/NSF Standard 40 dated July 1996 or later but have not yet been tested for bacteriological reduction, treatment performance of the treatment product or sequence may be established based on test results for $CBOD_5$ and TSS obtained from the previous ANSI/NSF Standard 40 testing and bacteriological reduction performance based on testing according to the protocol in subsection (2) of this section. Provided that the testing entity must verify the influent wastewater stream throughout the bacteriological testing period meets the influent threshold levels for $CBOD_5$ and TSS required by ANSI/NSF Standard 40 testing protocol.

(2) All test data submitted for product registration shall be produced by an ANSI accredited, third-party testing and certification organization whose accreditation is specific to on-site wastewater treatment products. Bacteriological reduction performance must be determined while the treatment product or sequence is tested according to the ANSI/NSF Standard 40 testing protocol. During this testing the following requirements apply:

(a) Collect samples from both the influent and effluent streams, identifying the treatment performance achieved by the full treatment process (component or sequence);

(b) Obtain influent characteristics falling within a range of 10^6 - 10^8 fecal coliform/100 mL calculated as thirty-day geometric means during the test.

(c) Test the influent to any disinfection unit and report the following at each occasion of sampling performed in (d) of this subsection:

(i) Flow rate;

(ii) pH;

(iii) Temperature;

(iv) Turbidity; and

(v) Color.

(d) Obtain samples for fecal coliform analysis ((~~throughout the testing period, including both design loading and stress loading recovery periods, as follows:~~

~~(i) Both an influent and an effluent grab sample must be taken during each of the three daily design loading periods on three separate days of each week; and~~

~~(ii) The three influent samples collected each day must be combined and analyzed as a single sample for that day. The effluent samples for each day must also be combined and analyzed as a single sample for that day~~)) during both the design loading and stress loading periods identified by NSF Standard 40. Grab samples shall be collected from both the influent and effluent on three separate days of the week. Each set of influent and effluent grab samples must be taken from a different dosing time frame (morning, afternoon, or evening) so that samples have been taken from each dosing time frame by the end of the week.

(e) Conduct analyses according to standard methods;

(f) Report the geometric mean of fecal coliform test results from all samples taken within thirty-day or monthly calendar periods;

(g) Report the individual results of all samples taken throughout the test period design and stress loading; and

(h) Report all maintenance and servicing conducted during the testing period, including for example, instances of cleaning a UV lamp, or replenishment of chlorine chemicals.

(3) Manufacturers may register products in treatment levels A and B using disinfection.

(4) Manufacturers may not register products for treatment level C using disinfection.

WSR 06-01-024
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed December 13, 2005, 11:39 a.m., effective January 13, 2006]

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

Purpose: The division of developmental disabilities has received initial approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four home and community based service (HCBS) waivers, which replaced the community alternatives program (CAP) waiver. These rules will clarify eligibility, service array, utilization, provider qualifications, client appeal rights and access to services. This filing includes a new chapter 388.845 WAC. When effective, these rules replace the emergency rules filed as WSR 05-19-044.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.12 [71A.12.120].

Other Authority: Chapter 71A.12 RCW.

Adopted under notice filed as WSR 05-17-055 on August 9, 2005.

Changes Other than Editing from Proposed to Adopted Version: The wording in WAC 388-845-0035, 388-845-0040 and 388-845-0045 has been changed to read "enrolled in a waiver."

WAC 388-845-0050 has been changed to reflect that all requests for enrollment in a waiver are documented in a DDD database.

WAC 388-845-0051 has been expanded to clarify that notice will be sent for a denial of a request to be enrolled in a waiver.

WAC 388-845-0050(2) has been changed to read: "When there is capacity to enroll additional people in a waiver, WAC 388-845-0045 describes how DDD will determine who will be enrolled."

WAC 388-845-0065(2) has been changed to read: "Your eligibility for nonwaiver state-only funded DDD services…"

A cross-reference to WAC 388-845-1500 has been added to WAC 388-845-0710.

Cross-reference to WAC 388-845-1505 and 388-845-1510 have been added to WAC 388-845-0750.

WAC 388-845-3080 (1)(a) and 388-845-3085 (1)(a) have been changed to read: "Identify more available natural supports."

WAC 388-845-3080(4) and 388-845-3085(3) have been changed to read: "… you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by the availability of funding …"

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 5310, Olympia, WA 98507-5310,

phone (360) 725-3416, fax (360) 407-0955, e-mail brinksc@dshs.wa.gov. There are no changes to the preliminary cost-benefit analysis.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 131, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 131, 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: December 9, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-03 issue of the Register.

WSR 06-01-026
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed December 13, 2005, 11:54 a.m., effective January 13, 2006]

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

Purpose: The purpose of this rule is to explain the various commute trip reduction incentives that are available. First, RCW 82.04.355 and 82.16.047 provide exemptions from business and occupation (B&O) tax and public utility tax on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs. RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride-sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or public utility tax credit in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting. The department is revising this rule to reflect legislative changes provided by chapter 364, Laws of 2003 and chapter 297, Laws of 2005, and to clarify the application of taxes. The rule has been reformatted into a question and answer format to provide the information in a more useful manner.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-261 Commute trip reduction incentives.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 05-19-028 on September 12, 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 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: December 13, 2005.

Janis P. Bianchi, Manager
Interpretations and Technical Advice Unit

AMENDATORY SECTION (Amending WSR 00-11-097, filed 5/17/00, effective 6/17/00)

WAC 458-20-261 ((~~Exemptions and credits for ride sharing, public transportation, and nonmotorized commuting.~~)) Commute trip reduction incentives. (1) **Introduction.** ((~~This section explains the various tax credits and exemptions which apply in connection with ride sharing, public transportation, and nonmotorized commuting.~~

~~(2) Definitions. For purposes of this section, the following definitions apply, unless otherwise required by the context.~~

~~(a) "Ride sharing" and "commuter ride sharing" mean a car pool or van pool arrangement whereby one or more fixed groups not exceeding fifteen persons each including the drivers, and (i) not fewer than five persons including the drivers, or (ii) not fewer than four persons including the drivers where at least two of those persons are confined to wheelchairs when riding, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment. The transportation must be between their places of abode or termini near such places, and their places of employment or educational or other institutions, each group in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institution. The terms include ride sharing on Washington state ferries.~~

~~(b) "Ride sharing for persons with special transportation needs" means an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010(3) in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs.~~

~~(c) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation.~~

(d) "Public transportation" means the transportation of passengers by means other than chartered or sightseeing bus, together with necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. It includes passenger services of the Washington state ferries.

(e) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor. It does not include teleworking.

(3) Business and occupation tax and public utility tax exemptions. Amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs are exempt from the business and occupation tax and from the public utility tax. RCW 82.04.355 and 82.16.047.

(4) Retail sales tax exemption. RCW 82.08.0287 provides a retail sales tax exemption for sales of passenger motor vehicles as ride-sharing vehicles.

(a) Sales tax does not apply to sales of passenger motor vehicles used for commuter ride sharing or ride sharing for persons with special transportation needs if the vehicles are exempt from motor vehicle excise tax under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption from sales tax. If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must notify the department of revenue and pay the tax.

(b) Vehicles with five or six passengers, including driver, used for commuter ride sharing must be operated within a county having a commute trip reduction plan under chapter 70.94 RCW in order to be purchased without payment of sales tax. In addition, for the exemption to apply at least one of the following conditions must apply:

(i) The vehicle must be operated by a public transportation agency for the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

(5) Use tax exemption. RCW 82.12.0282 provides a use tax exemption for the use of passenger motor vehicles as ride-sharing vehicles.

(a) Use tax does not apply to the use of passenger motor vehicles used for commuter ride sharing or ride sharing for persons with special transportation needs if the vehicles are exempt from motor vehicle excise tax under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption from use tax. If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must notify the department of revenue and pay the tax.

(b) Vehicles with five or six passengers, including driver, used for commuter ride sharing must be operated within a county having a commute trip reduction plan under chapter 70.94 RCW in order to be purchased without payment of sales tax. In addition, for the exemption to apply at least one of the following conditions must apply:

(i) The vehicle must be operated by a public transportation agency for the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

(6) Business and occupation tax and public utility tax credit. The credit program described in this subsection expires December 31, 2000. Employers in Washington are allowed a credit against their business and occupation tax and public utility tax liability for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, using public transportation, or using nonmotorized commuting. Property managers who manage worksites in Washington are allowed a credit against their business and occupation tax and public utility tax liability for amounts paid to or on behalf of persons employed at those worksites for ride sharing in vehicles carrying two or more persons, using public transportation, or using nonmotorized commuting. RCW 82.04.4453 and 82.16.048. Property managers became eligible for these credits on July 25, 1999. Chapter 402, Laws of 1999.

(a) In general, the amount of the credit for employers is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year. For property managers, the amount of the credit, in most cases, is equal to the amount paid to or on behalf of each person employed at the worksite, but may not exceed sixty dollars per employee per year. However, for ride sharing in vehicles carrying two persons, the credit for both employers and property managers is equal to the amount paid to or on behalf of each employee multiplied by thirty percent, but may not exceed sixty dollars per employee per year. The credit is based upon amounts paid to or on behalf of individual employees, and may not be based upon an average of amounts paid to or on behalf of employees for qualifying purposes.

(b) The credit may not exceed the amount of business and occupation tax or public utility tax that would otherwise be due for the same calendar year after all other credits are applied.

(c) A person may not receive credit for amounts paid to or on behalf of the same employee under both the business and occupation tax and the public utility tax.

(d) A person may not take a credit for amounts claimed for credit by other persons.

(e) The total credit received by a person against both the business and occupation tax and the public utility tax may not exceed one hundred thousand dollars for a calendar year.

(f) The total credit granted to all persons under both the business and occupation tax and the public utility tax may not exceed two million two hundred fifty thousand dollars for a calendar year. The total credit granted may be limited to less than two million two hundred fifty thousand dollars for any

~~particular calendar year, depending on the availability of funding.~~

~~(g) No credit or portion of a credit denied because of exceeding the limitations in (e) or (f) of this subsection may be used against tax liability for other calendar years.~~

~~(7) Credit procedures. This subsection explains the procedures used in the credit program described in subsection (6) of this rule.~~

~~(a) Persons apply for the credit by completing a ride share credit reporting schedule and filing it with the combined excise tax return covering the period for which the credit is claimed. The ride share credit reporting schedule is available upon request from the department of revenue.~~

~~(b) Persons may not apply for the credit more frequently than once per quarter nor less frequently then once per year against taxes due for the same calendar year in which the amounts for which credit is claimed were paid to or on behalf of employees.~~

~~(c) Credit must be claimed by the due date of the last tax return for the calendar year in which the payment to or on behalf of employees was made.~~

~~(i) Credit not previously claimed may not be claimed for the first time on supplemental or amended tax returns filed after the due date of the last tax return for the calendar year in which the payment to or on behalf of employees was made.~~

~~(ii) If the department of revenue has granted an extension of the due date for the last tax return for the calendar year in which the payment to or on behalf of employees was made, the credit must be claimed by the extended due date.~~

~~(d) The department of revenue tabulates the amount of credit taken by all persons on a quarterly basis. If the annual allowable amount of credit is exceeded in a given quarter, no further credit will be allowed in succeeding quarters in the same calendar year. For the quarter in which the maximum is exceeded, the department of revenue calculates the amount of credit available at the beginning of the quarter and determines the proportional share of that amount for every person who has claimed a credit in the quarter. These persons are billed for the difference between the amount of credit they claimed and the prorated amount of credit for which they are eligible.~~

~~(8) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.~~

~~(a) An employer pays one hundred eighty dollars for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of fifty dollars. This is the total expenditure during a calendar year of amounts paid to or on behalf of employees in support of ride sharing, using public transportation, and using nonmotorized commuting. The employer may claim a credit of sixty dollars for the amount spent for the employee using the bus pass. Fifty percent of one hundred eighty dollars is ninety dollars, but the credit is limited to sixty dollars per employee. The employer may claim a credit of twenty-five dollars (fifty percent of fifty dollars) for the amount spent for the employee who bicycles to work. Even though fifty percent of two hundred thirty dollars, the amount spent on both employees, works out to be less than sixty dollars per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.~~

~~(b) An employer provides parking spaces for the exclusive use of ride-sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride-sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.~~

~~(c) As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit, if it does not cause the sixty dollar limitation to be exceeded, because it is an amount paid on behalf of a specific employee.~~

~~(d) An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.~~)) This rule explains the various commute trip reduction incentives that are available. First, RCW 82.04.355 and 82.16.047 provide exemptions from business and occupation (B&O) tax and public utility tax on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs. RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride-sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or public utility tax credit, effective July 1, 2003, in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **B&O tax and public utility tax exemptions on providing commuter ride sharing or ride sharing for persons with special transportation needs.** Amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs are exempt from the business and occupation tax and from the public utility tax. RCW 82.04.355 and 82.16.047.

(a) **What is "commuter ride sharing"?** "Commuter ride sharing" means a car pool or van pool arrangement, whereby one or more fixed groups:

(i) Not exceeding fifteen persons each, including the drivers; and

(ii) Either:

(A) Not fewer than five persons, including the drivers; or

(B) Not fewer than four persons, including the drivers, where at least two of those persons are confined to wheelchairs when riding;

Are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational

or other institutions. Each group must be in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institutions.

(b) **What is "ride sharing for persons with special transportation needs"?** "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs.

(i) **What is a "private, nonprofit transportation provider"?** A "private, nonprofit transportation provider" is any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs.

(ii) **What is "persons with special transportation needs"?** "Persons with special transportation needs" are those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation.

(3) **Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ride-sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles.

(a) **What are the requirements?** The requirements are that the passenger motor vehicles must be used:

(i) For commuter ride sharing or ride sharing for persons with special transportation needs; and

(ii) As ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must pay the retail sales tax or use tax.

(b) **Additional requirements in certain cases.** Vehicles with five or six passengers, including the driver, used for commuter ride sharing must be operated within a county, or a city or town within that county, which has a commute trip reduction plan under chapter 70.94 RCW in order to be exempt from retail sales tax or use tax. In addition, for the exemptions to apply, at least one of the following conditions must apply:

(i) The vehicle must be operated by a public transportation agency for the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

Individual-employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commute ride-sharing arrangement conforms to a car pool/van pool element contained within their commute trip reduction program.

(4) **B&O tax or public utility tax credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** Effective July 1, 2003, RCW 82.70.020 provides a credit against B&O tax or public utility tax liability for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) **What is "ride sharing"?** "Ride sharing" means a car pool or van pool arrangement, whereby a group of at least two but not exceeding fifteen persons, including the driver, is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. The driver must also be on the way to or from his or her place of employment or educational or other institution. "Ride sharing" includes ride sharing on Washington state ferries.

(c) **What is "public transportation"?** "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries.

(d) **What is "car sharing"?** "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(e) **What is "nonmotorized commuting"?** "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(f) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each

employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year.

(g) **What is a "fiscal year"?** A "fiscal year" begins at July 1st of one year and ends on June 30th of the following year.

(h) **When will the credit expire?** The credit program is scheduled to expire July 1, 2013.

(i) **What are the limitations of the credit?**

(i) **For periods after June 30, 2005:**

(A) The credit may not exceed the amount of B&O tax or public utility tax that would otherwise be due for the same fiscal year.

(B) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and public utility tax.

(C) A person may not take a credit for amounts claimed for credit by other persons.

(D) Total credit received by a person against both B&O tax and public utility tax may not exceed two hundred thousand dollars for a fiscal year. This limitation does not apply to credits deferred from prior fiscal years as described in (i)(i)(G) and (H) of this subsection.

(E) Total credit granted to all persons under both B&O tax and public utility tax may not exceed two million seven hundred fifty thousand dollars for a fiscal year, including any credits carried forward from prior fiscal years as described in (i)(i)(G) of this subsection.

(F) No credit or portion of a credit denied, because of exceeding the limitations in (i)(i)(D) or (E) of this subsection, may be used against tax liability for other fiscal years, subject to (i)(i)(G) and (H) of this subsection.

(G) A person, with B&O tax and public utility tax liability equal to or in excess of the credit for a fiscal year, may use all or part of the credit deferred prior to July 1, 2005, for a period of not more than three fiscal years after the fiscal year in which the credit accrued. No credit deferred under this (i)(i)(G) may be used after June 30, 2008. The person must submit an application, as provided in (j)(i)(A) of this subsection, in the fiscal year tax credit will be applied, and the credit must be approved by the department before use. This application is subject to eligibility under (i)(i)(E) of this subsection for the fiscal year tax credit will be applied. If a deferred credit is subject to proportional reduction under (j)(i)(D) of this subsection, the amount of deferred credit reduced may be carried forward as long as the period of deferral does not exceed three years after the year the credit was earned.

(H) For deferred credit approved by the department after June 30, 2005, the approved credit may be carried forward to subsequent years until used. The limitation described in (i)(i)(E) of this subsection does not apply to such deferred credit approved after June 30, 2005.

(I) No person is eligible for the tax credit, including the deferred tax credit authorized under (i)(i)(G) and (H) of this subsection, after June 30, 2013.

(J) No person is eligible for tax credit if the additional revenues for the multimodal transportation account created under RCW 46.68.035(1), 82.08.020(3), 82.12.045(7), 46.16.233(2), and 46.16.690 (created by the Engrossed Substitute House Bill No. 2231, chapter 361, Laws of 2003) are terminated.

(ii) **For periods prior to July 1, 2005:**

(A) The credit may not exceed the amount of B&O tax or public utility tax that would otherwise be due for the same fiscal year.

(B) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and public utility tax.

(C) A person may not take a credit for amounts claimed for credit by other persons.

(D) Total credit received by a person against both B&O tax and public utility tax may not exceed two hundred thousand dollars for a fiscal year. This limitation does not apply to credits deferred from prior fiscal years as described in (i)(ii)(G) of this subsection.

(E) Total credit granted to all persons under both B&O tax and public utility tax may not exceed two million two hundred fifty thousand dollars for a fiscal year, including any credits carried forward from prior fiscal years as described in (i)(ii)(G) of this subsection.

(F) No credit or portion of a credit denied, because of exceeding the limitations in (i)(ii)(D) or (E) of this subsection, may be used against tax liability for other fiscal years, subject to (i)(ii)(G) of this subsection.

(G) A person, with B&O tax and public utility tax liability equal to or in excess of the credit for a fiscal year, may defer all or part of the credit for a period of not more than three fiscal years after the fiscal year in which the credit accrued. Such person deferring tax credit must submit an application in the fiscal year tax credit will be applied. This application is subject to eligibility under (i)(ii)(E) of this subsection for the fiscal year tax credit will be applied.

(H) No person is eligible for the tax credit, including the deferred tax credit authorized under (i)(ii)(G) of this subsection, after June 30, 2013.

(I) No person is eligible for tax credit if the additional revenues for the multimodal transportation account created under RCW 46.68.035(1), 82.08.020(3), 82.12.045(7), 46.16.233(2), and 46.16.690 (created by the Engrossed Substitute House Bill No. 2231, chapter 361, Laws of 2003) are terminated.

(j) **What are the credit procedures?**

(i) **For periods after June 30, 2005:**

(A) Persons applying for the credit must complete an application. The application must be received by the department between January 1 and January 31, following the calendar year in which the applicants made incentive payments. The application must be made to the department in a form and manner prescribed by the department.

(B) An application due by January 31, 2006, must not include incentive payments made from January 1, 2005, to June 30, 2005.

(C) The department must rule on an application within sixty days of the January 31 deadline. In addition, the department must disapprove an application not received by the January 31 deadline. Once the application is approved and tax credit is granted, the department is not allowed to increase the credit.

(D) If the total amount of credit applied for by all applicants in a fiscal year exceeds the limitation as provided in (i)(i)(E) of this subsection, the amount of credit allowed for

all applicants is proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years, except as provided in (i)(i)(G) of this subsection.

(ii) **For periods prior to July 1, 2005:**

(A) Persons apply for the credit, by completing a commute trip reduction reporting schedule and filing it with the excise tax return covering the period for which the credit is claimed. The commute trip reduction reporting schedule is available upon request from the department of revenue.

(B) Credit must be claimed by the due date of the last tax return for the fiscal year in which the payment to or on behalf of employees was made.

(I) Credit not previously claimed may not be claimed for the first time on supplemental or amended tax returns filed after the due date of the last tax return for the fiscal year in which the payment to or on behalf of employees was made.

(II) If the department of revenue has granted an extension of the due date for the last tax return for the fiscal year in which the payment to or on behalf of employees was made, the credit must be claimed by the extended due date.

(C) Once the statewide limitation of two million two hundred fifty thousand dollars is reached in a fiscal year, no further credit will be available for that fiscal year. Credit is permitted by the department of revenue on a first-come-first-serve basis. Credit claimed after the statewide limitation is reached may be deferred to the next three fiscal years before the credit expires.

(k) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) An employer pays one hundred eighty dollars for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of fifty dollars. These are the total expenditures during a fiscal year of amounts paid to or on behalf of employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of sixty dollars for the amount spent for the employee using the bus pass. Fifty percent of one hundred eighty dollars is ninety dollars, but the credit is limited to sixty dollars per employee. The employer may claim a credit of twenty-five dollars (fifty percent of fifty dollars) for the amount spent for the employee who bicycles to work. Even though fifty percent of two hundred thirty dollars, the amount spent on both employees, works out to be less than sixty dollars per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) An employer provides parking spaces for the exclusive use of ride-sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride-sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit, if it does not cause the sixty-dollar limitation to be exceeded, because it is an amount paid on behalf of a specific employee.

(iv) An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

WSR 06-01-039
PERMANENT RULES
STATE BOARD OF EDUCATION

[Filed December 15, 2005, 2:19 p.m., effective January 15, 2006]

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

Purpose: The amendment eliminates a possible loophole that might allow a school bus driver to retain his/her authorization even if convicted of certain conduct or alleged to have in certain conduct relating to the job of a bus driver.

Citation of Existing Rules Affected by this Order: Amending WAC 180-20-103 Disqualifying conditions for authorized school bus drivers.

Statutory Authority for Adoption: RCW 28A.160.210.

Adopted under notice filed as WSR 05-22-079 on November 1, 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 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: December 12, 2005.

December 14, 2005
Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-103 Disqualifying conditions for authorized school bus drivers. A school bus driver's authorization

will be denied or revoked as a result of the following conditions:

(1) Misrepresenting or concealing a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

(2) Having a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding five years or have had their commercial driver's license disqualified, suspended, or revoked within the preceding five years; a certified copy of the disqualification, suspension, or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension, or revocation.

(3) Incurring three or more speeding tickets of ten miles per hour or more over the speed limit within the last five years.

(4) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a lapsed, suspended, surrendered, or revoked school bus driver's authorization in a position for which authorization is required under this chapter.

(5) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended or revoked driver's license or a suspended, disqualified or revoked commercial driver's license.

(6) Having refused to take a drug or alcohol test as required by the provisions of 49 CFR 382 within the preceding five years. Provided, That this requirement shall not apply to any refusal to take a drug or alcohol test prior to January 31, 2005.

(7) Having a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other coworkers.

(8) Having been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a plea of guilty or *nolo contendere* is the basis for the conviction) or being under a deferred prosecution under chapter 10.05 RCW ((~~where the conduct or alleged conduct is related to the occupation of a school bus driver~~)), including, but not limited to, the following:

(a) The physical neglect of a child under chapter 9A.42 RCW;

(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;

(c) The sexual exploitation of a child under chapter 9.68A RCW;

(d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;

(e) The promotion of prostitution of a child under chapter 9A.88 RCW;

(f) The sale or purchase of a child under RCW 9A.64.030;

(g) Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription drug within the last ten years;

(h) Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last five years;

(i) Provided, That the general classes of felony crimes referenced within this subsection shall include equivalent federal crimes and crimes committed in other states;

(j) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;

(k) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea.

(9) Having been convicted of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver, the following and any other relevant considerations shall be weighed:

(a) Age and maturity at the time the criminal act was committed;

(b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;

(c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;

(d) Criminal history and the likelihood that criminal conduct will be repeated;

(e) The permissibility of service as an authorized school bus driver within the terms of any parole or probation;

(f) Proximity or remoteness in time of the criminal conviction;

(g) Any evidence offered which would support good moral character and personal fitness;

(h) If this subsection is applied to a person currently authorized as a school bus driver in a suspension or revocation action, the effect on the school bus driving profession, including any chilling effect, shall be weighed; and

(i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or authorized school bus driver has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or authorized school bus driver.

WSR 06-01-045
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed December 15, 2005, 4:33 p.m., effective January 15, 2006]

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

Purpose: To amend WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)?, this rule change is necessary to increase state supplemental payments

to individuals residing in nursing facilities by $10 per month as mandated by the 2005 legislative session, ESSB 6090 (section 207, chapter 518, Laws of 2005).

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0055.

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

Adopted under notice filed as WSR 05-22-100 on November 1, 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: December 12, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-07-024, filed 3/8/04, effective 4/8/04)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Monthly SSP Rate
Individual (aged 65 and older) - Calendar Year ((~~2004~~)) 2005	$46.00
Individual (blind as determined by SSA) - Calendar Year ((~~2004~~)) 2005	$46.00
Individual with an ineligible spouse - Calendar Year ((~~2004~~)) 2005	$46.00
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between $0.54 and $199.77.

Medical institution	Monthly SSP Rate
Individual	$((~~11.62~~)) 21.62

WSR 06-01-046
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed December 15, 2005, 4:35 p.m., effective January 15, 2006]

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

Purpose: The purpose of the new language in WAC 388-112-0020, 388-112-0060, 388-112-0090, 388-112-0210, 388-112-0245, 388-112-0260, and 388-112-0315 is to clarify standards and expectations regarding the integration of safe food handling training into the required training and continuing education, as required by SHB 1591, chapter 505, Laws of 2005. The statute requires that:

- The department's curricula meet the standards established by the state board of health pursuant to chapter 69.06 RCW. This includes the addition of a separate section of safe food handing questions be a part of the basic and modified training competency testing.
- Caregivers working in adult family homes receive information on safe food handling practices from the employer before providing food handling service for clients.
- The addition of .5 hours per year of safe food handling continuing education for adult family home caregivers in order to maintain food handling and safety training.

The purpose of new language in WAC 388-112-0255 is to add content requirements for first-aid training.

Citation of Existing Rules Affected by this Order: Amending WAC 388-112-0020, 388-112-0060, 388-112-0090, 388-112-0210, 388-112-0245, 388-112-0255, 388-112-0260, and 388-112-0315.

Statutory Authority for Adoption: RCW 18.20.090, 70.128.040, 70.128.230.

Other Authority: Chapter 505, Laws of 2005.

Adopted under notice filed as WSR 05-21-099 on October 18, 2005.

Changes Other than Editing from Proposed to Adopted Version:

- WAC 388-112-0210(13) and 388-112-0245(3): Language was amended to specify that these items pertain to adult family homes.
- WAC 388-112-0255: Language was added to state "Successful completion of First Aid training, following the OSHA guidelines, also serves as proof of CPR training."

A final cost-benefit analysis is available by contacting Tiffany Sevruk, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2538, fax (360) 407-7582, e-mail sevruta@dshs.wa.gov. There are no changes to the preliminary cost-benefit analysis.

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 7, 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 8, Repealed 0.

Date Adopted: December 12, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0020 What content must be included in an orientation? Orientation may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Orientation must include introductory information in the following areas:

(1) The care setting;

(2) The characteristics and special needs of the population served;

(3) Fire and life safety, including:

(a) Emergency communication (including phone system if one exists);

(b) Evacuation planning (including fire alarms and fire extinguishers where they exist);

(c) Ways to handle resident injuries and falls or other accidents;

(d) Potential risks to residents or staff (for instance, aggressive resident behaviors and how to handle them); and

(e) The location of home policies and procedures.

(4) Communication skills and information, including:

(a) Methods for supporting effective communication among the resident/guardian, staff, and family members;

(b) Use of verbal and nonverbal communication;

(c) Review of written communications and/or documentation required for the job, including the resident's service plan;

(d) Expectations about communication with other home staff; and

(e) Whom to contact about problems and concerns.

(5) Universal precautions and infection control, including:

(a) Proper hand washing techniques;

(b) Protection from exposure to blood and other body fluids;

(c) Appropriate disposal of contaminated/hazardous articles;

(d) Reporting exposure to contaminated articles, blood, or other body fluids; and

(e) What staff should do if they are ill.

(6) Resident rights, including:

(a) The resident's right to confidentiality of information about the resident;

(b) The resident's right to participate in making decisions about the resident's care, and to refuse care;

(c) Staff's duty to protect and promote the rights of each resident, and assist the resident to exercise his or her rights;

(d) How and to whom staff should report any concerns they may have about a resident's decision concerning the resident's care;

(e) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of a resident;

(f) Advocates that are available to help residents (LTC ombudsmen, organizations); and

(g) Complaint lines, hot lines, and resident grievance procedures.

(7) In Adult Family Homes, safe food handling information must be provided to all staff, prior to handling food for residents.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0060 Is competency testing required for basic training? Passing the DSHS competency test is required for successful completion of basic training as provided under WAC 388-112-0290 through 388-112-0315.

For licensed adult family home providers and employees, successfully completing basic training includes passing the safe food handling section or obtaining a valid food handler permit.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0090 Is competency testing required for modified basic training? Passing the DSHS competency test is required for successful completion of modified basic training as provided in WAC 388-112-0290 through 388-112-0315.

For licensed adult family home providers and employees, successfully completing modified basic training includes

passing the safe food handling section or obtaining a valid food handler permit.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0210 What kinds of training topics are required for continuing education? Continuing education must be on a topic relevant to the care setting and care needs of residents, including but not limited to:

(1) Resident rights;
(2) Personal care (such as transfers or skin care);
(3) Mental illness;
(4) Dementia;
(5) Developmental disabilities;
(6) Depression;
(7) Medication assistance;
(8) Communication skills;
(9) Positive resident behavior support;
(10) Developing or improving resident centered activities;
(11) Dealing with wandering or aggressive resident behaviors; ((~~and~~))
(12) Medical conditions; and
(13) In adult family homes, safe food handling.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0245 Who is required to complete continuing education training, and when? Adult Family Homes

(1) Adult family home providers (including entity representatives as defined under chapter 388-76 WAC), resident managers, and caregivers must complete ten hours of continuing education each calendar year (January 1 through December 31) after the year in which they successfully complete basic or modified basic training.

(2) Continuing education must be on a topic relevant to the care setting and care needs of residents in adult family homes.

(3) Continuing education must include 0.5 hours per year on safe food handling in adult family homes.

Boarding Homes

(((~~3~~))) (4) Boarding home administrators (or their designees) and caregivers must complete ten hours of continuing education each calendar year (January 1 through December 31) after the year in which they successfully complete basic or modified basic training. A boarding home administrator with a current nursing home administrator license is exempt from this requirement.

(((~~4~~))) (5) Continuing education must be on a topic relevant to the care setting and care needs of residents in boarding homes.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0255 What is first-aid training? First-aid training is training that meets the ((~~content requirements in WAC 296-800-15010~~)) guidelines established by the Occupational Safety and Health Administration and listed at www.osha.gov. Topics include:

(1) General program elements, including:
(a) Responding to a health emergency;
(b) Surveying the scene;
(c) Basic Cardiopulmonary Resuscitation (CPR);
(d) Basic First Aid intervention;
(e) Standard precautions;
(f) First aid supplies; and
(g) Trainee assessments.
(2) Type of injury training, including:
(a) Shock;
(b) Bleeding;
(c) Poisoning;
(d) Burns;
(e) Temperature extremes;
(f) Musculoskeletal injuries;
(g) Bites and stings;
(h) Confined spaces; and
(i) Medical emergencies; including heart attack, stroke, asthma attack, diabetes, seizures, and pregnancy.
(3) Site of injury training, including:
(a) Head and neck;
(b) Eye;
(c) Nose;
(d) Mouth and teeth;
(e) Chest;
(f) Abdomen; and
(g) Hand, finger and foot.
(4) Successful completion of First Aid training, following the OSHA guidelines, also serves as proof of the CPR training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0260 What are the CPR and first-aid training requirements? Adult Family Homes

(1) Adult family home providers and resident managers must possess a valid CPR and first-aid card or certificate prior to providing care for residents, and must maintain valid cards or certificates.

(2) Licensed nurses working in adult family homes must possess a valid CPR card or certificate within thirty days of employment and must maintain a valid card or certificate. If the licensed nurse is an adult family home provider or resident manager, the valid CPR card or certificate must be obtained prior to providing care for residents.

(3) Adult family home caregivers must obtain and maintain a valid CPR and first-aid card or certificate:

(a) Within thirty days of beginning to provide care for residents, if the provision of care for residents is directly supervised by a fully qualified caregiver who has a valid first-aid and CPR card or certificate; or

(b) Before providing care for residents, if the provision of care for residents is not directly supervised by a fully qualified caregiver who has a valid first-aid and CPR card or certificate.

(((~~(3) Adult family home caregivers must maintain valid CPR and first-aid cards or certificates.~~)))

Boarding Homes

(4) Boarding home administrators who provide direct care, and caregivers must possess a valid CPR and first-aid card or certificate within thirty days of employment, and must maintain valid cards or certificates. ((~~Boarding home~~)) Licensed nurses working in boarding homes must possess a valid CPR card or certificate within thirty days of employment, and must maintain a valid card or certificate.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0315 How many times may a competency test be taken? (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered. Licensed adult family providers and employees who fail the food handling section of the basic training competency test a second time, must obtain a valid food worker permit.

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

WSR 06-01-047
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed December 15, 2005, 4:40 p.m., effective January 15, 2006]

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

Purpose: Chapter 388-78A WAC was amended to make the rule clearer; to eliminate redundancies and inconsistencies with other rules and statutes; to expand options for boarding homes to provide adult day services and thereby create more options for consumers; to respond in part to chapter 505, Laws of 2005, and to create more training options for boarding home administrators.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020, 388-78A-2050, 388-78A-2100, 388-78A-2120, 388-78A-2270, 388-78A-2280, 388-78A-2300, 388-78A-2305, 388-78A-2360, 388-78A-2380, 388-78A-2470, 388-78A-2480, 388-78A-2500, 388-78A-2510, 388-78A-2520, 388-78A-2660, 388-78A-2700, 388-78A-2910, 388-78A-2920, 388-78A-2930, 388-78A-2940, 388-78A-2960, 388-78A-2990, 388-78A-3010, 388-78A-3030, 388-78A-3040, 388-78A-3090, 388-78A-3190, and 388-78A-3220.

Statutory Authority for Adoption: RCW 18.20.090.

Adopted under notice filed as WSR 05-20-079 on October 4, 2005.

Changes Other than Editing from Proposed to Adopted Version: "Resident" was deleted from WAC 388-78A-2360 (2)(i). The final rule for WAC 388-78A-2360 (2)(i) reads: "Maintain a record for each adult day services client."

"Or resident" was deleted from the proposed wording of WAC 388-78A-2660(7). The final rule for WAC 388-78A-2660(7) reads: The boarding home must: (7) "Not allow any staff person to abuse or neglect any resident."

A final cost-benefit analysis is available by contacting Denny McKee, ADSA Residential Care Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2590, fax (360) 438-7903, e-mail mckeedd@dshs.wa.gov. There are no changes to the preliminary cost-benefit analysis.

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 1, Amended 29, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 29, Repealed 0.

Date Adopted: December 12, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-03 issue of the Register.

WSR 06-01-055
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 16, 2005, 12:04 p.m., effective January 16, 2006]

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

Purpose: Currently, WAC 246-282-005 references the United States Food and Drug Administration's (FDA) 1999 National Shellfish Sanitation Program (NSSP) Model Ordinance, which all shellfish producing states are required to follow in order to place molluscan shellfish into interstate commerce. The FDA evaluates each state's shellfish sanitation control program to ensure compliance with the NSSP. The FDA has adopted a 2003 version of the Model Ordinance, leaving WAC 246-282-005 out of date. An update of WAC 246-282-005 is needed to assure that Washington state remains in compliance with the NSSP, and that molluscan shellfish products from the state can continue to be placed into interstate commerce. This proposed rule will update the reference to the current document, the 2003 NSSP Guide for the Control of Molluscan Shellfish. The state board of health delegated this rule-making activity to the department of health at their meeting on July 13, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-005.

Statutory Authority for Adoption: RCW 69.30.030.

Adopted under notice filed as WSR 05-21-124 on October 19, 2005.

Changes Other than Editing from Proposed to Adopted Version: The proposed rule as published in WSR 05-21-124 did not correct one reference to the 1999 Model Ordinance. The proposed text of WAC 246-282-005(2) has been amended to correct this oversight.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: December 16, 2005.

M. C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((~~1999~~)) 2003 National Shellfish Sanitation Program (NSSP) ((~~Model Ordinance~~)) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of food safety and shellfish programs);

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP ((~~Model Ordinance~~)) Guide for the Control of Molluscan Shellfish or a provision of 21 CFR, Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

WSR 06-01-073
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 20, 2005, 9:51 a.m., effective March 1, 2006]

Effective Date of Rule: March 1, 2006.

Purpose: The department rewrote and clarified requirements relating to fire brigades. The department repealed the rules in chapter 296-24 WAC and adopted fire brigades as new chapter 296-811 WAC. This rule making is part of our goal to rewrite all of WISHA's general occupational safety and health rules for clarity.

AMENDED SECTIONS:

WAC 296-78-71011 Egress and exit.

- Added a reference to the new fire brigade chapter.

WAC 296-79-040 Fire protection, ignition sources and means of egress.

- Updated a reference.

WAC 296-305-01003 Scope and application.

- Updated a reference.

NEW CHAPTER:

- **Chapter 296-811 WAC, Fire brigades.**

NEW SECTIONS:

WAC 296-811-100 Scope.

- Added language to this section relating to what this chapter covers.

WAC 296-811-200 Section contents.

- This section is a short table of contents of the sections located in this three-digit WAC number.

WAC 296-811-20005 Organizing statement.

- This section requires that a written fire brigade statement is available for inspection by employees. Elements of this statement are located in this section.
- The requirements in this section were located in WAC 296-24-58507. No new requirements have been added.

WAC 296-811-20010 Physical capability of brigade members.

- This section requires that brigade members who are assigned to fight interior structural fires are physically capable of doing that activity.
- The requirements in this section were located in WAC 296-24-58507 and 296-24-58517. No new requirements have been added.

WAC 296-811-300 Section contents.

- This section is a short table of contents of the sections located in this three-digit WAC number.

WAC 296-811-30005 Special hazards.

- This section requires written procedures to be developed relating to the special hazards of a fire brigade.
- The requirements in this section were located in WAC 296-24-58509. No new requirements have been added.

WAC 296-811-30010 Firefighting training.

- This section requires firefighting training.
- The requirements in this section were located in WAC 296-24-58509 and 296-24-58517. No new requirements have been added.

WAC 296-811-400 Section contents.

- This section is a short table of contents of the sections located in this three-digit WAC number.

WAC 296-811-40005 Firefighting equipment.

- This section requires providing and maintaining firefighting equipment.
- The requirements in this section were located in WAC 296-24-58511. No new requirements have been added.

WAC 296-811-40010 Protective clothing.

- This section requires providing appropriate personnel protective equipment for fire brigade members.
- The requirements in this section were located in WAC 296-24-58513. No new requirements have been added.

WAC 296-811-40015 Self-contained breathing apparatuses (SCBAs).

- This section contains requirements relating to SCBAs.
- The requirements in this section were located in WAC 296-24-58515 and 296-24-58517. No new requirements have been added.

WAC 296-811-500 Section contents.

- This section is a short table of contents of the sections located in this three-digit WAC number.

WAC 296-811-50005 Brigade members in interior structural fires.

- This section contains the requirements in an "Immediately Dangerous to Life or Health" (IDLH) and standby assistance situation.
- The requirements in this section were located in WAC 296-24-58516. No new requirements have been added.

WAC 296-811-600 Definitions.

- This section contains applicable definitions relating to fire brigades. They are: Approved, buddy-breathing device, education, extinguisher classification, extinguisher rating, fire brigade, fire classifications, flammable, incipient fire stage, inspection, interior structural firefighting, maintenance, positive-pressure breathing apparatus, quick-disconnect valve, and training.

REPEALED SECTIONS:

WAC 296-24-58505 Fire brigades, 296-24-58507 Organization, 296-24-58509 Training and education, 296-24-58511 Fire fighting equipment, 296-24-58513 Protective clothing, 296-24-58515 Respiratory protection devices, 296-24-58516 Procedures for interior structural fire fighting, and 296-24-58517 Appendix A—Fire brigades.

- Requirements in this section were moved to chapter 296-811 WAC, Fire brigades.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-24-58505, 296-24-58507, 296-24-58509, 296-24-58511, 296-24-58513, 296-24-58515, 296-24-58516 and 296-24-58517; and amending WAC 296-78-71011, 296-79-040, and 296-305-01003.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 05-19-085 on September 20, 2005.

Changes Other than Editing from Proposed to Adopted Version: There are no costs to assess on the changes from proposed to adopted.

WAC 296-811-200 Section contents.

- This section is a short table of contents of the sections located in this three-digit WAC number.
- Added a title to this contents page. It is called "Establishing a fire brigade."

WAC 296-811-300 Section contents.

- This section is a short table of contents of the sections located in this three-digit WAC number.
- Added a title to this contents page. It is called "Training."

WAC 296-811-30010 Fire fighting training.

- This section requires firefighting training.
- The requirements in this section were located in WAC 296-24-58509 and 296-24-58517. No new requirements have been added.
- Added the words "You must" in between the second and third bullets.

WAC 296-811-400 Section contents.

- This section is a short table of contents of the sections located in this three-digit WAC number.
- Added a title to this contents page. It is called "Equipment."

WAC 296-811-40005 Fire fighting equipment.

- This section requires providing and maintaining firefighting equipment.
- The requirements in this section were located in WAC 296-24-58511. No new requirements have been added.
- In the table added the words "and after each use" after the phrase "Inspect at least every month."

WAC 296-811-40015 Self-contained breathing apparatuses (SCBAs).

- This section contains requirements relating to SCBAs.
- The requirements in this section were located in WAC 296-24-58515 and 296-24-58517. No new requirements have been added.
- Fixed the spelling error of the word "apparatus."
- In the second bullet, second subbullet, deleted the words "or can be set that way when used for interior structural fire fighting."
- Deleted the subbullet that read, "Have the same capacity and pressure ratings as the SCBA's original cylinder(s)."
- Spelled out the acronyms for department of transportation and National Institute for Occupational Safety and Health.

WAC 296-811-500 Section contents.

- This section is a short table of contents of the sections located in this three-digit WAC number.
- Added a title to this contents page. It is called "Requirements during firefighting."

WAC 296-811-50005 Brigade members in interior structural fires.

- This section contains the requirements in an "Immediately Dangerous to Life or Health" (IDLH) and standby assistance situation.
- The requirements in this section were located in WAC 296-24-58516. No new requirements have been added.
- In the second bullet, replaced the word "section" with "chapter."
- Added a reference that reads, "More information on interior structural fires is located in another chapter, WAC 296-305-05001 Emergency fireground operations—Structural."

WAC 296-811-600 Definitions.

- This section contains applicable definitions relating to fire brigades. They are:
- In the definition of "Incipient fire stage" deleted the words "or Class II standpipe."
- In the definition of "Positive-pressure breathing apparatus" changed the name of this definition to "Self-contained breathing apparatus (SCBA)."
- Deleted the definition for "Quick-disconnect valve."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 14, Amended 3, Repealed 8; 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 14, Amended 3, Repealed 8.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, Amended 3, Repealed 8.

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 14, Amended 3, Repealed 8.

Date Adopted: December 20, 2005.

Gary Weeks
Director

Chapter 296-811 WAC

FIRE BRIGADES

NEW SECTION

WAC 296-811-100 Scope. This chapter applies if you choose to establish a fire brigade.

Definition:

A fire brigade is an organized group of employees whose primary employment is other than fire fighting but who are knowledgeable, trained, and skilled in specialized fire fighting operations based on site-specific hazards present at a single commercial facility or facilities under the same management.

Note: Nothing in this chapter requires you to establish an employee fire brigade.

NEW SECTION

WAC 296-811-200 Establishing a fire brigade—Section contents.

Your responsibility:

To decide on brigade functions in the workplace and make sure brigade members are capable of doing them.

Organizing statement
WAC 296-811-20005.

Physical capability of brigade members
WAC 296-811-20010.

NEW SECTION

WAC 296-811-20005 Organizing statement.

You must:

• Develop a written fire brigade policy that is available for inspection by employees or their designated representatives, that covers all of the following:

– The role and responsibilities of the fire brigade in the workplace.

– The basic organizational structure of the fire brigade.

– The number of brigade members.

– Type, amount, and frequency of training for brigade members according to the section Fire fighting training, WAC 296-811-30010, in this chapter.

Note: You may also want to include:
• Descriptions of brigade member duties.
• Line authority of each brigade officer.
• Number of brigade officers.
• Number of training instructors.

NEW SECTION

WAC 296-811-20010 Physical capability of brigade members.

You must:

• Make sure brigade members who are assigned to fight interior structural fires are physically capable of doing this activity.

– Do not permit employees with known physical limitations that can be reasonably identified, such as heart disease or seizure disorder, to participate in structural fire fighting activities unless the employee has been released by a physician to do so.

Note: Not all brigade members need to be physically capable of fighting interior structural fires. Brigade members who are not physically capable of fighting interior structural fires may be assigned to other brigade duties that match their physical capabilities, such as pump operation or fire prevention inspection.

NEW SECTION

WAC 296-811-300 Training—Section contents.

Your responsibility:

To inform brigade members of special hazards in the workplace and train them for their brigade functions.

Special hazards
WAC 296-811-30005.
Fire fighting training
WAC 296-811-30010.

NEW SECTION

WAC 296-811-30005 Special hazards.

You must:

• Develop, include in training, and make available to brigade members, written procedures that describe the following:

– The special hazards they may encounter in their workplace.

– The actions they need to take in situations that involve these hazards.

• Inform brigade members of any changes to those hazards, or the actions to take, when changes happen.

– Examples of special hazards include storing and using flammable liquids and gases, toxic chemicals, and radioactive substances.

NEW SECTION

WAC 296-811-30010 Fire fighting training.

You must:

• Make sure training that a brigade member receives elsewhere that meets one or more requirements in Table 1, Training for brigade members, has been:

– Received within the past year;

– Documented as having been received, such as with a completion certificate.

• Provide training frequently enough to keep brigade members able to do their functions satisfactorily and safely.

Note: You may choose to train more often, monthly or even weekly, for some equipment or techniques. Consult fire training resources, such as the International Fire Service Training Association, the National Fire Protection Association (NFPA), or the International Society of Fire Service Instructors, for recommendations about fire training schools or programs.

You must:

• Make sure brigade members are trained according to Table 1, Training for Brigade Members.

Table 1: Training for Brigade Members

For these brigade members	Provide training that is	At these times
All brigade members, including leaders, trainers, and incident commanders.	• Appropriate to their assigned duties and functions. • Appropriate to special hazards in the workplace. • Similar to that of reputable fire training schools. • A combination of hands-on and classroom experiences. • Suited to the industry you are part of, such as oil refining or chemical processing.	• Initially before they do any fire brigade emergency activities; **AND** • Every year after initial training.
Brigade members assigned to do interior structural fire fighting.	All of the above **plus** the following: • Specific training in interior structural fire fighting.	At the above times **plus** the following: • Every quarter.
Brigade members assigned as leaders, training instructors, or both.	All of the above **plus** the following: • Additional training that is more comprehensive than that of other brigade members and appropriate to their assigned duties and functions.	As needed to maintain their expertise at a higher level than that of other brigade members.

NEW SECTION

WAC 296-811-400 Equipment—Section contents.

Your responsibility:

To provide brigade members with equipment and protective clothing appropriate for their brigade functions.

Fire fighting equipment
WAC 296-811-40005.
Protective clothing
WAC 296-811-40010.
Respiratory protective devices
WAC 296-811-40015.

NEW SECTION

WAC 296-811-40005 Fire fighting equipment.

You must:

• Provide appropriate fire fighting equipment for the fire brigade.

• Inspect and maintain brigade fire fighting equipment according to Table 2, Fire Brigade Equipment Inspection and Maintenance.

Table 2: Fire Brigade Equipment Inspection and Maintenance

For this equipment	Do the following
All brigade fire fighting equipment.	• Inspect at least every year. • Maintain in safe operating condition. • Replace if damaged or in unsafe condition.
Brigade respirators and portable fire extinguishers.	Inspect at least every month and after each use.

NEW SECTION

WAC 296-811-40010 Protective clothing.

You must:

• Provide appropriate protective clothing for fire brigade members who do interior structural fire fighting. Make sure protective clothing is:

– Provided at no cost.

– Meets the requirements for foot, body, hand, eye, face, and head protection found in another chapter, Safety standards for fire fighters, chapter 296-305 WAC.

Exemption: • Protective clothing requirements do not apply to the following fire brigade members:
– Those who don't perform interior structural fire fighting.
– Those who use only standpipe systems or portable fire extinguishers to control or put out fires that are in the incipient stage only.

NEW SECTION

WAC 296-811-40015 Self-contained breathing apparatus' (SCBAs).

You must:

• Provide SCBAs, other than escape self-contained breathing apparatus' (ESCBAs), and make sure they are used by fire brigade members who do interior structural fire fighting.

• Make sure SCBAs do the following:

– Meet the requirements found in another chapter, Respirators, chapter 296-842 WAC.

– Are positive-pressure or pressure-demand type.

– Use only compressed-air cylinders that:

■ Meet department of transportation (DOT) and the National Institute for Occupational Safety and Health (NIOSH) requirements.

– Have a service life of at least thirty minutes, as required by 42 CFR, Part 84.

– Have an automatic alarm that can be heard when seventy-five to eighty percent of its service life has been used up.

Note: • An SCBA can have a quick-disconnect valve or "buddy breathing" accessory **only if** the valve or accessory **does not** do any of the following:
– Damage the SCBA.
– Restrict the SCBA's air flow.
– Interfere with the SCBA's normal operation.
– The "buddy breathing" accessory or quick-disconnect valve need not be certified by NIOSH.

NEW SECTION

WAC 296-811-500 Requirements during fire fighting—Section contents.

Your responsibility:

To make sure brigade members use safe practices during interior structural fire fighting.

Brigade members in interior structural fires

WAC 296-811-50005.

NEW SECTION

WAC 296-811-50005 Brigade members in interior structural fires.

IMPORTANT:

Nothing in this section is meant to prevent fire brigade members assigned to respond to fires from rescue activities in an immediately dangerous to life and health (IDLH) atmosphere before the whole team assigned to respond to fires has arrived.

You must:

• Make sure at least two qualified fire brigade members go together into an IDLH atmosphere and remain in visual or voice contact with each other at all times.

• Maintain standby assistance, with two people, as required by another section, Standby requirements for immediately dangerous to life or health (IDLH) conditions, WAC 296-842-19005.

Note: One of the two brigade members providing standby assistance can be assigned another role, such as safety officer, as long as the safety or health of any fire fighter working the incident will not be jeopardized if the brigade member becomes unavailable through giving assistance or rescue.

Reference: More information on interior structural fires is located in another section, WAC 296-305-05001, Emergency fireground operations—Structural.

NEW SECTION

WAC 296-811-600 Definitions.

Buddy-breathing device

An equipment accessory for self-contained breathing apparatus (SCBA) that permits a second person (a "buddy") to share the air supply used by the SCBA wearer.

Extinguisher classification

The letter classification given an extinguisher to designate the class or classes of fires on which that extinguisher will be effective. For example, use a Class A extinguisher on a Class A fire. See also fire classifications.

Portable fire extinguishers are classified for use on certain classes of fires and are rated within that class for relative extinguishing effectiveness at a temperature of plus 70°F by nationally recognized testing laboratories. This is based upon

fire classifications and fire extinguishment potentials as determined by fire tests.

Note: The classification and rating system described in this section is used by Underwriters' Laboratories, Inc., and Underwriters' Laboratories of Canada, and is based on extinguishing preplanned fires of determined size and description as follows:

Extinguisher Class	Fire Test for Classification and Rating
Class A	Wood and excelsior fires excluding deep-seated conditions.
Class B	Two-inch depth gasoline fires in square pans.
Class C	No fire test. Agent must be a nonconductor of electricity.
Class D	Special tests on specific combustible metal fires.

Extinguisher rating (see also "extinguisher classification")

The numerical rating, such as 2A, given to an extinguisher that indicates the extinguishing potential of the unit based on standardized tests developed by Underwriters' Laboratories, Inc.

Fire brigade

An organized group of employees whose primary employment is other than fire fighting but who are knowledgeable, trained, and skilled in specialized fire fighting operations based on site-specific hazards present at a single commercial facility or facilities under the same management.

Fire classifications

Fires are classified based on the types of burning materials:

Fire Class	Types of Burning Materials
Class A	Fires involving ordinary combustible materials such as paper, wood, cloth, and some rubber and plastic materials.
Class B	Fires involving flammable or combustible liquids, flammable gases, greases, and similar materials, and some rubber and plastic materials.
Class C	Fires involving energized (live) electrical equipment where it is important that the extinguishing agent not conduct electricity. (When electrical equipment is de-energized, it is safe to use an extinguisher for Class A or B fires on it, since electricity is not an issue then.)
Class D	Fire involving combustible metals such as magnesium, titanium, zirconium, sodium, lithium, and potassium.

Incipient fire stage

A fire in the beginning stage that can be controlled or put out by portable fire extinguishers, or small hose systems, without the need for protective clothing or breathing apparatus.

Inspection

A visual check of fire protection systems and equipment to ensure they are in place, charged, and ready for use if there is a fire.

Interior structural fire fighting

The physical activity of suppressing fire, rescuing people, or both, inside buildings or enclosed structures involved in a fire that is past the incipient stage.

Maintenance

Servicing fire protection equipment and systems to ensure they will perform as expected if there is a fire. Maintenance differs from inspection in that maintenance requires checking internal fittings, devices, and agent supplies, as well as correcting deficiencies found.

Self-contained breathing apparatus (SCBA)

Self-contained breathing apparatus (SCBA) in which the air pressure in the breathing zone is higher than that of the immediate environment during both inhaling and exhaling.

AMENDATORY SECTION (Amending WSR 03-06-076, filed 3/4/03, effective 8/1/03)

WAC 296-78-71011 Egress and exit. (1) In all enclosed buildings, means of egress shall be provided in accordance with the provisions of WAC 296-800-310.

(2) All swinging doors shall be provided with windows, the bottom of which shall be not more than forty-eight inches above the floor. One window shall be provided for each section of double swinging doors. All such windows shall be of shatter proof or safety glass unless otherwise protected against breakage.

(3) Outside exits shall open outward. Where sliding doors are used as exits, an inner door not less than two feet six inches by six feet shall be cut inside each of the main doors and arranged to open outward.

(4) At least two fire escapes or substantial outside stairways, shall be provided for mill buildings where the floor level is more than eight feet above the ground.

(a) Buildings over one hundred fifty feet in length shall have at least one additional fire escape or substantial outside stairway for each additional one hundred fifty feet of length or fraction thereof.

(b) Passageways to fire escapes or outside stairways shall be marked and kept free of obstructions at all times.

(c) Fire protection. The requirements of ((~~Part G2 (Fire Protection) and Part G3 (Fire Suppression Equipment),~~)) chapter 296-24 WAC, Part G-3 of the general safety and health standard, and WAC 296-800-300 of the safety and health core rules, and chapter 296-811 WAC, Fire brigades, shall be complied with in providing the necessary fire protection for sawmills.

(d) Fire drills shall be held at least quarterly and shall be documented.

(5) Where a doorway opens upon a roadway, railroad track, or upon a tramway or dock over which vehicles travel, a barricade or other safeguard and a warning sign shall be placed to prevent workers from stepping directly into moving traffic.

(6) Tramways and trestles shall be substantially supported by piling or framed bent construction which shall be frequently inspected and maintained in good repair at all times. Tramways or trestles used both for vehicular and pedestrian traffic shall have a walkway with standard hand rail at the outer edge and shear timber on the inner edge, and shall provide three feet clearance to vehicles. When walkways cross over other thoroughfares, they shall be solidly fenced at the outer edge to a height of 42 inches over such thoroughfares.

(7) Where tramways and trestles are built over railroads they shall have a vertical clearance of twenty-two feet above the top of the rails. When constructed over carrier docks or roads, they shall have a vertical clearance of not less than six feet above the drivers foot rest on the carrier, and in no event shall this clearance be less than twelve feet from the surface of the lower roadway or dock.

(8) Walkways (either temporary or permanent) shall be not less than twenty-four inches wide and two inches thick, nominal size, securely fastened at each end. When such walkways are used on an incline the angle shall not be greater than twenty degrees from horizontal.

(9) Walkways from the shore or dock to floats or barges shall be securely fastened at the shore end only and clear space provided for the other end to adjust itself to the height of the water.

(10) Cleats of one by four inch material shall be fastened securely across walkways at uniform intervals of eighteen inches whenever the grade is sufficient to create a slipping hazard.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-79-040 Fire protection, ignition sources and means of egress. For fire protection, ignition source, and means of egress requirements see chapter 296-24 WAC, Parts G-1((~~, G-2~~)) and G-3 ((~~and~~)), WAC 296-800-300 of the safety and health core rules, and chapter 296-811 WAC, Fire brigades.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-305-01003 Scope and application. (1) The rules of this chapter shall apply with respect to any and all activities, operations and equipment of employers and employees involved in providing fire protection services which are subject to the provisions of the Washington Industrial Safety and Health Act of 1973 (chapter 49.17 RCW).

(2) The provisions of this chapter apply to all fire fighters and their work places, including the fire combat scene. Although enforcement of applicable standards will result from provable violations of these standards at the fire combat scene, agents of the department will not act in any manner that will reduce or interfere with the effectiveness of the emergency response of a fire fighting unit. Activities directly related to the combating of a fire will not be subjected to the immediate restraint provisions of RCW 49.17.130.

(3) In the development of this document many consensus standards of the industry were considered and evaluated as to adaptability to the Washington state fire service industry. Where adaptable and meaningful, the fire fighter safety elements of these standards were incorporated into this WAC. Chapter 296-305 WAC, shall be considered as the fire fighter safety standards for the state of Washington.

(4) The provisions of this chapter cover existing requirements that apply to all fire departments. All fire departments shall have in place their own policy statement and operating instructions that meet or exceed these requirements. This chapter contains state and/or federal performance criteria that fire departments shall meet.

(5) Unless specifically stated otherwise by rule, if a duplication of regulations, or a conflict exists between the rules regulating wildland fire fighting and other rules in the chapter, only the rules regulating wildland fire fighting shall apply to wildland fire fighting activities and equipment.

(6) The provisions of this chapter shall be supplemented by the provisions of the general safety and health standards of the department of labor and industries, chapters 296-24 (((~~including Part G-2, Fire protection~~))), 296-62 ((~~and~~)), 296-800, and 296-811 WAC. In the event of conflict between any provision(s) of this chapter and any provision(s) of the general safety and health standards, the provision(s) of this chapter shall apply.

(7) The provisions of this standard do not apply to industrial fire brigades, as defined in this chapter. Industrial fire brigades are covered under the provisions of chapter ((~~296-24 WAC, Part G-2, Fire protection~~)) 296-811 WAC, Fire brigades.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-24-58505	Fire brigades.
WAC 296-24-58507	Organization.
WAC 296-24-58509	Training and education.
WAC 296-24-58511	Fire fighting equipment.
WAC 296-24-58513	Protective clothing.
WAC 296-24-58515	Respiratory protection devices.
WAC 296-24-58516	Procedures for interior structural fire fighting.
WAC 296-24-58517	Appendix A—Fire brigades.

WSR 06-01-074
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 20, 2005, 9:52 a.m., effective February 1, 2006]

Effective Date of Rule: February 1, 2006.

Purpose: Cholinesterase monitoring, chapter 296-307 WAC, this rule making is being adopted based on stakeholder

recommendations and to address program changes occurring since original cholinesterase monitoring rule was adopted. These changes are to modify the licensed health care professional's written recommendation to address all employee blood tests, to clarify some requirements, and to make some minor housekeeping changes.

AMENDED SECTIONS:

WAC 296-307-14805 Maintain handling records for covered pesticides.

- Deleted the reference to the table and added the reference to the applicable WAC section.
- There is a current requirement in RCW 49.17.285 which requires employers to provide handling hours to the medical provider/laboratory; we are adding this for clarity.

WAC 296-307-14810 Implement a medical monitoring program.

- Deleted the table and the reference to this table in this section.
- Added two notes to this section for clarity.

WAC 296-307-14815 Identify a physician or licensed health care professional.

- Added a requirement for the employer to obtain a written recommendation from the health care provider for all blood testing and to make sure the employee receives a copy of the written recommendation. This will provide employees with ready access to health care provider recommendations.
- Added a note relating to testing being done by the same laboratory whenever possible.
- Added a note relating to obtaining employee's written consent to obtain blood test results.
- Clarified language.

WAC 296-307-14820 Make cholinesterase testing available.

- Deleted the reference to the table and add the reference to the applicable WAC section.
- Added a note relating to a "working baseline."
- Moved two notes to WAC 296-307-14810 for better organization.
- Added language relating to the employee receiving a copy of the signed declination statement within five business days after receipt from the LHCP.
- Clarified language.

WAC 296-307-14825 Respond to depressed cholinesterase levels.

- Changed the table to "Table 1."
- Added language in the table for clarity.

WAC 296-307-14830 Provide medical removal protection benefits.

- Added a clarifying note relating to benefits being paid while on medical removal.

Citation of Existing Rules Affected by this Order: Amending WAC 296-307-14805 Maintain handling records for covered pesticides, 296-307-14810 Implement a medical monitoring program, 296-307-14815 Identify a physician or licensed health care professional, 296-307-14820 Make cholinesterase testing available, 296-307-14825 Respond to depressed cholinesterase levels, and 296-307-14830 Provide medical removal protection benefits.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 05-19-087 on September 20, 2005.

Changes Other than Editing from Proposed to Adopted Version: There are no costs to assess on the changes from proposed to adopted.

WAC 296-307-14805 Maintain handling records for covered pesticides.

- Deleted the reference to the table and added the reference to the applicable WAC section.
- There is a current requirement in RCW 49.17.285 which requires employers to provide handling hours to the medical provider/laboratory; we are adding this for clarity.
- Added the word "other" in the second bullet.
- Merged a primary bullet and subbullet for clarity.

WAC 296-307-14810 Implement a medical monitoring program.

- Delete the table and the reference to this table in this section.
- Add two notes to this section for clarity.
- In the note, moved the phrase "Closed cabs are not 'closed systems'" for clarity.

WAC 296-307-14815 Identify a physician or other licensed health care professional.

- Added a requirement for the employer to obtain a written opinion from the health care provider for all blood testing and to make the opinion available to the employee. This will provide employees with ready access to test results and health care provider recommendations.
- Added a note relating to testing being done by the same laboratory whenever possible.
- Added a note relating to obtaining employee's written consent to obtain blood test results.
- Clarified language.
- Added the word "other" to the title of this section.
- Changed the language in the first bullet, first subbullet to read, "Provide baseline and periodic cholinesterase testing through the department of health public health laboratory or a laboratory approved by the department of labor and industries."
- Added the word "cholinesterase" in the second subbullet for clarity.
- Added clarifying language after the second subbullet that reads, "Provide you with a written recommendation for each employee's blood test and evaluation."

- In the second bullet, changed the word "opinion" to "recommendation" for consistency.
- In the second bullet, clarified the language to read, "Obtain the LHCP's written recommendation for each employee's blood test and evaluation (including baseline tests) and make sure that the employee receives a copy of the LHCP's written recommendation, either through you or directly through the LHCP, within five business days after you receive the recommendation."
- In the third bullet, clarified the language to read, "Make sure the LHCP's written recommendation for each employee's blood test and evaluation is limited to the following information:
  - The employee's cholinesterase status based on the LHCP's evaluation.
    - ❏ Identification of changes in cholinesterase levels requiring a work practice evaluation for the employee.
    - ❏ Identification of changes in cholinesterase levels requiring the employee to be removed from handling and other exposure to organophosphate and N-methyl-carbamate pesticides."
- Clarified the note to read, "All testing for an employee should be conducted through the same laboratory. This will allow for accurate comparison between baseline and periodic tests."
- In the fourth bullet, clarified the language to read, "Instruct the LHCP to not reveal in writing or in any other communication with you any other personally identifiable medical information."
- Added a note for clarity that reads, "If the LHCP written recommendation contains specific findings or diagnoses unrelated to occupational exposure, you should send it back and obtain a revised version without the additional information."
- Added the words "You must" after the note.
- In the fifth bullet, deleted the words "physician or" for consistency.
- In the sixth bullet, deleted the words "medical provider" for consistency.
- In the seventh bullet, deleted the words "physician or" for consistency.
- Clarified the note to read, "You may only obtain the employee's actual test results if the employee provides the LHCP with written consent to share these results with you."

WAC 296-307-14820 Make cholinesterase testing available.

- Deleted the reference to the table and added the reference to the applicable WAC section.
- Added a note relating to a "working baseline."
- Moved two notes to WAC 296-307-14810 for better organization.
- Added language relating to the employee receiving a copy of the signed declination statement within five business days after receipt from the LHCP.
- Clarified language.
- In the first bullet, clarified the language to read, "Make medical monitoring available to employees who will meet the handling hour threshold of thirty or more hours in any consecutive thirty-day period (WAC 296-307-14810) at no cost and at a reasonable time and place as follows:"
- In the first and second subbullets replaced the word "plasma" with "serum."
- In the first and second tertiary bullets replaced the words "levels in" with "hour threshold in."
- Inserted a third subbullet, that was located in another place in this section, that reads, "Follow the recommendations of the LHCP regarding continued employee pesticide handling or removal from handling until a thirty-day exposure free baseline can be established."
- Deleted the second bullet.
- In the note, deleted the words "medical provider" for consistency.
- In the second bullet, deleted the words "physician or" for consistency.
- In the first subbullet, deleted the words "physician or" for consistency.
- In the third bullet, clarified the language to read, "Make sure the employee receives a copy of the signed declination statement, either through you or directly through the LHCP, within five business days after you receive the declination statement."

WAC 296-307-14825 Respond to depressed cholinesterase levels.

- Changed the table to "Table 1."
- Added language in the table for clarity.
- In the second subbullet, deleted the words "physician or" for consistency.
- In table, replaced the "plasma" with "serum" in two places.
- In the table deleted the words "physician or" for consistency.

WAC 296-307-14830 Provide medical removal protection benefits.

- Added a clarifying note relating to benefits being paid while on medical removal.
- Clarified the note to read, "The following are examples of how a worker's pay could be maintained while medically removed from exposure to cholinesterase-inhibiting pesticides:"
- In the note, replaced the words "the additional two dollars per hour" with "this premium" for clarity.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: December 20, 2005.

Gary Weeks
Director

AMENDATORY SECTION (Amending WSR 03-24-105, filed 12/3/03, effective 2/1/04)

WAC 296-307-14805 Maintain handling records for covered pesticides.

You must:

• Maintain accurate records of all time that each employee spends handling category I or II organophosphate or N-methyl-carbamate pesticides (this includes employees who do not meet the handling hour thresholds in ((~~Table 1~~)) WAC 296-307-14810).

• Provide a completed CHOLINESTERASE MONITORING HANDLING HOURS REPORT (F413-065-000) to the physician or other licensed health care professional (LHCP) for each employee receiving a periodic cholinesterase blood test and make sure the report is submitted to the laboratory with each periodic cholinesterase test.

• Provide the employee with a copy of the CHOLINESTERASE MONITORING HANDLING HOURS REPORT upon request.

• Retain pesticide handling records for seven years.

• Make sure that pesticide-handling records are readily accessible to employees, their designated representatives, and treating health care professionals.

AMENDATORY SECTION (Amending WSR 03-24-105, filed 12/3/03, effective 2/1/04)

WAC 296-307-14810 Implement a medical monitoring program.

You must:

• Implement a medical monitoring program for your employees who handle or will be expected to handle category I or II organophosphate or N-methyl-carbamate pesticides ((~~according to the schedule in Table 1~~)) for thirty or more hours in any consecutive thirty-day period.

((~~Table 1~~
~~Implementation Schedule~~

~~Provide medical monitoring for each employee who handles organophosphate or N-methyl-carbamate pesticides for:~~	~~Beginning~~
~~Fifty or more hours in any consecutive thirty-day period~~	~~February 1, 2004~~
~~Provide medical monitoring for each employee who handles organophosphate or N-methyl-carbamate pesticides for:~~	~~Beginning~~
~~Thirty or more hours in any consecutive thirty-day period~~	~~February 1, 2005~~))

Note: ((~~• The department will adjust the threshold for medical monitoring of employees under this rule on February 1, 2005, if the data collected during 2004 clearly demonstrates that the threshold should be either lower or higher than thirty hours.~~)) • You do not need to count time spent mixing and loading using closed systems (as defined in WAC 296-307-13045 (4)(d)) in determining the need for periodic testing. Closed cabs are not "closed systems." Time using closed systems is still counted for purposes of establishing coverage under this rule and determining the need for obtaining baseline cholinesterase levels.

• The first thirty consecutive day period begins on the first day of handling organophosphate or N-methyl-carbamate pesticides after obtaining the baseline cholinesterase test.

• There is nothing in this rule that prohibits employers from providing cholinesterase monitoring to employees who handle organophosphate or N-methyl-carbamate pesticides for fewer ((~~hours~~)) than ((~~specified in Table 1~~)) thirty hours in any consecutive thirty-day period.

AMENDATORY SECTION (Amending WSR 03-24-105, filed 12/3/03, effective 2/1/04)

WAC 296-307-14815 Identify a physician or other licensed health care professional.

You must:

• Identify a physician or other licensed health care professional (LHCP) who will:

– Provide baseline and periodic cholinesterase testing through the department of health public health laboratory((~~,~~)) or ((~~beginning in 2006, through any~~)) a laboratory approved by the department of labor and industries.

– Interpret cholinesterase tests.

– Provide you with a written recommendation((~~s and opinions that:~~

~~■ Identify employees with periodic test results requiring a work practice evaluation.~~

~~■ Identify employees with periodic test results indicating they must be removed from handling and other exposure to organophosphate and N-methyl-carbamate pesticides~~)) for each employee's blood test and evaluation.

• Obtain the LHCP's written recommendation for each employee's blood test and evaluation (including baseline tests) and make sure that the employee receives a copy of the LHCP's written recommendation, either through you or directly through the LHCP, within five business days after you receive the recommendation.

• Make sure the LHCP's written recommendation for each employee's blood test and evaluation is limited to the following information:

– The employee's cholinesterase status based on the LHCP's evaluation.

– Identification of changes in cholinesterase levels requiring a work practice evaluation for the employee.

– Identification of changes in cholinesterase levels requiring the employee to be removed from handling and other exposure to organophosphate and N-methyl-carbamate pesticides.

((■ Provide)) – Guidance on medical monitoring.

((■ Include)) – Any other relevant information concerning an employee's workplace exposure to organophosphate and N-methyl-carbamate pesticides.

Note: All testing for an employee should be conducted through the same laboratory. This will allow for accurate comparison between baseline and periodic tests.

You must:

• Instruct the ((physician or other licensed health care professional ())LHCP((,)) to **NOT** reveal in writing or in any other communication with you((,)) any other personally identifiable medical information((, other than laboratory test results, for any employee)).

Note: If the LHCP written recommendation contains specific findings or diagnoses unrelated to occupational exposure, you should send it back and obtain a revised version without the additional information.

You must:

• Make sure the ((physician or)) LHCP is familiar with the requirements of this rule (for example, by providing a copy of the rule or by confirming that the provider has attended training on the rule).

• Post the name, address, and telephone number of the ((medical provider)) LHCP you have identified at the locations where employees usually start their work day.

• Make sure ((copies of employee test results and)) written recommendations from the ((physician or)) LHCP are maintained for seven years.

Note: You may only obtain the employee's actual test results if the employee provides the LHCP with written consent to share these results with you.

AMENDATORY SECTION (Amending WSR 03-24-105, filed 12/3/03, effective 2/1/04)

WAC 296-307-14820 Make cholinesterase testing available.

You must:

• Make medical monitoring available to employees who will meet the ((exposure)) handling hour threshold((s in Table 1,)) of thirty or more hours in any consecutive thirty-day period (WAC 296-307-14810) at no cost and at a reasonable time and place, as follows:

– Provide annual baseline red blood cell (RBC) and ((plasma)) serum cholinesterase tests that are taken at least thirty days after the employee last handled organophosphate or N-methyl-carbamate pesticides.

– Provide periodic RBC and ((plasma)) serum cholinesterase testing:

■ Within three days after the end of each thirty-day period where the employee meets the handling ((levels in Table 1)) hour threshold in WAC 296-307-14810; however, testing is not required more often than every thirty days;

OR

■ At least every thirty days for those employees who may meet the handling ((levels)) hour threshold in ((Table 1)) WAC 296-307-14810.

((• Arrange to obtain a "working baseline" as soon as possible for employees who initially decline cholinesterase testing and later choose to participate in testing.))

– Follow the recommendations of the ((physician or)) LHCP regarding continued employee pesticide handling or removal from handling until a thirty-day exposure free baseline can be established.

Exemption: You do not need to provide baseline or periodic testing for those employees whose work exposure is limited to handling only N-methyl-carbamate pesticides.

Note: ((• You do not need to count time spent mixing and loading using closed systems (as defined in WAC 296-307-13045 (4)(d)) in determining the need for periodic testing. Time using closed systems is still counted for purposes of establishing coverage under this rule and determining the need for obtaining baseline cholinesterase levels.)) • For employees who have had exposure to organophosphate or N-methyl-carbamate pesticides in the thirty days prior to the test obtain a working baseline. For example, a worker who initially declines cholinesterase testing and later chooses to participate in testing would obtain a "working baseline."

• For new employees, the ((medical provider)) LHCP may accept previous baselines, if they are obtained according to this rule.

((• The first thirty consecutive day period begins on the first day of handling organophosphate or N-methyl-carbamate pesticides after obtaining the baseline cholinesterase test.))

You must:

• Obtain a signed declination statement from the ((physician or)) LHCP for each employee((s)) who declines cholinesterase testing.

– Employees may decline cholinesterase testing only after they receive training about cholinesterase inhibiting pesticides and discuss the risks and benefits of participation with the ((physician or)) LHCP.

– An employee may change his or her mind and elect to participate or decline to continue participation in the testing program at any time.

• Make sure the employee receives a copy of the signed declination statement, either through you or directly through the LHCP, within five business days after you receive the declination statement.

Note: If employers discourage participation in cholinesterase monitoring, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful discrimination under RCW 49.17.160, Discrimination against employee filing, instituting proceedings, or testifying prohibited—Procedure—Remedy.

AMENDATORY SECTION (Amending WSR 03-24-105, filed 12/3/03, effective 2/1/04)

WAC 296-307-14825 Respond to depressed cholinesterase levels.

You must:

• Respond to an employee's depressed cholinesterase levels by:

– Taking the actions required in Table ((2)) 1;

AND

– Following any additional occupational health recommendations from the ((physician or)) LHCP.

Table ((2)) 1
Required Responses to an Employee's Depressed Cholinesterase Levels

When:	Action to be taken:	Methods:
An employee's RBC or ((plasma)) serum cholinesterase levels fall more than twenty percent below the baseline	Evaluate the employee's workplace and work practices to identify and correct potential sources of pesticide exposure	Review: • Personal protective equipment (PPE) and its condition • Employees' PPE usage • General sanitation and decontamination practices and availability of decontamination facilities required by WAC 296-307-13050 • Pesticide handling practices • Pesticide label requirements
An employee's RBC cholinesterase level falls thirty percent or more from the baseline **OR** An employee's ((plasma)) serum cholinesterase level falls forty percent or more from the baseline	Remove the employee from handling and other work exposures to organophosphate and N-methyl-carbamate pesticides such as thinning and harvesting in recently treated areas **AND** Evaluate the employee's work practices to identify and correct potential sources of pesticide exposure	• When available, provide the employee with other duties that do not include handling and other work exposures to organophosphate and N-methyl-carbamate pesticides • Provide medical monitoring and cholinesterase testing as recommended by the ((physician or)) LHCP • Provide salary and benefits as if employee was continuing pesticide application activities
A removed employee's cholinesterase levels return to twenty percent or less below baseline	The employee may return to handling class I and II organophosphate and N-methyl-carbamate pesticides	Continue periodic cholinesterase monitoring

AMENDATORY SECTION (Amending WSR 03-24-105, filed 12/3/03, effective 2/1/04)

WAC 296-307-14830 Provide medical removal protection benefits.

You must:

• Provide medical removal protection benefits for a maximum of three months on each occasion:

– An employee is temporarily removed from work due to depressed cholinesterase levels;

OR

– Assigned to other duties due to depressed cholinesterase levels.

• Provide medical removal protection benefits that include maintenance of the same pay, seniority and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to organophosphate or N-methyl-carbamate pesticides or otherwise limited.

Note: The following are examples of how a worker's pay could be maintained while medically removed from exposure to cholinesterase-inhibiting pesticides:
• A removed worker is assigned to work eight hours a day but the employer's pesticide handlers are working ten hours a day. The removed worker would be paid for ten hours at the handler's pay rate.
• The farmer pays workers two dollars more per hour when they are handling organophosphate or N-methyl-carbamate pesticides. The removed worker will be paid this premium when the pesticides are being handled on the farm; however, the worker will be paid at their usual pay rate when the pesticides are not being handled on the farm.

WSR 06-01-075
PERMANENT RULES
DEPARTMENT OF NATURAL RESOURCES

[Resolution No. 1186—Filed December 20, 2005, 9:55 a.m., effective January 20, 2006]

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

Purpose: The changes increase time provided during the rent review process, by extending filing periods and providing optional extensions for decision making. The changes do not change rents paid by lessees of state-owned aquatic lands. Instead, they are designed to clarify the rules, make them easier to understand and apply, consistent with current DNR standard practice.

Citation of Existing Rules Affected by this Order: Amending WAC 332-30-128.

Statutory Authority for Adoption: RCW 79.90.520.

Adopted under notice filed as WSR 05-17-183 on August 24, 2005.

Changes Other than Editing from Proposed to Adopted Version: Under this amendment, the amount of time allotted to lessees/applicants for submitting a rent review petition to the rental dispute appeals officer would be increased by fifteen days. The amount of time the rental dispute appeals officer has to review a decision would be increased by thirty days with an optional sixty days. The amount of time allotted for a lessee/applicant to submit a petition to the board of natural resources for rent review would be increased by fifteen days. The amount of time the board of natural resources has to review the decision would be increased by thirty days with an optional sixty day extension.

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 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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: December 6, 2005.

Doug Sutherland
Commissioner of Public Lands

AMENDATORY SECTION (Amending Resolution No. 500, filed 11/5/85)

WAC 332-30-128 Rent review. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Eligibility to request review.** Any lessee or applicant to lease or release state-owned aquatic lands may request review of any rent proposed to be charged by the department.

(2) **Dispute officers.** The manager of the marine lands division will be the rental dispute officer (RDO). The supervisor of the department, or his designee, will be the rental dispute appeals officer (RDAO).

(3) **Submittals.** A request for review of the rent (an original and two copies) shall be submitted within thirty days of notification by the department of the rent due from the lessee/applicant. The request for review shall contain sufficient information for the officers to make a decision on the appropriateness of the rent initially determined by the department. The burden of proof for showing that the rent is incorrect shall rest with the lessee/applicant.

(4) **Rental due.** The request for review shall be accompanied by one year's rent payment based on the preceding year's rate, or a portion thereof as determined by RCW 79.90.530; or based on the rate proposed by the department, or a portion thereof as determined by RCW 79.90.530, whichever is less. The applicant shall pay any additional rent or be entitled to a refund, with interest, within thirty days after completion of the review process provided in this section.

(5) **Contents of request.** The request for review shall state what the lessee/applicant believes the rent should be and shall contain, at the minimum, all necessary documentation to justify the lessee/applicant's position. This information shall include but not be limited to:

(a) **Rationale.** Why the rent established by the department is inappropriate. The supporting documentation for nonwater-dependent leases may include appraisals by professionally accredited appraisers.

(b) **Lease information.** A description of state-owned aquatic land under lease which shall include, but not be limited to:

(i) Lease or application number;

(ii) Map showing location of lease or proposed lease;

(iii) Legal description of lease area including area of lease;

(iv) The permitted or intended use on the leasehold; and

(v) The actual or current use on the leasehold premises.

(c) **Substitute upland parcel.** A lessee/applicant whose lease rent is determined according to RCW 79.90.480 (water-dependent leases) and who disputes the choice of the upland parcel as provided by WAC 332-30-123, shall indicate the upland parcel that should be substituted in the rental determination and shall provide the following information on the parcel:

(i) The county parcel number;

(ii) Its assessed value;

(iii) Its area in square feet or acres;

(iv) A map showing the location of the parcel; and

(v) A statement indicating the land use on the parcel and justifying why the parcel should be substituted.

(6) **RDO review.**

(a) The RDO shall evaluate the request for review within fifteen days of filing to determine if any further support materials are needed from the lessee/applicant or the department.

(b) The lessee/applicant or the department shall provide any needed materials to the RDO within thirty days of receiving a request from the RDO.

(c) The RDO may, at any time during the review, order a conference between the lessee/applicant and department staff to try to settle the rent dispute.

(d) The RDO shall issue a decision within sixty days of filing of the request. Such decision shall contain findings of fact for the decision. If a decision cannot be issued within that time, the lessee/applicant's request will automatically be granted and the rent proposed by the lessee/applicant will be the rent for the lease until the next rent revaluation; provided that, the RDO may extend the review period for one sixty-day period.

(7) **RDAO review.**

(a) The ((~~RDAO may, within fifteen days of the final decision by the RDO, be petitioned to review~~)) lessee/applicant may submit a petition within thirty days to the rental dispute appeals officer (RDAO) for review of that decision.

(b) If the RDAO declines to review the petition on the decision of the RDO, the RDO's decision shall be the final decision of the RDAO.

(c) If the RDAO consents to review the decision, the review may only consider the factual record before the RDO and the written findings and decision of the RDO. The RDAO shall issue a decision on the petition containing written findings within ((~~thirty~~)) sixty days of the filing of the petition. The RDAO may extend the review period for one sixty-day period. This decision shall be the RDAO's final decision.

(8) **Board review.**

(a) ((~~The board of natural resources (board) may, within fifteen days of the final RDAO decision, be petitioned to review that decision.~~)) The lessee/applicant may submit a petition within thirty days to the board of natural resources (board) for review of the RDAO decision.

(b) If the board declines to review the petition, the RDAO decision shall be the final decision of the board.

(c) If the board decides to review the petition, the department and the lessee/applicant shall present written statements on the final decision of the RDAO within ((~~fifteen~~)) thirty days of the decision to review. The board may request oral statements from the lessee/applicant or the department if the board decides a decision cannot be made solely on the written statements.

(d) The board shall issue a decision on the petition within ((~~sixty~~)) ninety days of the filing of the written statements by the lessee/applicant and the department.

WSR 06-01-102
PERMANENT RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)

[Filed December 21, 2005, 9:19 a.m., effective January 21, 2006]

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

Purpose: The nursing care quality assurance commission (NCQAC) adopted this rule to implement chapter 28, Laws of 2005. This legislation rescinded the requirement for advanced registered nurse practitioners (ARNPs) to have a joint practice arrangement (JPA) with a physician or osteopathic physician when prescribing drugs listed on Schedules II through IV.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-840-421, 246-840-422, 246-840-423, 246-840-424, 246-840-426 and 246-840-427; and amending WAC 246-840-420.

Statutory Authority for Adoption: RCW 18.79.240 and chapter 28, Laws of 2005.

Adopted under notice filed as WSR 05-17-044 on August 9, 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: November 4, 2005.

Judith D. Personnett, Ed.D, RN, Chair

Nursing Care Quality Assurance

AMENDATORY SECTION (Amending WSR 97-13-100, filed 6/18/97, effective 7/19/97)

WAC 246-840-420 Authorized prescriptions by the ARNP with prescriptive authority. (1) Prescriptions for drugs ((~~shall~~)) must comply with all applicable state and federal laws.

(2) The prescriber must sign all prescriptions ((~~shall be signed by the prescriber with~~)) and include the initials ARNP.

(3) ((~~Prescriptions for~~)) An ARNP may not, under RCW 18.79.240(1) and chapter 69.50 RCW, prescribe controlled substances in Schedule((~~s~~)) I ((~~through IV are prohibited by RCW 18.79.240 (1)(r)~~)).

(4) Any ARNP with prescriptive authorization who prescribes ((~~Schedule V~~)) controlled substances ((~~shall~~)) must register with the drug enforcement administration.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-840-421	How do advanced registered nurse practitioners qualify for prescriptive authority for Schedule II - IV drugs?
WAC 246-840-422	Criteria for joint practice arrangement.
WAC 246-840-423	Endorsement of joint practice arrangements for ARNP licensure.
WAC 246-840-424	Process for joint practice arrangement termination.
WAC 246-840-426	Education for prescribing Schedule II - IV drugs.
WAC 246-840-427	Jurisdiction.

WSR 06-01-103
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 21, 2005, 9:24 a.m., effective January 21, 2006]

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

Purpose: The proposal reduces the required number of years of supervised clinical practice experience from four to three for diagnostic radiologic technologists. The proposal reduces the required number of years of supervised clinical practice experience from five to three for therapeutic radiologic technologists. The proposal reduces the required number of years of supervised clinical practice experience from four to two for nuclear medicine technologists. The proposal adds the mandatory requirement of thirty-three contact hours of sectional anatomy for diagnostic radiologic technologists and twenty-two contact hours of sectional anatomy for therapeutic radiologic technologists to be comparable to the requirements of traditional educational programs. The proposal adds a requirement for individuals participating in the

alternative training program to annually report to the radiologic technologist program, in writing, the progress of their supervised clinical hours. The proposal adds the requirements for foreign trained individuals to become certified as required by statute. The proposal also updates the acceptable accrediting bodies and updates the current examination requirements. The proposal also fixes typographical and grammatical errors and removes definitions which are obsolete.

Citation of Existing Rules Affected by this Order: Amending WAC 246-926-100, 246-926-110, 246-926-120, and 246-926-130.

Statutory Authority for Adoption: RCW 18.84.040.

Adopted under notice filed as WSR 05-17-186 on August 24, 2005.

A final cost-benefit analysis is available by contacting Holly Rawnsley, P.O. Box 47866, Olympia, WA 98501, phone (360) 236-4941, fax (360) 236-2406, e-mail Holly.Rawnsley@doh.wa.gov.

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 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: October 13, 2005.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 03-10-100, filed 5/7/03, effective 6/7/03)

WAC 246-926-100 Definitions—Alternative training radiologic technologists. (1) Definitions. For the purposes of certifying radiologic technologists by alternative training methods the following definitions ((~~shall~~)) apply:

(a) "One quarter credit hour" equals eleven "contact hours";

(b) "One semester credit hour" equals sixteen contact hours;

(c) "One contact hour" is considered to be fifty minutes lecture time or one hundred minutes laboratory time;

(d) "One clinical year" is considered to be 1900 contact hours.

(e) ((~~"Immediate supervision" means the radiologist or nuclear medicine physician is in audible or visual range of the patient and the person treating the patient.~~

(~~f~~))) "Direct supervision" means the supervisory clinical evaluator is on the premises((~~,~~)) and is quickly and easily available.

(((~~g~~))) (f) "Indirect supervision" means the supervising ((~~radiologist or nuclear medicine~~)) physician is on site no less than half-time.

(((~~h~~))) (g) "Allied health care profession" means an occupation for which programs are accredited by the ((~~American Medical Association Committee on Allied Health Education and Accreditation, Sixteenth Edition of the Allied Health Education Directory, 1988 or a previous edition~~)) Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee for Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation.

(((~~i~~))) (h) "Formal education" ((~~shall be~~)) means education obtained ((~~in~~)) from postsecondary vocational/technical schools and institutions, community or junior colleges, and senior colleges and universities accredited by regional accrediting associations or by other recognized accrediting agencies or programs approved by the ((~~Committee on Allied Health Education and Accreditation of the American Medical Association~~)) Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee for Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation.

(2) Clinical practice experience shall be supervised and verified by the approved clinical evaluators who must be:

(a) A ((~~certified~~)) radiologic technologist ((~~designated in the specialty area the individual is requesting certification~~)) who provides direct supervision and is certified by the department in the specialty area for which the individual in the alternative training program is requesting certification; and

(b) A ((~~radiologist for those individuals requesting certification in practice of diagnostic radiologic technology or therapeutic radiologic technology; or for those individuals requesting certification as a nuclear medicine technologist, a~~)) physician ((~~specialist in nuclear medicine~~)) who provides indirect supervision. The physician supervisor shall routinely critique the films and evaluate the quality of the trainees' work; or

(c) The physician ((~~specialist in nuclear medicine~~)) who is providing indirect supervision may also provide direct supervision, when a certified nuclear medicine technologist is not available, for individuals requesting to become certified as a nuclear medicine technologist.

AMENDATORY SECTION (Amending Order 237, filed 2/7/92, effective 2/19/92)

WAC 246-926-110 Diagnostic radiologic technologist—Alternative training. An individual ((~~must possess~~)) shall have the following alternative training qualifications to be certified as a diagnostic radiologic technologist.

(1) Have obtained a high school diploma or GED equivalent, a minimum of ((~~four~~)) three clinical years supervised practice experience in radiography, and completed the course content areas outlined in subsection (2) of this section; or have obtained an associate or higher degree in an allied health care profession or meets the requirements for certification as

a therapeutic radiologic technologist or nuclear medicine technologist, have obtained a minimum of ((~~three~~)) two clinical years supervised practice experience in radiography, and completed course content areas outlined in subsection (2) of this section.

(2) The following course content areas of training may be obtained directly by supervised clinical practice experience: Introduction to radiography, medical ethics and law, medical terminology, methods of patient care, radiographic procedures, radiographic film processing, evaluation of radiographs, radiographic pathology, introduction to quality assurance, and introduction to computer literacy. Clinical practice experience must be verified by the approved clinical evaluators.

The following course content areas of training must be obtained through formal education: Human anatomy and physiology - 100 contact hours; principles of radiographic exposure - 45 contact hours; imaging equipment - 40 contact hours; radiation physics, principles of radiation protection, and principles of radiation biology - 40 contact hours; and sectional anatomy - 33 contact hours.

(3) Individuals participating in the diagnostic radiologic technologist alternative training program must annually report to the department of health radiologic technologist program the progress of their supervised clinical hours. Notification must be made in writing and must include the street and mailing address of their program and the names of the individual's direct and indirect supervisors.

(4) Must ((~~satisfactorily~~)) pass an examination approved or administered by the secretary with a minimum scaled score of 75.

(((~~(4)~~))) (5) Individuals who are registered as a diagnostic radiologic technologist with the American Registry of Radiologic Technologists shall be considered to have met the alternative education and training requirements.

(6) Individuals educated and/or credentialed to practice as a diagnostic radiologic technologist in another country must provide official documentation of their education and training proving that they meet or exceed alternative training requirements. They must also pass an examination approved or administered by the secretary with a minimum scaled score of 75.

AMENDATORY SECTION (Amending Order 237, filed 2/7/92, effective 2/19/92)

WAC 246-926-120 Therapeutic radiologic technologist—Alternative training. An individual ((~~must possess~~)) shall have the following alternative training qualifications to be certified as a therapeutic radiologic technologist.

(1) Have obtained a baccalaureate or associate degree in one of the physical, biological sciences, or allied health care professions, or meets the requirements for certification as a diagnostic radiologic technologist or nuclear medicine technologist; have obtained a minimum of ((~~five~~)) three clinical years supervised practice experience in therapeutic radiologic technology; and completed course content areas outlined in subsection (2) of this section.

(2) The following course content areas of training may be obtained by supervised clinical practice experience: Orientation to radiation therapy technology, medical ethics and law, methods of patient care, computer applications, and medical terminology. At least fifty percent of the clinical practice experience must have been in operating a linear accelerator. Clinical practice experience must be verified by the approved clinical evaluators.

The following course content areas of training must be obtained through formal education: Human anatomy and physiology - 100 contact hours; oncologic pathology - 22 contact hours; radiation oncology - 22 contact hours; radiobiology, radiation protection, and radiographic imaging - 73 contact hours; mathematics (college level algebra or above) - 55 contact hours; radiation physics - 66 contact hours; radiation oncology technique - 77 contact hours; clinical dosimetry - 150 contact hours; quality assurance - 12 contact hours; ((~~and~~)) hyperthermia - 4 contact hours; and sectional anatomy - 22 contact hours.

(3) Individuals participating in the therapeutic radiologic technologist alternative training program must annually report to the department of health radiologic technologist program the progress of their supervised clinical hours. Notification must be made in writing and must include the street and mailing address of their program and the names of the individual's direct and indirect supervisors.

(4) Must ((~~satisfactorily~~)) pass an examination approved or administered by the secretary with a minimum scaled score of 75.

(((~~(4)~~))) (5) Individuals who are registered as a therapeutic radiologic technologist by the American Registry of Radiologic Technologists shall be considered to have met the alternative education and training requirements.

(6) Individuals educated and/or credentialed to practice as a therapeutic radiologic technologist in another country must provide official documentation of their education and training proving that they meet or exceed alternative training requirements. They must also pass an examination approved or administered by the secretary with a minimum scaled score of 75.

AMENDATORY SECTION (Amending Order 237, filed 2/7/92, effective 2/19/92)

WAC 246-926-130 Nuclear medicine technologist—Alternative training. An individual ((~~must possess~~)) shall have the following alternative training qualifications to be certified as a nuclear medicine technologist.

(1) Have obtained a baccalaureate or associate degree in one of the physical, biological sciences, allied health care professions, or meets the requirements for certification as a diagnostic radiologic technologist or a therapeutic radiologic technologist; have obtained a minimum of ((~~four~~)) two clinical years supervised practice experience in nuclear medicine technology; and completed course content areas outlined in subsection (2) of this section.

(2) The following course content areas of training may be obtained by supervised clinical practice experience: Methods of patient care, computer applications, department organization and function, nuclear medicine in-vivo and in-vitro procedures, and radionuclide therapy. Clinical practice

experience must be verified by the approved clinical evaluators.

The following course content areas of training must be obtained through formal education: Radiation safety and protection - 10 contact hours; radiation biology - 10 contact hours; nuclear medicine physics and radiation physics - 80 contact hours; nuclear medicine instrumentation - 22 contact hours; statistics - 10 contact hours; radionuclide chemistry and radiopharmacology - 22 contact hours.

(3) Individuals participating in the nuclear medicine technologist alternative training program must annually report to the department of health radiologic technologist program the progress of their supervised clinical hours. Notification must be made in writing and must include the street and mailing address of their program and the names of the individual's direct and indirect supervisors.

(4) Must ((~~satisfactorily~~)) pass an examination approved or administered by the secretary with a minimum scaled score of 75.

(((~~(4)~~))) (5) Individuals who are registered as a nuclear medicine technologist with the American Registry of Radiologic Technologists or with the Nuclear Medicine Technology ((~~certifying~~)) Certification Board shall be considered to have met the alternative education and training requirements.

(6) Individuals educated and/or credentialed to practice as a nuclear medicine technologist in another country must provide official documentation of their education and training proving that they meet or exceed alternative training requirements. They must also pass an examination approved or administered by the secretary with a minimum scaled score of 75.

WSR 06-01-104
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 21, 2005, 9:26 a.m., effective January 21, 2006]

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

Purpose: The purpose of the proposal is to clarify the supervision needed for a radiologic technologist to perform parenteral procedures. The proposal defines how diagnostic and therapeutic agents may be administered by radiologic technologists, as part of the parenteral procedures, and limits them to intravenous, intramuscular, or subcutaneous injection. The proposal also updates the acceptable accrediting bodies and updates the current examination requirements. It also corrects typographical and grammatical errors and removes definitions which are obsolete.

Citation of Existing Rules Affected by this Order: Amending WAC 246-926-020, 246-926-140, 246-926-180, 246-926-190, and 246-926-990.

Statutory Authority for Adoption: RCW 18.84.040.

Adopted under notice filed as WSR 05-17-187 on August 24, 2005.

A final cost-benefit analysis is available by contacting Holly Rawnsley, P.O. Box 47866, Olympia, WA 98501, phone (360) 236-4941, fax (360) 236-2406, e-mail Holly.Rawnsley@doh.wa.gov.

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 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending Order 237, filed 2/7/92, effective 2/19/92)

WAC 246-926-020 ((~~General provisions.~~)) Definitions. (1) "Unprofessional conduct" as used in this chapter ((~~shall~~)) means the conduct described in RCW 18.130.180.

(2) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

(3) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(4) "Department" means the department of health.

(5) "Radiological technologist" means a person certified ((~~pursuant to~~)) under chapter 18.84 RCW.

(6) "Registered X-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.

(7)(((~~(a) "Immediate supervision" means the appropriate licensed practitioner is in audible or visual range of the patient and the person treating the patient.~~

~~(b)~~))) "Direct supervision" means the appropriate licensed practitioner is on the premises((~~,~~)) and is quickly and easily available.

(((~~(c) "Indirect supervision" means the appropriate licensed practitioner is on site no less than half-time.~~))

(8) "Mentally or physically disabled" means a radiological technologist or X-ray technician who is currently mentally incompetent or mentally ill as determined by a court, or who is unable to practice with reasonable skill and safety to patients by reason of any mental or physical condition and who continues to practice while so impaired.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-926-140 Approved schools. Approved schools and standards of instruction for diagnostic radiologic technologist, therapeutic radiologic technologist, and nuclear medicine technologist are those recognized as radiography, radiation therapy technology, and nuclear medicine technology educational programs that have obtained accreditation

from the ((~~Committee on Allied Health Education and Accreditation of the American Medical Association as recognized in the publication Allied Health Education Directory, Sixteenth Edition, published by the American Medical Association, 1988 or any previous edition~~)) Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee for Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation.

AMENDATORY SECTION (Amending Order 302, filed 9/11/92, effective 10/12/92)

WAC 246-926-180 Parenteral procedures. (1) A certified radiologic technologist may administer diagnostic and therapeutic agents under the ((~~direction and immediate supervision of a radiologist if~~)) direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW. Diagnostic and therapeutic agents may be administered via intravenous, intramuscular, or subcutaneous injection. In addition to direct supervision, before the radiologic technologist may administer diagnostic and therapeutic agents, the following guidelines ((~~are~~)) must be met:

(a) The radiologic technologist has had the prerequisite training and thorough knowledge of the particular procedure to be performed;

(b) Appropriate facilities are available for coping with any complication of the procedure as well as for emergency treatment of severe reactions to the diagnostic or therapeutic agent itself, including ((~~the ready availability of~~)) readily available appropriate resuscitative drugs, equipment, and personnel; and

(c) After parenteral administration of a diagnostic or therapeutic agent, competent personnel and emergency facilities ((~~shall~~)) must be available to the patient for at least thirty minutes in case of a delayed reaction.

(2) A certified radiologic technologist may perform venipuncture ((~~at the direction and immediate supervision of a radiologist~~)) under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW.

AMENDATORY SECTION (Amending Order 237, filed 2/7/92, effective 2/19/92)

WAC 246-926-190 State examination/examination waiver/examination application deadline. (1) The American Registry of Radiologic Technologists certification examinations for radiography, radiation therapy technology, and nuclear medicine technology ((~~shall be~~)) are the state examinations for certification as a radiologic technologist.

(((~~(a) The examination for certification as a radiologic technologist shall be conducted three times a year in the state of Washington, in March, July, and October.~~

~~(b)~~)) (2) The examination shall be conducted in accordance with the American Registry of Radiologic Technologists security measures and contract.

(((~~(c) Examination candidates shall be advised of the results of their examination in writing.~~

~~(2)~~)) (3) Applicants taking the state examination must submit the application, supporting documents, and fees to the department of health ((~~no later than the fifteenth day of December, for the March examination; the fifteenth day of April, for the July examination; and the fifteenth day of July, for the October~~)) for approval prior to being scheduled to take the examination.

(((~~(3) A scaled score of seventy-five is required to pass the examination.~~)) (4) Examination candidates shall be advised of the results of their examination in writing by the department of health.

(5) The examination candidate must have a minimum scaled score of seventy-five to pass the examination.

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-926-990 Radiological technologists certification and registration fees and renewal cycle. (1) Certificates and registrations must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) ((~~The following nonrefundable fees will be charged:~~)) The practitioner must pay the following nonrefundable fees:

Title of Fee	Fee
Application - certification	$45.00
Exam fee - certification	30.00
Application - registration	35.00
Certification renewal	45.00
Registration renewal	35.00
Late renewal penalty - certification	45.00
Late renewal penalty - registration	35.00
Expired certificate reissuance	45.00
Expired registration reissuance	35.00
Certification of registration or certificate	15.00
Duplicate registration ((~~of~~)) or certificate	15.00

WSR 06-01-105
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 21, 2005, 9:32 a.m., effective August 15, 2006]

Effective Date of Rule: August 15, 2006.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Initial extension of the effective date of the rule, as described below, was due to a request from the department of ecology for time to evaluate potential issues arising from the application, if

any of the Cleanup Priority Act (CPA), chapter 70.105E RCW, to the disposal of NARM at the commercial low-level radioactive waste disposal site, before the rule took effect. Ecology's evaluation indicates the need to obtain the federal district court's decision on summary judgment in the case of *United States v. Manning,* CV-04-5128-AAM, in order to fully analyze the CPA's application, if any, to NARM disposal at the commercial site. Arguments on summary judgment are currently scheduled for May 23, 2006, and a decision from the court is expected next summer. To provide adequate time for the court to rule and ecology to consider the court's ruling with respect to its implementation of the CPA, the extension of the effective date of the rule is continued to August 15, 2006. Toward the end of this period, the department health will evaluate whether or not the court's decision and ecology's subsequent analysis of the CPA's application to NARM disposal at the commercial site affects this rule making.

Purpose: The purpose of this order is to amend the rule-making order, WSR 05-21-128, filed on October 19, 2005, adopting amendments to chapter 246-249 WAC, to extend the effective date of the rule. The order of adoption identified the effective date of the rule as thirty-one days after filing, or November 19, 2005. By amended order of adoption, dated November 18, 2005, the effective date of the rule was extended to December 23, 2005. This second amended order of adoption continues the extension of the effective date of the rule to August 15, 2006.

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 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: December 21, 2005.

Mary C. Selecky
Secretary

WSR 06-01-111
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed December 21, 2005, 11:54 a.m., effective January 21, 2006]

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

Purpose: This rule-making order creates a crucifer seed quarantine requiring that all crucifer seed be tested and found free from two specific diseases, black leg and black rot, prior to the planting of the seed in six western Washington counties. The quarantine also places restrictions on the content of dormant seed that may be present in a seed lot for certain crucifer crops. In addition, this rule-making order places wild radish and black mustard on the restricted noxious weed seed list. This designation requires that the rate of occurrence be disclosed on the label for each container of seed.

Citation of Existing Rules Affected by this Order: Amending WAC 16-301-050 and 16-302-105.

Statutory Authority for Adoption: Chapters 15.49 and 17.24 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 05-21-141 on October 19, 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 19, Amended 2, 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 19, Amended 2, Repealed 0.

Date Adopted: December 21, 2005.

Valoria Loveland
Director

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

WAC 16-301-050 Restricted noxious weed seeds. Restricted (secondary) noxious weed seeds are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices. Seed is deemed mislabeled if it consists of or contains any of the restricted noxious weed seeds listed below in excess of the number declared on the label. For the

purpose of seed certification, see WAC 16-302-105 for the list of objectionable weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass	*Alopecurus myosuroides*
Black mustard	*Brassica nigra*
Blue lettuce	*Lactuca tatarica subsp. pulchella*
Docks and Sorrel	*Rumex spp.*
Dodder	*Cuscuta spp.*
Dyers woad	*Isatis tinctoria*
Field pennycress (fanweed)	*Thlaspi arvense*
Field sandbur	*Cenchrus incertus*
Gromwell (only in small grain)	*Buglossoides arvensis*
Halogeton	*Halogeton glomeratus C.A. Mey.*
Medusahead	*Taeniatherum caput-medusae*
Plantains	*Plantago spp.*
Poverty weed	*Iva axillaris Pursh.*
Puncturevine	*Tribulus terrestris L.*
St. Johnswort	*Hypericum perforatum L.*
Dalmation toadflax	*Linaria dalmatica (L.) Mill.*
Yellow toadflax	*Linaria vulgaris Hill.*
Western ragweed	*Ambrosia psilostachya DC.*
Wild mustard	*Sinapis arvensis subsp. arvensis*
Wild oat	*Avena fatua L.*
Wild radish	*Raphanus raphanistrum*

CRUCIFER SEED QUARANTINE

NEW SECTION

WAC 16-301-490 Why is the department establishing a crucifer seed quarantine? The production of crucifer vegetable seed is an important industry in Washington state. The economic well-being of that industry is threatened by the introduction of crucifer seed infected with certain bacterial and fungal pathogens. In addition, certain crucifer species produce dormant seed that, if present in a seed lot will persist into subsequent cropping years. The resulting "volunteer" plants have the potential to become established as weeds in Washington state.

The director has determined that a quarantine is needed to protect the Washington crucifer vegetable seed industry from the introduction of seed infected with certain pathogens and from the introduction of crucifer seed containing dormant seed. The quarantine will provide the seed growers in this state with sources of crucifer seed that have been tested and proven to be free from harmful pathogens and, when appropriate, dormant seed.

NEW SECTION

WAC 16-301-495 What definitions are important to understanding this chapter? Definitions for some terms in this chapter can be found in chapter 15.49 RCW and chapter 16-301 WAC. In addition, the following definitions apply to this chapter:

"Approved treatment methods" include hot water, hot chlorine or any other methods that can eliminate the presence of regulated pathogens.

"Crucifer" means all plants in the family Brassicaceae (also known as Cruciferae) and specifically includes all *Brassica* species, *Raphanus sativus* - Radish, *Sinapis alba* and other mustards.

"Crucifer production" means any planting of crucifer seed or seedlings for the purpose of producing seed, oil, commercial vegetables or cover crops.

"Crucifer seed" includes any part of a plant capable of propagation including, but not necessarily limited to, seeds, roots, and transplants.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the Washington state department of agriculture or the director's designee.

"Dormant seed" means viable true seed that displays a delay in or lack of germination when provided favorable germination conditions for the type of seed in question.

"Owner" means the person having legal ownership, possession or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, grower, seed dealer, landowner or their agent.

"Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

"Regulated area" means those geographic areas that are protected from the introduction of specified plant pests by the provisions of this quarantine.

"Seed lot" means a designated quantity of seed that is uniquely identified by a lot number.

"Seed program" means the Washington state department of agriculture seed program.

"Trial ground" means a specific parcel of land approved by the director for experimental or limited production or increase of crucifer seed and for planting seed lots whose quantity of seed is insufficient to allow for pathological testing.

"True seed" means a mature fertilized ovule consisting of an embryo, with or without an external food reserve enclosed by a seed coat.

NEW SECTION

WAC 16-301-500 What crucifer articles are regulated by this chapter? (1) With the exception of the exemptions listed in WAC 16-301-525(4), all crucifer seed, seedlings, roots, or transplants intended for seed production, oil production, commercial vegetable production or cover crop use are regulated under the provisions of this chapter.

(2) This chapter also regulates crop residue remaining from the harvest of infected crucifer plants.

NEW SECTION

WAC 16-301-505 What diseases are regulated by this chapter? (1) **"Regulated diseases"** means those bacterial and fungal diseases of crucifers listed in this section and any new variations or strains of these diseases.

(2) **"Regulated pathogens"** means those bacterial and fungal organisms identified as the casual agents for the diseases listed in this section.

(3) The following bacterial and fungal diseases of crucifers, and any new strains or variations of these diseases are regulated by this chapter:

Common Name	Scientific Name
Black leg of Crucifers	*Phoma lingam*
Black rot	*Xanthomonas campestris pv. campestris*

NEW SECTION

WAC 16-301-510 What seed must undergo dormancy testing? Any seed of a *Brassica* or *Sinapis* species whose primary uses for any nonvegetable use must be tested for the presence of dormant seed.

This testing must be done by either a single or paired germination test that demonstrates freedom of dormant seed.

NEW SECTION

WAC 16-301-515 What is the quarantined area for this crucifer seed quarantine? (1) The quarantine area for the crucifer seed quarantine includes all Washington state counties except Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

(2) Regulated articles imported into Washington state must comply with the regulations of this chapter before transport into the regulated area. No additional requirements apply within the quarantine area but all regulated articles transported into the regulated area must comply with the regulations of this chapter.

NEW SECTION

WAC 16-301-520 What is the regulated area for this crucifer seed quarantine? The regulated area for this crucifer seed quarantine includes Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

NEW SECTION

WAC 16-301-525 What are the exemptions to the crucifer seed quarantine that apply within the regulated area? This crucifer quarantine does not apply to:

(1) Experiments or trial grounds of the United States Department of Agriculture;

(2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or

(3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550.

(4) Shipments, movements, or transportation of:

(a) Prepackaged crucifer seed in packages of 1/2 ounce or less if the seeds are free of diseases; or

(b) Vegetable seedlings offered for sale for home garden use in the regulated area if the seedlings are free of diseases.

(5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse.

NEW SECTION

WAC 16-301-530 What requirements apply to planting crucifer seed in the regulated area? (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the regulated area.

(b) Any seed of a *Brassica* or *Sinapis* species planted or established in the regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the regulated area must file a Notice of Intent/Quarantine Compliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the regulated area unless each seed container bears a label issued by the seed program indicating that the seed is in compliance with the requirements of this chapter.

NEW SECTION

WAC 16-301-535 What requirements apply to boxes and racks used to ship crucifer seedlings? (1) Only boxes that have not previously contained crucifer seedlings may be used for shipping transplants into or within a regulated area.

(2) Racks used to ship transplanted crucifer seedlings must be thoroughly disinfected with an appropriate sanitizer before the seedlings are shipped.

NEW SECTION

WAC 16-301-540 What requirements apply to crucifer transplants grown in greenhouses in the regulated area? (1) All crucifer transplants produced in greenhouses in the regulated area must be subjected to pest control procedures that reduce the presence of diseases or insects that may inhibit identifying regulated diseases.

(2) The interiors of greenhouses in the regulated area used to produce crucifer transplants must be free of crucifer weeds.

(3) One hundred meter buffers, free of crucifer weeds, must surround all greenhouses in the regulated area used to produce crucifer transplants.

NEW SECTION

WAC 16-301-545 What requirements apply to crucifer seed lots that test positive for any regulated disease? (1) If a crucifer seed lot tests positive for any regulated disease, the infected seed lot may be treated with an approved seed treatment.

(2) After treatment, the seed lot must be tested for the presence of regulated diseases using appropriate pathological testing methods.

(3) If the pathological testing yields negative test results, the seed lot will be considered in compliance with this chapter.

(4) It is a violation of this chapter to plant seed in the regulated area that tests positive for any regulated disease subsequent to any approved treatment method.

NEW SECTION

WAC 16-301-550 If documentation verifying that crucifer seed is free from regulated diseases is not available, what protocols must be followed before the seed is planted in a regulated area? When no documentation exists verifying that a crucifer seed lot is free from regulated diseases, the following protocols must be followed before the seed is planted in the regulated area:

(1) A crucifer seed lot will be classified as a suspect seed lot if the seed lot lacks the documentation verifying that the lot complies with the crucifer seed quarantine requirements of this chapter.

(2) Suspect seed lots must:

(a) Not be offered for sale in the regulated area.

(b) Be treated by an approved treatment method.

(c) Be sown in a greenhouse and the seedlings must pass inspection by seed program inspectors before transplanting to the field.

(3) Any greenhouse operation used to grow crucifer seedlings for transplant must:

(a) Physically separate suspect seed lots from other crucifer production within that greenhouse.

(b) Monitor and document the location and identity of each suspect seed lot during production.

(4) It is a violation of this chapter for seedlings from a suspect seed lot to be topped, clipped, chopped or undergo any other treatment to toughen them or reduce their size.

(5) All seedlings from a suspect seed lot that exhibit symptoms of regulated diseases must be physically separated from asymptomatic transplants in that lot.

(6) Before shipping seedlings from a suspect seed lot, the seedlings must be inspected by seed program inspectors for the presence of regulated diseases.

(a) If no symptoms of regulated diseases are detected during this inspection, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the regulated area.

(b) If seedlings display symptoms of regulated diseases, laboratory testing for the diseases is mandatory.

(c) If seedlings from a suspect seed lot test negative for regulated pathogens after appropriate pathological testing, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the regulated area.

(d) If the presence of a regulated disease is confirmed by laboratory testing, all seedlings from a suspect seed lot may be subject to a quarantine order or destruction order under WAC 16-301-570.

(7) Any crucifer seed production fields, plant beds, or greenhouse production that will be planted with or receives production from suspect seed lots that are determined to be free from regulated diseases under subsection (6) of this section must be entered into the Washington state phytosanitary inspection program as required under WAC 16-301-235.

(8)(a) It is a violation of this chapter to plant seedlings from a suspect seed lot that tests positive for any regulated disease in the regulated area.

(b) Any suspect seed lot testing positive for any regulated disease may be subject to a quarantine order or a destruction order under WAC 16-301-570.

NEW SECTION

WAC 16-301-555 How are approved trial grounds established and what rules apply to them? (1) If a crucifer seed lot has not been tested to determine if it is disease free, and the quantity of seed in the lot is too small for testing to be practical, it must be planted in an approved trial ground that meets the requirements of the seed program.

(2) Trial grounds may be established for the purposes of, but not limited to, variety maintenance, variety development or other related research.

(3)(a) The seed program must approve a trial ground before it is established.

(b) Failure to obtain approval of a trial ground before it is established is a violation of this chapter and may subject the trial ground to a destruction order under WAC 16-301-570.

(4)(a) Trial grounds must be isolated from crucifer production crops according to the standards set in "*Seed Field Minimum Isolation Distances*" published by the Washington State University (WSU) cooperative extension.

(b) Copies of this publication can be obtained by contacting a WSU extension office.

(5) A person may plant crucifer seed in an approved trial ground after notifying the seed program, in writing, of their intent to plant for research purposes only. The notification will include an assurance that the person planting crucifer seed in an approved trial ground will comply with the inspection procedures in WAC 16-301-560, the isolation requirements prescribed by the WSU extension publication "*Seed Field Minimum Isolation Distances*", and any other requirements established by the director.

(6) The maximum planting in a trial ground is:

(a) One pound per variety for crucifer seed; and

(b) One-half acre for crucifer transplants.

NEW SECTION

WAC 16-301-560 What are the inspection requirements for trial grounds? (1) Applications for the phytosanitary field inspection of a trial ground must be submitted to the department before September 1 of the year the trial ground is established.

(2) A minimum of two phytosanitary field inspections of a trial ground must be conducted. These inspections must take place:

(a) During the seedling stage; and

(b) At the bloom stage.

(3) The phytosanitary field inspection application must include:

(a) A detailed varietal planting plan;

(b) A description of the exact location of the trial ground;

(c) The manner in which the trial ground will be isolated from other known crucifer production; and

(d) The distance by which the trial ground is isolated from other known crucifer production.

(4) If the field inspections detect any regulated pathogens, the trial ground is subject to destruction upon the order of the director.

(5) A disinfectant must be applied to the:

(a) Machinery used in the production of the crucifer crop;

(b) Footwear of all persons entering the trial grounds; and

(c) Footwear of all persons before traveling from a trial ground to other crucifer fields.

NEW SECTION

WAC 16-301-565 What are the testing requirements for seed harvested from an approved trial ground? (1) Seed harvested from an approved trial ground must be tested in an approved laboratory for the presence of regulated pathogens before it is planted in a regulated area.

(2) If the seed harvested from a trial ground tests positive for any regulated pathogens, it may not be released for general planting within a regulated area.

(3)(a) Seed harvested from a trial ground infected with a regulated pathogen must either be destroyed or shipped out of the regulated area.

(b) Written documentation of either the seed's destruction or shipment out of the regulated area must be submitted to the seed program within thirty days of the positive test for the regulated pathogen.

(c) Seed from a trial ground infected with a regulated pathogen that remains in a regulated area beyond thirty days may be subject to destruction upon the order of the director.

NEW SECTION

WAC 16-301-570 What are the penalties for violating the crucifer seed quarantine? (1) When the director determines that crucifer seed or production is infected with a regulated disease, the director may issue a quarantine order or notice of destruction. A violation of this chapter may also result in either a quarantine order or notice of destruction as determined by the director and the rules regulating the crucifer quarantine. Any costs associated with complying with a notice of destruction or quarantine order is the sole responsibility of the owner and not the responsibility of the department.

(2) The director may issue a notice of destruction:

(a) The notice of destruction will identify the property or seed lot affected.

(b) The notice of destruction will order the destruction of regulated articles or prescribe the terms of entry, inspection, partial destruction and/or treatment of regulated articles.

(c) The notice of destruction may prescribe control measures or other requirements needed to prevent the infection of adjacent properties with a regulated disease.

(d) To ensure that the affected parties comply with the measures required to eliminate a disease caused by regulated pathogens, the director will notify the owner and seed company representatives, if known, regarding the methods of destruction to be used, the extent of the destruction and the safeguards being implemented to prevent the spread of the disease.

(3) The director may order the quarantine of any regulated article or planting area. The director will:

(a) Determine the quarantine conditions;

(b) Determine if a quarantine extension is warranted; and

(c) Prescribe sanitary precautions that will prevent the spread of the suspected regulated disease.

(4) To prevent the spread of the suspected regulated disease, persons entering the quarantined area must follow the sanitary precautions in WAC 16-301-560(5). Entry into the quarantined area is restricted to:

(a) The owner;

(b) Department employees;

(c) University personnel or other plant pathology specialists; and/or

(d) Persons authorized in writing by the director.

(5) Fields placed under a quarantine order:

(a) Must enter the Washington state phytosanitary inspection program as required under WAC 16-301-235 with all inspection costs borne by the owner.

(b) May be subject to additional inspection, control, isolation, or destruction requirements if the director determines they are needed to prevent the spread of regulated pathogens.

(6) Any owner violating the requirements of this crucifer quarantine is subject to the civil and/or criminal penalties as established in chapters 15.49 and/or 17.24 RCW.

NEW SECTION

WAC 16-301-575 How are diseased crucifer seeds and infected fields identified? (1) So that timely investigations may be made, all interested parties, including owners, seed company representatives, and university extension personnel are encouraged to promptly report any suspected infected crucifer fields to the seed program.

(2) Any crucifer crop infected with a regulated pathogen must be reported to the seed program within seventy-two hours after the regulated pathogen is discovered.

(3)(a) The seed program may conduct inspections and tests to determine infection of any crucifer seed or production with a regulated disease.

(b) If a WSDA plant services program plant pathologist and a qualified plant pathologist representing a commercial company or owner disagree over the presence of a regulated disease, the company or owner may request a verification test for a regulated pathogen. A university plant pathologist may recommend the verification test. The verification test must use accepted scientific and professional techniques and will be at the owner's expense.

(c) The affected planting area will be placed under quarantine for at least thirty days or until verification testing is completed.

NEW SECTION

WAC 16-301-580 What regulations apply to diseased crucifer seeds and infected fields? (1) When the director determines that a field is infected with a regulated pathogen and threatens to infect other fields, the director may issue a notice of destruction prescribing control measures or other requirements needed to prevent the infection of adjacent properties.

(2) Unless the crop is within two weeks of harvest, any crucifer crop within the regulated area that is infected with a regulated pathogen may be subject to immediate destruction, in part or in total. The owner is responsible for the expenses incurred to destroy a diseased crucifer crop.

(3) The following requirements apply to crops that are within two weeks of harvest:

(a) Residues must be destroyed or incorporated into the ground immediately after harvest;

(b) Harvested seed must be isolated from other seed lots until it is treated with hot water and/or chlorine seed treatments;

(c) Harvest equipment must be steam cleaned before entering any other fields; and

(d) WSDA personnel in consultation with WSU extension personnel must monitor these post-harvest activities.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-105 Seed certification—Objectionable weeds. The following weeds are considered objectionable noxious weeds for the purpose of seed certification.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass	*Alopecurus myosuroides*
Blue lettuce	*Lactuca tatarica*
Docks and Sorrel	*Rumex spp.*
Field pennycress (fanweed)	*Thlaspi arvense*
Field sandbur	*Cenchrus incertus*
Halogeton	*Halogeton glomeratus C.A. Mey.*
Medusahead	*Taeniatherum caput-medusea subsp. caputmedusae*
Plantains	*Plantago spp.*
Poverty weed	*Iva axillaris Pursh.*
Puncturevine	*Tribulus terrestris L.*
St. Johnswort	*Hypericum perforatum L.*
Dalmation toadflax	*Linaria dalmatica (L.) Mill.*
Yellow toadflax	*Linaria vulgaris Hill.*
Western ragweed	*Ambrosia psilostachya DC.*
Wild mustard	*Sinapis arvensis subsp. arvensis*
Wild oat	*Avena fatua L.*
Gromwell (in small grain)	*Buglossoides arvensis*
Bedstraw	*Galium spp. (in alfalfa only)*
Black mustard	*Brassica nigra ((~~(in rapeseed only)~~))*
Brown mustard	*Brassica juncea (in rapeseed only)*
Wild radish	*Raphanus raphanistrum (((~~(in rapeseed only)~~)))*
Dyers woad	*Isatis tinctoria*