

WSR 07-07-016
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed March 9, 2007, 11:01 a.m.]

The department of licensing hereby withdraws proposed rule, chapter 308-56A WAC, Certificates of title—Motor vehicles, etc., filed with your office on March 5, 2007, as part of WSR 07-06-059.

Dale R. Brown
 Rules Coordinator
 Vehicle Services

WSR 07-07-033
PROPOSED RULES
HOME CARE
QUALITY AUTHORITY

[Filed March 12, 2007, 1:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-044.

Title of Rule and Other Identifying Information: Amending WAC 257-05-160 Who is required to complete safety training and when must it be completed? and 257-05-240 Will DSHS deny payment of an individual provider who does not complete safety training?, to remove the safety training requirement for individual providers working for a consumer prior to December 1, 2004.

Hearing Location(s): Home Care Quality Authority, 515 15th Avenue S.E., Olympia, WA 98504, on April 24, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 22, 2007.

Submit Written Comments to: Lisa Livingston, 515 15th Avenue S.E., P.O. Box 40940, Olympia, WA 98504, e-mail llivingston@hcqa.wa.gov, fax (360) 586-0786, by 5:00 p.m. on April 20, 2007.

Assistance for Persons with Disabilities: Contact Lisa Livingston, HCQA Rules Coordinator, by 5:00 p.m. on April 20, 2007, TTY (360) 493-2637 or (360) 902-8859.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Repeals the current WAC that requires individual providers already caring for consumers of in-home care services prior to December 1, 2004, to complete safety training conducted by and through the home care quality authority.

(2) Repeals the current WAC that requires that all the workers in this category who continue to care for consumers of in-home care services and who have not completed the training, will be denied payment by DSHS.

Reasons Supporting Proposal: If this WAC were to be applied on or after January 1, 2007, to all the workers in this category who have not completed the training, DSHS must deny payment to these workers who continue to care for consumers of in-home care services. Without payment, care providers might not provide continued care, which could jeopardize the health and safety of those consumers. An emergency

rule was adopted regarding this subject effective December 21, 2006.

Statutory Authority for Adoption: RCW 74.39A.280(3).

Statute Being Implemented: RCW 74.39A.280(3).

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

Name of Proponent: Home care quality authority, governmental.

Name of Agency Personnel Responsible for Drafting: Rick Hall, P.O. Box 49940, Olympia, WA 98504, (360) 902-8855; Implementation and Enforcement: Lisa Livingston, P.O. Box 49940, Olympia, WA 98504, (360) 902-8859.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The home care quality authority has analyzed the proposed rules and determined that no new costs will be imposed on small business or non-profits.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable pursuant to RCW 34.05.328(5).

March 12, 2007

Rick Hall

Executive Director

AMENDATORY SECTION (Amending WSR 05-01-158, filed 12/20/04, effective 1/20/05)

WAC 257-05-160 Who is required to complete safety training and when must it be completed? (1) Individual providers must complete safety training no later than one hundred twenty calendar days after beginning to work with their first DSHS consumer. Safety training must be provided by appropriate HCQA staff or contracted entities, or by approved trainers who meet DSHS requirements outlined in WAC 388-71-05875.

(2) ~~((Individual providers who are already working for a consumer as of December 1, 2004, have two calendar years to complete safety training.~~

(3)) Individual providers who are not required to complete basic core training, such as revised fundamentals of caregiving, identified in WAC 388-71-0500 through 388-71-05952 may complete safety training via distance learning. Alternate methods to complete safety training will be provided that could include innovative learning strategies such as:

- (a) CD, video, DVD, or other electronic method.
- (b) Internet-based or other computerized method.
- (c) Workbook of printed subject matter.

AMENDATORY SECTION (Amending WSR 05-01-158, filed 12/20/04, effective 1/20/05)

WAC 257-05-240 Will DSHS deny payment of an individual provider who does not complete safety training? HCQA will notify DSHS of an individual provider's noncompliance. DSHS will deny payment of an individual provider who does not return the attestation form and complete safety training within one hundred twenty calendar days after beginning to work with their first DSHS consumer.

~~((DSHS will deny payment of an individual provider who is already caring for a consumer as of December 1, 2004,~~

and who does not complete the safety training by December 31, 2006.)

WSR 07-07-040
PROPOSED RULES
GAMBLING COMMISSION

[Filed March 13, 2007, 8:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-129.

Title of Rule and Other Identifying Information: WAC 230-20-685 Commercial amusement games—Wager and prize limitations.

Hearing Location(s): The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on May 11, 2007, at 9:30 a.m.

Date of Intended Adoption: May 11, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by May 1, 2007.

Assistance for Persons with Disabilities: Contact Shirley Corbett, Executive Assistant, by May 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner, an amusement game licensee, requests that amusement game wagering limits be increased from 50 cents to \$2. When the petitioner submitted his petition, he requested that prize limits also be increased; however, at the March commission meeting, the petitioner withdrew his request to increase prize limits and asked that only wager limits be increased.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Nickels and Dimes, Inc., amusement game licensee, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

January 22, 2007
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-11-021, filed 5/13/97, effective 7/1/97)

WAC 230-20-685 Commercial amusement games—Wager and prize limitations. For locations authorized under WAC 230-04-138 (1)(g), (i), (j), or (k) where school-aged minors are allowed to play, the following limitations shall apply.

(1) Prize limitations. No prize offered shall exceed a cost to the operator of two-hundred fifty dollars.

(2) Consideration. The maximum wager for play shall not exceed (~~(fifty cents)~~) two dollars.

WSR 07-07-045
PROPOSED RULES
HORSE RACING COMMISSION

[Filed March 13, 2007, 12:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-169.

Title of Rule and Other Identifying Information: Chapter 260-14 WAC, Special rules related to commissioners and commission employees.

Hearing Location(s): Marcus Whitman Hotel and Conference Center, 6 West Rose Street, Walla Walla, WA 99362, on May 18, 2007, at 1:00 p.m.

Date of Intended Adoption: May 18, 2007.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by May 14, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by May 14, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 260-14 WAC, Special rules related to commissioners and commission employees, is being updated as part of the agency's regulatory reform effort and to update rules into clearer and more understandable language.

Reasons Supporting Proposal: Supports regulatory reform.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6236 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6236 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 13, 2007
R. J. Lopez
Deputy Secretary

Chapter 260-14 WAC

~~((SPECIAL))~~ RULES RELATING TO COMMISSIONERS AND COMMISSION EMPLOYEES

AMENDATORY SECTION (Amending WSR 04-05-090, filed 2/18/04, effective 3/20/04)

WAC 260-14-010 Definitions. ~~((For the purposes of chapter 260-14 WAC, unless otherwise indicated by the context in which the term is used, the following terms shall have the meaning set forth herein:))~~ The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Commissioner(~~(;)~~)," ~~((shall mean any))~~ A member of the Washington state horse racing commission ~~(, and any member of the immediate family of such commissioner).~~

(2) "Employee(~~(;)~~)," ~~((shall mean))~~ Any full or part time employee of the commission ~~((not normally engaged in direct regulatory functions)).~~ ~~((Included in such group are the executive secretary, Olympia office personnel, and registration clerks.~~

(3) "Regulatory employee," shall include all of the officials named in WAC 260-24-010 and any other employee engaged in direct regulatory functions.

(4) "Thing of economic value," shall have the same meaning as that term has in chapter 42.52 RCW.)

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-020 Prohibited acts. No commissioner(~~(; employee or regulatory))~~ or employee ~~((shall))~~ may accept any thing of economic value, as defined in chapter 42.52 RCW, from any applicant, licensee, or association except as ~~((set forth in these rules))~~ allowed by law.

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-030 Ownership interest in associations. ~~((H))~~ No commissioner or employee ~~((or commissioner during his term of office, shall acquire))~~ may have any ownership interest in any association which seeks race meet dates. ~~((Any ownership interest in any such association owned prior to such membership on the commission or employment by the commission shall be disposed of within thirty days of the time such employee or commissioner accepts employment or takes office unless the commissioner or employee elects to place such ownership in a trust for the duration of his term of office or employment. In such case, said employee, or commissioner shall place such ownership interest in a trust approved by the commission, such trust to provide that any dividends or other profit distribution shall redound to the benefit of a charitable purpose approved by the commission, and that no ownership interest shall be returned to such commissioner or employee at the expiration of such trust unless an amount equal to any increment in value which may have occurred during such trust shall be paid by the commissioner or employee to a charity approved by the commission. In determining whether an increment in value has occurred the~~

trust instrument may provide that a normal rate of interest on the ownership interest, had it been reduced to cash, need not be included in ascertaining such increment.

(2) ~~No regulatory employee shall have an ownership interest in any association conducting a race meeting at which he is employed by the commission.~~

(3) ~~Copies of any trust agreement by which a commissioner or employee retains an interest or potential interest in an association shall be filed with the commission and maintained in a separate file in the Olympia offices of said commission. Such file shall be open and available for public inspection during regular office hours of the commission.)~~

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-14-040 Wagering. ~~((H))~~ No ~~((commissioner or employee~~ commissioner or employee ~~((shall))~~ may make any wager at a facility under the jurisdiction of the commission ~~(-~~

(2) ~~No commissioner employee shall), nor may they~~ make any wager on the outcome of any horse race at a meeting under the jurisdiction of the commission. ~~((Commission employee means both regulatory employee and employee as defined in WAC 260-14-010.~~

(3) ~~No commissioner shall make any wager on the outcome of any horse race at a meeting under the jurisdiction of the commission.)~~

AMENDATORY SECTION (Amending WSR 04-19-046, filed 9/13/04, effective 10/14/04)

WAC 260-14-050 Ownership interests in race horses. ~~((H))~~ No ~~((regulatory employee))~~ commissioner or employee ~~((shall))~~ may have any ownership interest in any race horse running at any race meet under the jurisdiction of the commission.

~~((2) No commissioner shall have any ownership interest in any race horse running at any race meet under the jurisdiction of the commission.)~~

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-060 Performance of compensated services on behalf of associations prohibited. ~~((H))~~ No commissioner or employee of the commission ~~((shall))~~ may receive any compensation whatsoever from an association for any services performed for or on behalf of an association ~~(-~~

(2) ~~No regulatory employee shall receive any compensation from an association for services))~~ or performed during a race meet for which he or she is employed by the commission.

~~((3) Nothing in this rule shall be deemed to prohibit the performance of such services by a regulatory employee either before or after a race meet if authorization in writing is granted by the commission prior to the time any services for which compensation may be reasonably expected are performed. Such authorization may be obtained only in accordance with subparagraph (4) hereof.~~

(4) ~~Upon receiving a request to perform services for which compensation shall be due for or on behalf of an asso-~~

~~iation by a regulatory employee or an association or both, the executive secretary shall investigate and determine whether the performance of such services is bona fide. If he determines that the performance of such services is bona fide and that the compensation to be paid therefor is reasonably related to the performance of such services, he may authorize in writing such services to be performed pending final action by the commission. Should the commission later determine that the executive secretary was in error in granting such authorization, it shall promptly notify the regulatory employee and the association and such services shall thereupon immediately cease and no compensation may be paid such regulatory employee for services performed after such notification.~~

~~(5) Copies of written authorizations issued pursuant to this section shall be maintained in a separate file in the offices of the commission in Olympia, Washington, and shall be open and available for public inspection during regular office hours of said commission.)~~

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-070 Violations. (1) Any ~~((wilful))~~ violation of any of the ~~((foregoing))~~ rules in this chapter by any commissioner ~~((shall))~~ will be ~~((deemed to be))~~ considered official misconduct ~~((in office))~~ and ~~((shall))~~ will be reported by the executive secretary to the governor ~~((for appropriate action)).~~

(2) Any ~~((wilful))~~ violation by any employee ~~((or regulatory employee shall be deemed to be))~~ will be considered misconduct and ~~((shall))~~ will be grounds for ~~((immediate discharge))~~ discipline, including termination. ~~((In the event that such violation occurs between race meets by an employee normally employed for the duration of a race meet, such employee shall be deemed to be ineligible for employment by the commission at the pertinent race meet for a period of at least one year.))~~

**WSR 07-07-046
PROPOSED RULES
HORSE RACING COMMISSION**

[Filed March 13, 2007, 12:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-090.

Title of Rule and Other Identifying Information: Chapter 260-42 WAC, Postponements, cancellations and preferences (repeal) and two new sections added to chapter 260-40 WAC.

Hearing Location(s): Marcus Whitman Hotel and Conference Center, 6 West Rose Street, Walla Walla, WA 99362, on May 18, 2007, at 1:00 p.m.

Date of Intended Adoption: May 18, 2007.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by May 14, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 260-42 WAC is outdated and unnecessary. The commission plans to repeal this chapter. Two of the applicable sections in this chapter are being moved (as new sections) to chapter 260-40 WAC.

Reasons Supporting Proposal: Part of the agency's regulatory reform effort.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 13, 2007

R. J. Lopez

Deputy Secretary

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 260-42-010 Postponement from day to day.
- WAC 260-42-020 Refunds when stake race declared off.
- WAC 260-42-030 Public notice.
- WAC 260-42-040 Preferences—Preferred list.

NEW SECTION

WAC 260-40-245 Refunds when stake race declared off. If a stake race is declared off, all nomination and entry fees paid in connection with that race will be refunded.

NEW SECTION

WAC 260-40-275 Postponement from day to day. The stewards may postpone a race from day to day until an off day intervenes.

**WSR 07-07-047
PROPOSED RULES
HORSE RACING COMMISSION**

[Filed March 13, 2007, 12:04 p.m.]

Supplemental Notice to WSR 06-05-075.

Preproposal statement of inquiry was filed as WSR 05-14-069.

Title of Rule and Other Identifying Information: Chapter 260-20 WAC, Association grounds.

Hearing Location(s): Marcus Whitman Hotel and Conference Center, 6 West Rose Street, Walla Walla, WA 99362, on May 18, 2007, at 1:00 p.m.

Date of Intended Adoption: May 18, 2007.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by May 14, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by May 14, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: By amending chapter 260-20 WAC the agency intends to modernize our rules as part of our regulatory reform effort and to also write and organize our rules in a more clear and concise manner so they are more easily understood by those to whom they apply.

Reasons Supporting Proposal: The current effort will modernize our rules and repeal a number of rules that have not been updated since 1961.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 13, 2007

R. J. Lopez
Deputy Secretary

NEW SECTION

WAC 260-20-005 General duty of a racing association. A racing association, its officers, directors, officials and employees will abide by and enforce the rules of racing and the orders of the commission and stewards. A racing association may request an exemption from a requirement in this chapter to utilize new technology or innovative construction in the design of the racetrack facilities. The commission may grant an exemption if the commission determines that the racing association's proposal substantially satisfies the purpose of the requirement, and the exemption is in the best interests of horse racing.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-010 Duty to maintain ((~~race track~~) ~~racetrack~~.) (~~(Racing associations shall at all times maintain their race tracks in good condition and with a special consideration for the comfort and safety of the public, of the horses stabled, exercising or entered to race thereat, and of all whose business requires their attendance thereat, and to this end shall have available adequate and proper implements to maintain a uniform track, weather conditions permitting.)~~) Weather conditions permitting, the racing association must:

(1) Maintain their racetrack in a condition that is safe for the riders and horses; and

(2) Have implements available to maintain a uniform track.

NEW SECTION

WAC 260-20-012 Audio and visual equipment. (1) A racing association must provide and maintain a working communication system between the stewards' stand, race office, tote room, jockeys' quarters, paddock, test barn, starting gate, weigh-in scale, video camera locations, clockers' stand, track announcer, location of the aid vehicle and equine ambulance, and other locations and persons designated by the commission or designee.

(2) A racing association must have a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

(3) If the commission does not provide photo finish service, a racing association is required to:

(a) Provide two electronic photo finish devices with mirror image to photograph the finish of each race. The commission, or designee will approve the location and operation of the photo finish devices before their first use in a race.

(b) Promptly post a photograph or digital image of each photo finish for win, place or show in an area accessible to the public.

(c) Ensure the photo finish devices are calibrated before the first day of each race meet and at other times as required by the commission, or designee.

(d) Provide, when requested, and without cost, a print of a photo finish to the commission, or designee.

(4) A racing association must provide an electronic timing system that records the time of each race in at least fifths of a second. The association will maintain this system and all split time marker sensors in good working order.

(5) A racing association must provide a videotaping system approved by the commission, or designee. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, will be provided in the stewards' stand. The commission, or designee will approve the location and construction of video towers.

(a) One camera will videotape the prerace loading of all horses into the starting gate and will continue to videotape them until the starter dispatches the field.

(b) One camera will videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted, and the equipment has been removed from the horse.

(c) The board of stewards may, at their discretion, direct the video camera operators to videotape the activities of any horses or persons handling horses prior to, during or following a race.

(6) Races run at a Class A or B track must be recorded by at least three video cameras. Races run at a Class C track must be recorded by at least two video cameras.

(7) A racing association must, upon request, provide to the commission, without cost, a copy of a videotape of a race.

(8) Videotapes recorded prior to, during and following each race will be maintained by the association for not less than six months after the end of the race meet, or such other period as is directed by the stewards, the commission, or designee.

(9) A racing association must provide an area where an owner, trainer, jockey, or other interested individual may view a videotape recording of a race.

(10) Following any race in which there is an inquiry or objection, the association will display to the public the videotaped replays of the incident in question, which were utilized by the stewards in making their decision.

NEW SECTION

WAC 260-20-013 Racetrack, rails and starting gate.

(1) The surface of a racetrack, including the cushion, subsurface and base, must be designed, constructed and maintained to provide for the safety of the riders and horses.

(2) Prior to the first race meet at an association racetrack, a licensed surveyor may be required to provide to the commission a certified report of the grade and measurement of the distances to be run. If required, the surveyor's report must be submitted to the commission for approval prior to the first race day of the meet.

(3) Distances to be run will be measured from the starting line at a distance three feet out from the inside rail.

(4) A racing association will provide a drainage system for the racetrack.

(5) A racing association will provide backup equipment for maintaining the track surface. An association that conducts races on a turf track will:

(a) Maintain an adequate stockpile of growing medium; and

(b) Provide a system capable of adequately watering the entire turf course evenly.

(6) Racetracks, including turf tracks, will have inside and outside rails, including gap rails, designed, constructed and maintained to provide for the safety of riders and horses.

The top of the rail must be at least thirty-eight inches but not more than forty-two inches above the top of the cushion. The commission, or designee must approve the design and construction of rails prior to the first race at the track.

(7) During racing hours, Class A and B associations must provide at least two operable padded starting gates. Class C associations must provide at least one operable padded starting gate. The stewards will approve all starting gates.

(8) A racing association must make at least one starting gate and qualified starting gate personnel available for schooling during designated training hours.

(9) A racing association will ensure that an adequate amount of assistant starters are available for each horse in an official race.

(10) If a race is started at a place other than in a chute, the association will provide backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

NEW SECTION

WAC 260-20-015 Lighting. (1) A racing association will provide lighting for the racetrack and the patron facilities to ensure the safety and security of the patrons, licensees and horses.

(2) A racing association will provide additional lighting in the stable area.

(3) If a racing association conducts racing at night, the association will maintain a backup lighting system that is sufficient to ensure the safety of race participants and patrons.

NEW SECTION

WAC 260-20-016 Barns. (1) All racing associations will ensure that the barns are kept clean and in good repair. At Class A and B racing associations, each barn, including the receiving and test barns, must have a hot and cold water supply available, be well-ventilated, and have proper drainage.

(2) All racing associations will ensure that each horse is stabled in an individual box stall with minimum dimensions of ten by ten feet.

NEW SECTION

WAC 260-20-017 Test barn. (1) All racing associations must provide a test barn for taking specimens for testing. The test barn must be equipped with:

(a) A walk ring that is large enough to accommodate four horses;

(b) An approved amount of enclosed stalls that permit observation of the collection process and provide for the protection of collection personnel;

(c) Facilities for the collection, identification and storage of samples;

(d) A wash-rack that is large enough to accommodate an adequate number of horses at the same time;

(e) Hot and cold running water at Class A and B racing associations.

(2) A racing association will limit access to the test barn to persons authorized by the official veterinarian.

AMENDATORY SECTION (Amending Order 79-05, filed 12/17/79)

WAC 260-20-030 Fire prevention. ~~((Associations shall make reasonable provisions for fire prevention, protection against fire, and fire suppression within the enclosure.~~

Smoking is prohibited in barns (except tackrooms), stables, shedrows, hay sheds, and any area prohibited by state or local law.) (1) A racing association will develop and implement a program for fire prevention on association grounds. An association will instruct employees working on association grounds of the procedures for fire prevention. The racing association must retain inspection reports for three years and upon request make them available to the commission, or designee.

(2) No person may:

(a) Smoke in stalls, feed rooms, dormitory rooms, stable offices, or under shed rows;

(b) Tamper with a fire protection, prevention or suppression system or device;

(c) Burn open fires or oil and gas lamps in the stable area;

(d) Leave unattended any electrical appliance that is plugged in to an electrical outlet;

(e) Permit horses to come within reach of electrical outlets or cords;

(f) Store flammable materials such as cleaning fluids or solvents in the stable area; or

(g) Lock a stall that is occupied by a horse.

(3) A racing association must post a notice in the stable area that lists the prohibitions outlined above.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-040 ((~~Credentials for~~) Admission to grounds(~~, stables, and enclosures~~))—Restricted areas. ((No one shall)) (1) A person may only be permitted to enter ((in or about the grounds, stables or stable enclosures who does not have in his possession)) the restricted areas of the racing association grounds under the following conditions:

(a) The person possesses a license or credentials issued by the commission ((as owner, trainer, jockey, apprentice, agent, stable foreman, groom, exercise boy, plater, valet or veterinarian, or proper credentials)).

(b) The person possesses a pass issued by the association ((, and a full record of these credentials shall [be] compiled and open to inspection at all times)).

(c) The person has been signed-in by a person licensed by the commission.

(2) The restricted areas of a racing association will include, but not be limited to the stable area, and the jockey's quarters.

(3) Children may be granted access to the stable areas as long as they are in the company of a parent or guardian who has a properly issued license, credential, or pass.

(4) Persons escorted by a licensee must remain in the company of the licensee who signed them in.

(5) At a Class C racing association, the stable areas will not be considered a restricted area, except that the racing association may limit access to this area.

(6) Passes must be displayed while in a restricted area.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-050 ((~~Badges and~~) Passes. ((No tax free badge or pass may be issued to any horseman, in any capacity, without the approval of the commission; all badges or passes so approved must be recorded in a book kept by the racing secretary and each badge or pass must be numbered and kept in numerical order in the records; the commission shall have the right at all times to inspect such records.)) The racing association may issue passes to allow access to restricted areas of the grounds. Each pass must be numbered and kept in numerical order in the association's records. The commission may inspect these records at any time.

AMENDATORY SECTION (Amending Order 81-01, filed 3/24/81)

WAC 260-20-075 Firearms prohibited on association grounds. ((Each racing association shall exclude from its grounds any person found to have firearms in his possession, except security personnel employed by the association or commission and law enforcement officers. Any licensee or permit holder who brings firearms onto the grounds of any racing association, except security personnel and law enforcement officers, may be subject to revocation or suspension of such license or permit, and any other authorized penalty the stewards may deem necessary.)) Firearms are not permitted on the grounds of any racing association, except by security personnel employed by the association and law enforcement officers. Any person who brings or possesses firearms on the grounds may be suspended and/or ejected from the grounds.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-090 Association((~~s to maintain police and watchman service—List~~) security. ((Each association shall maintain and furnish complete police and watchman service night and day in and about all stable enclosures and furnish to the commission each day a complete tabulation list thereof, showing name, duty, place stationed and portions of enclosures supervised by such policeman and watchman.)) (1) A racing association conducting a race meet must maintain security controls over its grounds.

(2) An association will prevent access to, and will remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

(3) Class A or B racing associations must provide continuous security in the stable area during all times that horses are stabled on the grounds. An association will require any person entering the stable area to display a valid license or credential issued by the commission or a pass issued by the association.

(4) Class A or B racing associations must provide fencing around the stable area in a manner that is approved by the commission.

(5) Not later than twenty-four hours after an incident occurs requiring the attention of security personnel, the chief of security must deliver to commission security a written report describing the incident, which may be forwarded to the stewards for disciplinary action. The report must include the name of each individual involved in the incident and the circumstances of the incident.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-160 ~~((Ambulances-))~~ **Medical aid.** ~~((Racing associations shall furnish and maintain both a man ambulance and a horse ambulance each day that their tracks may be opened for racing or exercising horses, equipped and ready for immediate duty.))~~ (1) A racing association must provide a vehicle properly equipped and staffed with two emergency medical technicians for each day that the track is open for racing, and one emergency medical technician during the hours the track is open for training.

(2) A Class A or B racing association must also provide a first-aid room equipped with at least two beds and other appropriate equipment.

NEW SECTION

WAC 260-20-165 Equine ambulance. (1) A racing association must provide an equine ambulance staffed by trained personnel on association grounds each day that the racetrack is open for racing or training. The ambulance must be properly ventilated and kept at an entrance to the racing strip when not in use. The ambulance must be a vehicle that restricts view of the injured horse and large enough to accommodate a horse in distress. The ambulance must be able to navigate on the racetrack during all weather conditions and transport a horse off the racing surface. The ambulance must be equipped with:

- (a) Large, portable screens to shield a horse from public view;
- (b) A system to facilitate loading an injured horse;
- (c) Adequate means of loading a horse that is down;
- (d) A rear door and a door on each side;
- (e) A shielded area for the person who is attending to the horse; and
- (f) An adequate area for the storage of water and veterinary drugs and equipment.

(2) A racing association may not conduct a race unless an equine ambulance or an official veterinarian approved substitute is available.

(3) The official veterinarian, its supplies and attendants and the operating procedures for the equine ambulance are subject to review and approval by the official veterinarian.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-180 ~~((Sanitary))~~ **Facilities for jockeys.** Each racing association ~~((shall make such sanitary arrangements as baths, toilets, etc., for the use of jockeys, as may be reasonably required by the commission, the same to be con-~~

~~veniently located on the grounds))~~ will provide facilities for the use of jockeys separate from the public areas.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-190 Living quarters for stable employees. ~~((Each))~~ Class A and B racing associations ((shall)) will provide ((adequate and)) sanitary living quarters((, with proper sanitary arrangements pertaining thereto, for stable employees)) for grooms and other stable employees.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-210 Manure and refuse disposal. Each racing association ~~((shall))~~ will provide ((proper and well located boxes or pits for separately receiving stable manure and other refuse, situated well distant from living quarters, and such boxes and pits shall be emptied and their contents entirely removed from the premises of the association daily, and the area sprayed or dusted for insects each day)) an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area in a timely manner.

AMENDATORY SECTION (Amending Rules of racing, filed 3/11/65)

WAC 260-20-220 Standard color designations for distance poles. ~~((The distance poles shall be))~~ A racing association must provide starting point markers and distance poles in a size and position that is clearly seen from the stewards' stand. The starting point markers and distance poles must be marked as follows:

1/4 Poles	Red and White <u>Horizontal Stripes</u>
1/8 Poles	Green and White <u>Horizontal Stripes</u>
1/16 Poles	Black and White <u>Horizontal Stripes</u>

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-20-020	Duty of commission employees relative to health, safety, and order.
WAC 260-20-060	Unauthorized persons—Exclusion from stables.
WAC 260-20-070	Unauthorized persons—Exclusion from paddock.
WAC 260-20-100	Responsibility of police and watchmen—Letter of instructions.
WAC 260-20-110	Stable enclosures—Fencing—Admission to.

- WAC 260-20-120 Report by bureau or security officer of arrests and bookings.
- WAC 260-20-130 Report by officer in charge of night force.
- WAC 260-20-140 Electric timing apparatus.
- WAC 260-20-150 Patron gates.
- WAC 260-20-170 First-aid equipment and personnel.
- WAC 260-20-200 Drinking water, toilets, for patrons and invitees.

WSR 07-07-048
PROPOSED RULES
HORSE RACING COMMISSION

[Filed March 13, 2007, 12:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-02-036.

Title of Rule and Other Identifying Information: Chapter 260-12 WAC, General rules.

Hearing Location(s): Marcus Whitman Hotel and Conference Center, 6 West Rose Street, Walla Walla, WA 99362, on May 18, 2007, at 1:00 p.m.

Date of Intended Adoption: May 18, 2007.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by May 14, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by May 14, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 260-12 WAC, General rules, is being updated into clearer and more understandable language. In addition, the section on definitions is being updated and sections no longer applicable are being repealed.

Reasons Supporting Proposal: Part of the agency's regulatory reform effort.

Statutory Authority for Adoption: RCW 67.16.020.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 13, 2007
 R. J. Lopez
 Deputy Secretary

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

~~WAC 260-12-001 ((Promulgation-)) Intent. ((Chapter 55, Laws of 1933, created and established the Washington horse racing commission, and vested said commission with full powers to prescribe rules, regulations and conditions under which all horse racing, upon the result of which there shall be wagering, shall be conducted within the state of Washington.~~

~~The rules of racing as adopted and herein set forth are published and declared the rules and regulations of racing for the state of Washington. They have been compiled with the hope that they will promote racing on a high plane and encourage the breeding and ownership of thoroughbred horses in this state.~~

~~Anyone who enters or causes a horse to run, or who owns a share of any horse which takes part in any race held at a meeting conducted under a license from the Washington horse racing commission, or any corporation, association, official or person participating in any such meeting in any capacity, is expected to be conversant with and to comply with the present rules governing racing.~~

~~Such persons, corporations and associations hereby agree to submit, without any reservation, to all the rules and consequences resulting therefrom.~~

~~WASHINGTON HORSE RACING COMMISSION~~

~~Will Bachofner, Chairman,
 Robert Mead, Commissioner,
 Warren Chinn, Commissioner,
 Blaine Johnson, Secretary.))~~

The rules adopted by the Washington horse racing commission will be known as the "rules of racing." They have been compiled with the intent to promote integrity in racing and to encourage the breeding and ownership of thoroughbred horses in this state.

AMENDATORY SECTION (Amending Order 81-06, filed 7/10/81)

~~WAC 260-12-010 Definitions. ((In applying the rules herein set forth and all amendments thereof the following definitions, constructions and interpretations shall apply, except where otherwise indicated in said rules:~~

~~(1) Age of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.~~

~~(2) "Arrears" shall mean all moneys due for entrance forfeits, fees (including jockey's, etc. fees), forfeitures, subscriptions, stake, purchase money in claiming races, and also any default in money incident to the rules.~~

~~(3)) The definitions in this section apply throughout these rules unless the context requires otherwise.~~

~~(1) "Added money." Money added to the purse of a race by the association, or other fund, in the amount paid by owners for nominations, entry, and starting fees.~~

~~(2) "Allowance race." An overnight race for which there is no claiming price established.~~

~~(3) "Also eligible."~~

~~(a) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eli-~~

gible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

(b) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(4) "Apprentice jockey." A jockey who has not won a certain number of races within a specific period of time who is granted an extra weight allowance as provided in WAC 260-32-370(9).

(5) "Apprentice allowance." A weight allowance given to an apprentice jockey ranging from five to ten pounds.

(6) "Authorized agent," ((shall mean)) A person appointed by a written ((instrument)) document signed ((and acknowledged before a notary public)) by the owner ((and filed in accordance with the rules)) with authority to act for the owner.

((4)) (7) "Association," ((shall mean)) Any person or persons, associations, or corporations licensed by the commission to conduct ((racing for any stake, purse or reward)) parimutuel wagering on a race meet.

((5) "Breeder" of a horse shall mean the owner of its dam at the time of foaling.

(6) "Breeding place" shall mean the place of horse's birth.

(7) "Calendar day" shall mean twenty-four hours ending at midnight.

(8) "Declaration" shall mean the act of withdrawing an entered horse from a race before the closing of overnight entries.

(9) "Entry" shall mean according to the requirement of the text (a) a horse made eligible to run in a race, (b) two or more which are entered or run in a race owned by the same owner or trained by the same trainer.

(10) "Equipment," as applied to a horse, shall mean whips, blinkers, tongue straps, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

(11) "Forfeit" shall mean money due because of an error, fault, neglect of duty, breach of contract, or a penalty.

(12) "Grounds" shall mean all real property owned or leased by an association used in the conduct of a race meet.

(13) "Horse" includes filly, mare, colt, horse, gelding or ridgling.

(14) "Jockey" shall mean a race rider, whether a licensed jockey, apprentice or amateur.

(15) "Maiden" shall mean a horse which at the time of starting has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden which has been disqualified after finishing first is still to be considered a maiden.

(16) "Meeting" shall mean the entire consecutive period for which license to race has been granted to any one association by the commission.

(17) "Month" shall mean a calendar month.

(18) "Nominator" shall mean a person in whose name a horse is entered for a race.

(19) "Owner" includes sole owner, part owner or lessee of a horse. An interest only in the winnings of a horse does not constitute part ownership.

(20) "Place" in racing shall mean first, second or third and in that order is called "win," "place," and "show."

(21) "Post position" shall mean the position assigned to the horse at the starting line of the race.

(22) "Post time" shall mean the time set for the arrival at the starting point of the horses in a race and must be shown a reasonable time prior to the race on a clock device, provided for that purpose, prominently displayed and clearly readable from the grandstand.

(23) "Race" shall mean a contest between horses for purse, stakes, or reward on any licensed course and in the presence of judge or judges. A race which overfills may be contested in two or more divisions.

(a) "Claiming race" shall mean a race in which any horse entered therein may be claimed in conformity with the rules.

(b) "Free handicap" shall mean a handicap in which no liability for entrance money is incurred.

(c) "Handicap" shall mean a race in which the weights to be carried by the entered horses are adjusted by a handicapper or board of handicappers for the purpose of equalizing their respective chances of winning.

(d) "Highweight handicap" shall mean a handicap in which the weight assigned to the top horse in that handicap is not less than 140 pounds.

(e) "Match" shall mean a private sweepstakes between two horses which are the property of two different owners. If prior to the running of the race either of the horses entered in the match dies, or if either owner dies the match is void. It remains a match even if money or any other award is added to the stakes.

(f) "Optional claiming race" shall mean a race restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less. In the case of horses entered to be claimed in such a race, the race will be considered, for the purposes of these rules, a claiming race.

(g) "Overnight race" shall mean a race for which entries close seventy-two hours, or less, before the time set for the first race of the day on which such race is to be run.

(h) "Owner's handicap" shall mean a race wherein the owner fixes, at the time of entry, the weight his horse is to carry.

(i) "Post race" shall mean a race in which the subscribers announce at declaration time the horse, or horses, each intends to start, without limitations of choice other than prescribed by the rules and conditions of the race.

(j) "Private sweepstakes" shall mean a race to which no money or other prize is added, and which, previous to closing, has not been advertised, either by publication, or by circular or entry blank, or in any other way.

(k) "Produce race" shall mean a race to be run for by the produce of horses named or described at the time of entry.

(l) "Purse race" shall mean a race for money or any other prize to which the owners of the horses engaged do not contribute.

(24) "Race day" shall mean any period of twenty-four hours beginning at midnight and included in the period of a race meeting and in the matter of penalties the word "day" means a "calendar day."

~~(25) "Recognized meeting" shall mean any meeting wherever held under the sanction of a turf authority having reciprocal relations with the commission and other turf authorities (approved by said commission) for the mutual enforcement of rulings imposed on persons guilty of fraudulent turf practices of any kind.~~

~~(26) "Rules" shall mean the rules herein prescribed and any amendments or additions thereto.~~

~~(27) "Scratch" shall mean the act of withdrawing an entered horse from the race after the closing of overnight entries.~~

~~(28) "Scratch time" shall mean the time set by the association for the closing of applications for permission to withdraw from races of that day.~~

~~(29) "Stake race" or "sweepstakes" shall mean a race for which nominations close more than seventy-two hours in advance of its running and for which subscribers contributed money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of stakes.~~

~~(30) "Starter." A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses.~~

~~(31) "Stewards" shall mean the stewards of the meeting or their duly appointed deputies.~~

~~(32) "Subscription" shall mean the act of nominating to a stake race.~~

~~(33) "Untried horse" shall mean a horse whose produce are maidens.~~

~~(34) "Walk over" shall mean a situation in which two horses in entirely different interest do not run in a race.~~

~~(35) "Weight for age" shall mean standard weight according to the rules. A "weight for age" race is one in which all horses carry weight according to the scale without penalties or allowances.~~

~~(36) "Year" shall mean a calendar year.) (8) "Association grounds." All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, and parking lots and any other areas under the jurisdiction of the commission.~~

~~(9) "Bar shoe." A special shoe with a solid bar that runs across the rear of the shoe for extra protection.~~

~~(10) "Bit." The metal mouthpiece on a bridle used to guide and control a horse.~~

~~(11) "Bleeder." A horse that demonstrates exercise induced pulmonary hemorrhaging.~~

~~(12) "Blinkers." A hood with different size cups to limit the peripheral vision of a horse.~~

~~(13) "Breakage." The remaining cents after parimutuel payoffs are rounded down to a dime or nickel.~~

~~(14) "Breeder." For thoroughbreds, the breeder is the owner of the horse's dam at the time of foaling. For quarter horses, appaloosas, arabians and paint horses, the breeder is the owner of the dam at the time of service.~~

~~(15) "Claiming." The act of buying a horse out of a race for a specific price.~~

~~(16) "Claim box." A box in a specified location where a claim must be deposited to be valid.~~

(17) "Claiming race." Races in which horses are entered subject to being claimed for a specified price.

(18) "Clerk of scales." An official who weighs the jockeys prior to and after each race.

(19) "Clocker." An official that times horses when horses are performing a workout.

(20) "Colors." Racing silks with owners' distinct designs and color worn by jockeys while racing.

(21) "Colt." Male horse under the age of five.

(22) "Commission."

(a) The five-member commission established by RCW 67.16.012; or

(b) The state agency known as the Washington horse racing commission.

(23) "Condition book." A book issued by the racing secretary with specific eligibility conditions for scheduled races.

(24) "Coupled entry." Two or more horses running as a single betting interest for parimutuel wagering purposes.

(25) "Daily double." Type of wager calling for the selection of the winner of two consecutive races.

(26) "Dead heat." Two or more horses in an exact tie at the finish line.

(27) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

(28) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

(29) "Entry."

(a) A horse eligible for and entered in a race.

(b) Two or more horses which are entered or run in a race with common ownership.

(30) "Equipment." Tack carried or used on a racehorse including whips, blinkers, tongue ties, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

(31) "Exacta." A wager involving selecting the first two finishers in a race in exact order.

(32) "Exercise rider." A person licensed by the commission to ride horses for the purpose of exercising.

(33) "Field." The total horses scheduled to run in a race.

(34) "Filly." A female horse age four or under.

(35) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.

(36) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.

(37) "Furosemide." Generic term for a medication used for the treatment of bleeders.

(38) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.

(39) "Gelding." A male horse that has been castrated.

(40) "Groom" A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.

(41) "Handicap."

(a) A race in which the racing secretary designates the weight to be carried for each horse.

(b) Making wagering selections on the basis of a horse's past performances.

(42) "Handle." Total amount of money wagered in the parimutuel pool for a race, race card, or a race meet.

(43) "Horse."

(a) A registered filly, mare, colt, horse, gelding or ridgling of a breed that is eligible to race in the state of Washington.

(b) Any male horse five years old or older.

(44) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.

(45) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.

(46) "Jockey fee." The money paid to a jockey for riding in a race.

(47) "Maiden." A horse, which at the time of starting in a race, has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden who has been disqualified after finishing first is still considered a maiden.

(48) "Mare." A female horse five years old or older, or a female horse of any age, which has been bred at anytime in its life.

(49) "Meet." The dates for live racing that have been approved by the commission. (Also refer to RCW 67.16-.010.)

(50) "Minus pool." A mutuel pool caused when one horse is heavily bet and after all mandatory deductions there is not enough money in the pool to pay the legally prescribed minimum on each winning wager.

(51) "Morning line." A handicapper's approximate odds quoted in the program.

(52) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.

(53) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).

(54) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.

(55) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

(56) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.

(57) "Official."

(a) When the board of stewards has determined that the order of finish of a race is correct for the mutuel payouts.

(b) An individual designated to perform functions to regulate a race meet.

(58) "Off-track betting." Parimutuel wagering on horse races conducted at a location other than the racing association's grounds, often referred to as a satellite location.

(59) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.

(60) "Overnight race." A contest for which entries close at a time set by the racing secretary.

(61) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.

(62) "Owner." Any person licensed by the commission with an ownership interest in a horse, including a lessee. An interest only in the winnings of a horse does not constitute part ownership.

(63) "Owners' bonus." A percentage of the gross mutuel pool the association is required by RCW 67.16.102 to withhold to be paid to owners of Washington bred horses at the conclusion of the meet based on the owner's horse finishing first, second, third or fourth.

(64) "Paddock." Enclosure or area where horses are saddled prior to the post parade.

(65) "Paddock judge." An official who monitors the saddling of the horses before a race to ensure consistent equipment on each horse and supervises the paddock.

(66) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.

(67) "Pick six." A type of wager requiring the patron to select the winners of six consecutive races.

(68) "Pick three" or "pick four." A type of wager requiring the patron to select the winners of three or four consecutive races.

(69) "Place." To finish second in a race.

(70) "Poles." Markers positioned around the track indicating the distance to the finish line.

(71) "Post." The starting position on the track.

(72) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.

(73) "Post position." Position assigned to the horse to break from the starting gate determined by lot at the time of the draw of the race.

(74) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

(75) "Purse." The amount of prize money offered by the racing association for each race.

(76) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

(77) "Racing plates." Shoes designed for racehorses, usually made of aluminum.

(78) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

(79) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

(80) "Recognized meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

(81) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

(82) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

(83) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

(84) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

(85) "Show." To finish third in a race.

(86) "Simulcast." Broadcasting a live race from another racing association for purposes of parimutuel wagering on that race, or sending a broadcast of a live race to another rac-

ing association for purposes of parimutuel wagering on that race.

(87) "Stake race." A race for which nominations close more than seventy-two hours in advance of its running and for which owners or nominators contribute money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of nomination, entry, or starting fees.

(88) "Stallion." A male horse which can be used for breeding purposes.

(89) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

(90) "Starter."

(a) A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses; or

(b) An official responsible for dispatching the horses from the starting gate.

(91) "Starter's list." A list, maintained by the official starter, of horses that have been unruly when loading in the starting gate. Horses on the starter's list are ineligible to enter.

(92) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

(93) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

(94) "Stewards' list." A list, maintained by the stewards, of horses which are ineligible to enter for various reasons, e.g., poor performance, ownership disputes, etc.

(95) "Test barn." The enclosure to which selected horses are taken for post race testing.

(96) "Tongue tie." Bandage or other apparatus used to tie a horse's tongue to prevent the horse from rolling it back and restricting its airway.

(97) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

(98) "Turf course." A racing surface comprised of grass.

(99) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

(100) "Washington bred." A horse that was foaled in the state of Washington.

(101) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

(102) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

(103) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

(104) "Workout." An official workout of a horse as required in WAC 260-40-100 to make a horse eligible to run in a race.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-020 To whom rules apply. (1) The rules of racing (~~herein prescribed, and any amendments or addi-~~

~~tions thereto,)) apply to all persons, associations, partnerships, or corporations holding or conducting a (~~meeting~~) race meet within the state of Washington (~~licensed by the commission where racing shall be permitted for any stake, purse or reward~~) where the parimutuel wagering system is used.~~

(2) (~~The~~) These rules (~~shall~~) also apply to any participant in, or patron of, any (~~such licensed meetings~~) race meet.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-040 Licenses conditioned on observance. Every license to hold a (~~meeting~~) race meet is granted upon the condition that the licensee (~~shall~~) will accept, observe, and enforce (~~said~~) the rules of racing. (~~Furthermore, it shall be~~) It is the duty of each (~~and every~~) officer, director, and every official and employee of (~~said~~) the licensee to (~~observe and enforce~~) comply with the rules of racing and to report violations to the commission.

AMENDATORY SECTION (Amending Order 81-07, filed 8/25/81)

WAC 260-12-050 Execution, filing, of application for license. Application to the (~~Washington horse racing~~) commission for a license to conduct a race (~~meeting~~) meet during the next succeeding season of racing must be filed with the executive secretary of the commission, (~~over the signature of~~) by an executive officer of the association not later than February 1st. Once a license is granted, the commission may (~~at any time, upon a showing of good cause,)~~ extend, reduce or otherwise modify the dates over which a racing association may conduct a race meet pursuant to that license.

NEW SECTION

WAC 260-12-065 When are race dates required to be submitted for approval? Racing associations must submit their proposed live racing dates to the commission at least ninety days before the date the racing association proposes to begin live racing. The commission will consider and determine whether to approve the dates at the next regularly scheduled commission meeting.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-070 The commission may refuse to issue license—Criteria. The commission may refuse to issue a license to conduct a race (~~meeting when in its judgment such refusal shall appear to be for the best interest of legitimate racing and of the public~~) meet. The commission will consider (~~especially~~) the following (~~matters~~) factors in making its decision:

- (1) Opportunity for the sport to properly develop;
- (2) Avoidance of competition with established tracks;
- (3) Extent of community support for the promotion and continuance of the tracks;

(4) The character and reputation of the ~~((men))~~ individuals identified ((with)) in the ((undertaking)) license application; and

(5) Any other relevant factors.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-080 Assignment of license—Racing days. No license or any part ~~((thereof shall be))~~ of a license is transferable or assignable in any manner ((or in any particular)) without the ((consent of the racing)) prior approval of the commission((, and it shall not be permissible of any racing days other than those stipulated)).

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-100 Laws and rules ~~((paramount—Misconduct, punishment))~~ supersede race conditions. The laws of Washington and the rules promulgated by the commission supersede the conditions of a race~~((, or the regulations of a race meeting. The racing commission may punish independently any misconduct of any persons connected with racing)).~~

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-110 Commission's right of entry. Members of the commission and its ~~((designated representatives shall))~~ officials have the right of full and complete entry to any and all parts of the association grounds~~((, and mutuel plants of the association licensed to conduct horse racing)).~~

AMENDATORY SECTION (Amending Order 77.1, filed 4/22/77)

WAC 260-12-115 Parimutuel equipment ~~((and apparatus))~~ subject to approval. All equipment, ~~((devices or apparatus used to officially record, time, photograph, film or videotape the racing program, or))~~ used within the parimutuel department for the sale, calculation, display of odds, or ~~((encashment))~~ cashing of tickets, is subject to the approval of the commission.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-120 Commission offices and personnel. Each association ~~((shall))~~ must provide within its grounds an office for the use~~((, and to be at the disposal))~~ of the commission ~~((and all))~~, its officials and employees. ~~((The commission shall have such employees or inspectors, who shall perform such duties as may be assigned to them by the commission.))~~

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-150 Denial of admission to grounds—Suspended persons and horses. ~~((No person or horse ruled off, by or under suspension, by any recognized turf authority, trotting association, quarter horse association included, shall be admitted to the grounds of any association. For exception, see WAC 260-12-170.))~~ A person who is suspended or revoked by another recognized racing jurisdiction will not be admitted to the grounds of any racing association in Washington. A horse owned or trained by a person who is suspended or revoked will not be allowed on the grounds.

AMENDATORY SECTION (Amending WSR 06-07-067, filed 3/10/06, effective 4/10/06)

WAC 260-12-180 Safety equipment required. (1) When on association grounds, all persons on horseback ~~((shall))~~ must wear a securely fastened safety helmet that meets current standards for equipment designed and manufactured for use while riding horses as established by the American Society for Testing and Materials/Safety Equipment Institute (ASTM/SEI), the British Standards Institute (BSI) or similar organization.

(2) All persons on horseback ~~((shall))~~ must wear a securely fastened safety vest that is designed to provide shock-absorbing protection of ~~((at least a rating of 5.))~~

(a) Level 1, as defined by the 2000 British Equestrian Trade Association (BETA) Horse Rider's Body and Shoulder Protectors; or

(b) American Society for Testing and Materials/Safety Equipment Institute (ASTM/SEI) standard F1937-04 (Specification for Body Protectors Used in Horse Sports and Horseback Riding).

(3) ~~((In addition,))~~ All persons on horseback ((shall)) must wear equestrian footwear that covers the rider's ankle with a minimum of a 1/2 ((to 3/4)) inch heel ((and that covers the rider's ankle)), except jockeys while riding in a race((, or while on their mount immediately prior to riding in a race, shall)) who must wear jockey boots as required by WAC 260-32-100.

This rule does not apply to nonracing related events conducted for entertainment purposes. Safety equipment for such entertainment events shall be at the discretion of the racing association.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-210 Post time of first race. Post time of the first race each day at each ~~((meeting))~~ race meet must be approved by the commission.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-220 Race conditions ~~((and rewards))~~ to be ~~((filed))~~ provided. Each association conducting racing ~~((on))~~ in Washington ~~((tracks shall file with the commission.))~~ must provide the stewards a copy of the conditions of

racers ((#) the association proposes to hold, together with the stakes(~~(, purse or rewards))~~ schedule.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-230 Information to be filed before opening ~~((of meeting))~~ a race meet. ~~((In not))~~ No less than ten days before opening of a race ~~((meeting;))~~ meet each association licensed to conduct a race ~~((meeting or meetings or))~~ in Washington tracks ~~((shall))~~ must file with the commission:

(1) ~~((A complete schedule of the rates of admission fees the association proposes to make at the meeting or meetings for which dates have been awarded.~~

~~((2))~~ A financial statement of the association.

~~((3))~~ (2) A list of stockholders as of the date of ~~((application))~~ submission of the list and the amount of stock held by each. Any change in the ~~((personnel of))~~ officers or stockholders, or in the holdings of any individual stockholder of an association ~~((shall))~~ must be reported to the commission immediately. This rule ~~((shall))~~ will apply during the ~~((life))~~ entire term of any ~~((permit))~~ license granted by the commission.

The commission may ~~((call for further data and))~~ require additional information in writing from the association, or it may ask the officers of any association to appear in person ~~((before it. There shall thereafter be no change made in any said admission fees except upon the desire changes being submitted to the commission in writing five days prior to the effective date of such changes))~~ to provide additional information.

AMENDATORY SECTION (Amending Order 75-1, filed 2/18/75)

WAC 260-12-235 Accepted conditions of race meeting. ~~((1) The commission, recognizing the necessity of an association to comply with the requirements of its license and to fulfill its obligation to the public and the state of Washington with the best possible uninterrupted services, in the comparatively short licensed period, herein provides that all associations, officials, horsemen, owners, trainers, jockeys, grooms, horseshoers, employees, and all licensees, who have accepted directly or indirectly, with reasonable advance notice, the conditions under which said association engages and plans to conduct such race meeting, shall be bound thereby.~~

~~((2) Any association, officials, horsemen, owners, trainers, employees, and all licensees who so accept such conditions shall, before they terminate or discontinue their employment engagements or activities, give the commission and the association with whom they are engaged, at least fifteen days notice in writing of their intentions to terminate or discontinue their employment, engagements or activities under such conditions. The commission may upon notice to all parties of interest, conduct a hearing or hearings with respect to any termination or discontinuance of employment. Provided, however, That no group of licensees shall be required to comply with the notice requirements of this rule when track conditions are deemed to be unsafe or hazardous.))~~ The association

is obligated to conduct parimutuel racing, except in the case of emergencies, on each race date allocated. The commission must approve any change in race dates. In the case of emergencies the stewards may authorize cancellation of all or a portion of any race day.

AMENDATORY SECTION (Amending WSR 05-17-084, filed 8/12/05, effective 9/12/05)

WAC 260-12-250 Problem gambling information sign must be posted. ~~((The legislature recognizes that some individuals in Washington state are problem or compulsive gamblers. Because the state promotes and regulates gambling through the activities of the lottery commission, gambling commission and horse racing commission, the state has the responsibility to continue to provide resources for the support of services for problem and compulsive gamblers. RCW 9.46.071 requires that the lottery commission, gambling commission and horse racing commission shall jointly develop informational signs concerning problem and compulsive gambling, and that signs shall be placed in establishments of horse racing licensees, gambling licensees and lottery retailers.))~~

All Class A, B and C licensees ~~((shall)),~~ including satellite locations, must post problem and compulsive gambling informational signs ~~((in locations of their establishments, including satellite locations, which are clearly visible in patron traffic areas)),~~ which contain a toll-free help line number in locations of their establishments. The informational signs must be clearly visible to patrons, and must remain posted whenever parimutuel wagering is authorized. The informational signs will be provided to the licensee by the horse racing commission ~~((and will contain a toll-free hot line number for problem and compulsive gamblers)).~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-12-030	Rules limited to Washington.
WAC 260-12-060	Application does not commit commission.
WAC 260-12-090	Amendment, etc., of rules.
WAC 260-12-170	Eligibility of horses of suspended person.
WAC 260-12-190	Racing hours.
WAC 260-12-200	Number of races per day.
WAC 260-12-240	Commission to approve distribution of passes, etc.

WSR 07-07-049
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed March 13, 2007, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-21 [07-03-022].

Title of Rule and Other Identifying Information: Chapter 16-228 WAC, General pesticide rules; chapter 16-230 WAC, Use of chemicals and chemically treated materials in certain counties; chapter 16-231 WAC, Restricted use herbicides; and chapter 16-232 WAC, Restricted use herbicides in certain counties.

Hearing Location(s): Natural Resources Building, Room 259, 1111 Washington Street, Olympia, WA 98504-2560, on April 25, 2007, at 2:00 p.m.

Date of Intended Adoption: May 9, 2007.

Submit Written Comments to: Laurie Mauerman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail lmauerman@agr.wa.gov, fax (360) 902-2093, by April 25, 2007, close of business.

Assistance for Persons with Disabilities: Contact Laurie Mauerman by April 16, 2007, TTY (360) 902-1996.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Four areas are proposed for modification due to:

- Inconsistent language regarding the distribution of phenoxy herbicides in one gallon containers in Eastern Washington. Revised sections dealing with phenoxy's.
- Confusion regarding the use of the term "restricted use" pesticide when products are classified federally as general use but have Washington use restrictions.
- Request for clarification of the definition of home and garden use pesticides.
- Request for modifying the April and May cut-off dates for the application of bromoxynil.

In addition, the department is proposing several house-keeping changes such as changing headings to a question and answer format in the county orders, clarifying wording and record forms and making grammatical changes as required of all agencies under the clear and readable rule format and plain talk requirements.

Statutory Authority for Adoption: Chapters 15.58, 17.21 RCW.

Statute Being Implemented: Chapters 15.58, 17.21 RCW.

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

Name of Proponent: Washington state department of agriculture, industry, private and governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Ann Wick, 1111 Washington Street S.E., Olympia, WA, (360) 902-2051; and Enforcement: Cliff Weed, 1111 Washington Street S.E., Olympia, WA, (360) 902-2036.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires the department to prepare a small business economic

impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic impact of the proposed amendments and concluded that the cost imposed by the proposed changes are "not more than minor" and do not have a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 12, 2007

Bob Arrington

Assistant Director

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1010 What are the definitions that apply to this chapter? The definitions in this section apply throughout this chapter, unless the context requires otherwise:

(1) "Agricultural commodity" means any plant, or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Authorized agent" is any individual who is authorized to act on behalf of a certified applicator for the purpose of purchasing pesticides.

(3) "Bait box" for rodenticides is a box constructed of durable metal, wood, plastic, or other treated material. It shall be designed to hold rodent bait securely, allow rodents to enter and leave, and prevent unauthorized individuals and nonpest domestic animals from gaining access to the bait. Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper resistant bait boxes. Fragile materials are unacceptable.

(4) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

(5) "Blossoming plants" means:

(a) When there are five or more open blooms per square yard on average in a given field; or

(b) When there are one or more open blooms per tree or vine in an orchard or vineyard; or

(c) When there are five or more open weed blooms per square yard on average for the area being measured for groundcover in orchards or vineyards, fence lines, ditch banks, or field, vineyard or orchard edges. This definition shall not apply to plants that are not attractive to bees (e.g., lentils, hops, peas (*Pisum sp.*), pears (second bloom) and potatoes). For the purposes of this definition, "bloom" means a flower head, raceme or spike with one or more open flowers.

(6) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

(7) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certi-

fied private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators only.

(8) "Chemigation" means the application of any substance or combination of substances intended as a pesticide, plant or crop protectant or a system maintenance compound applied with irrigation water.

(9) "Commercial vineyard" means a parcel of land from which the grape crop is intended to be sold to a processor or for the commercial fresh market.

(10) A "complainant" is defined as a person who has requested an inspection of an area in which a pesticide violation is believed to have occurred.

~~((10))~~ (11) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections must also include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspector, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

~~((11))~~ (12) "Controlled disposal site" means any place where solid or liquid waste is disposed of: Provided that the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency. The site must be fenced, barricaded or otherwise enclosed or attended by some person in charge to control the access of domestic animals, pets, and unauthorized persons.

~~((12))~~ (13) "Department" means the Washington state department of agriculture.

~~((13))~~ (14) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to the application rate for adequate coverage (such as water).

~~((14))~~ (15) "Director" means the director of the department or a duly authorized representative.

~~((15))~~ (16) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

~~((16))~~ (17) "EPA" means the United States Environmental Protection Agency.

~~((17))~~ (18) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

~~((18))~~ (19) "Fertilizer" as included in this chapter means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

~~((19))~~ (20) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 et seq.).

~~((20))~~ (21) "Floor level" means the floor upon which people normally walk—not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

~~((21))~~ (22) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand;

industrial-feeding establishment; retail grocery; retail food market; retail meat market; retail bakery; private, public, or nonprofit organization routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

~~((22))~~ (23) "Fumigant" means any substance or combination of substances that produce gas, fumes, vapors, or smoke, and is used to kill pests in some kind of enclosure.

~~((23))~~ (24) "High volatile esters" are phenoxy hormone-type herbicides with five or less carbon atoms in the ester group, such as, but not limited to, methyl, ethyl, isopropyl, n-butyl, isobutyl and n-pentyl.

(25) "Highly toxic pesticide" for the purpose of this chapter, means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity Category I due to oral, inhalation or dermal toxicity.

~~((24))~~ (26) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

~~((25))~~ (27) "Low volatile esters" are phenoxy hormone-type herbicides with more than five carbon atoms in the ester group.

(28) "Person" is defined as any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((26))~~ (29) A "person aggrieved" by a violation is defined as a person who has reasonable grounds to believe that he or she has been subjected to harm or an unreasonable risk by such a violation.

~~((27))~~ (30) "Pollen shedding corn" means that stage of growth when ten percent or more of the corn plants in any one quarter portion of the field are showing spike anthers.

~~((28))~~ (31) "Positive identification" means a photo identification document issued by a U.S. government agency or affiliated jurisdiction (states, tribes, territories). Acceptable photo identification documents are: A driver's license, a passport, a military ID card or an immigration green card. Exception: Nonphoto identification documents may be allowed for religious groups that prohibit members from having their picture taken. In this case, two forms of identification are required, one of which must be a government issued document with a signature (e.g., Social Security card). Other nonphoto identification must identify the holder by name and address (e.g., utility bill).

~~((29))~~ (32) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide for the purposes of producing any agricultural commodity and for any associated noncrop application on

land owned or rented by the private applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

~~((30))~~ (33) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

~~((34))~~ (34) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

~~((32))~~ (35) "State restricted use pesticide" means any pesticide determined to be a restricted use pesticide by the director under the authority of chapters 17.21 and 15.58 RCW.

~~((33))~~ (36) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

~~((34))~~ (37) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((35))~~ (38) "Use restricted pesticide" means any pesticide determined by the director to need further state restrictions on use under the authority of chapters 17.21 and 15.58 RCW. This designation does not change federal or state restricted use classifications.

(39) "Waste pesticide" is any pesticide formulation which cannot be used according to label directions in Washington state because of cancellation or suspension of its federal or state registration, or deterioration of the product or its label, and any pesticide formulation whose active ingredients are not clearly identifiable because of label deterioration or because the pesticide is not stored in its original container.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1125 When can the department revoke or deny a license? (1) The department retains the sole discretion to determine when an individual license should be revoked rather than suspended. Revocation of a license shall be an option for the department in those circumstances where:

- (a) The penalty schedule allows for revocation; and/or
- (b) One or more aggravating factors are present; and/or
- (c) The duration of the licensure action exceeds six months.

In circumstances where the department determines revocation to be appropriate, the period of revocation shall be determined at the discretion of the department, but in no instance shall the revocation exceed five years.

(2) The department may deny an applicant a license when the applicant has committed a violation(s) of chapters 15.58 and 17.21 RCW and/or the rules adopted under those

chapters. The duration of denial shall be determined based upon the penalty provisions of this chapter. In circumstances where the department determines denial to be appropriate, the period of denial shall not exceed five years.

(3) Nothing shall prevent the department from denying an applicant a license when the applicant has an outstanding civil penalty owed to the department from a previous violation(s).

(4) The department may, at its discretion, suspend a license without also seeking a civil penalty. Such circumstances include, but are not limited to, those incidents where a civil penalty is not available as an appropriate penalty pursuant to RCW 43.05.110. The appropriate period of suspension shall be determined from the penalty schedule.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1200 What are the restrictions on pesticide distribution, transportation, application, storage and disposal? (1) No person shall handle, transport, store, display, apply, dispose of or distribute pesticides in such a manner as to endanger humans and their environment or to endanger food, feed, or any other product that may be transported, stored, displayed, or distributed with such pesticides. Toxicities of pesticides shall be considered in distribution, storage, handling, and merchandising practices.

(2) Highly toxic pesticides shall not be transported in the same compartment of the vehicle or other equipment together with clothes, food, feed, or any other material intended for consumption by humans or animals. Any vehicle or other equipment shall be inspected by the owner or authorized agent for contamination before reuse. In instances where leakage or spillage has occurred, the shipper of the pesticides shall be immediately notified for instructions concerning the best method to be employed for the removal of the contamination. Vehicles or other equipment which have been contaminated shall not be returned to service until the contamination has been removed.

(3) Pesticide containers shall be secured during transit by use of side or end racks, bracing, chocks, tiedowns, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(4) Valves shall be tightly closed and manhole covers shall be secured on cargo, portable and permanent tanks used for transporting, storage and application of pesticides, whether tanks are full or empty.

(5) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(6) Pesticides shall not be delivered to a pesticide consignee unless the consignee or authorized agent is present to accept delivery of the pesticides and signs a delivery slip or the pesticides are secured in a proper storage. Signed delivery slips shall be maintained as required by WAC 16-228-1300 for records.

(7) Pesticides shall not be stored and/or displayed over or adjacent to meat or vegetable cases, other human foods, ani-

mal feeds, or drugs, or in any manner that may result in contamination of food, feed, or clothing. Pesticides intended for sale or distribution shall only be stored and displayed within an enclosed area of a building or fence and shall not be displayed on sidewalks.

(8) Pesticide dealers shall not sell, offer for sale, or hold for sale highly toxic pesticides in the same department where food for human consumption is displayed or sold. The same "checkstand" or food packaging area may not be used for the distribution of highly toxic pesticides and food for human consumption.

(9) All pesticide incidents involving undesirable impacts on human health shall be reported to the Washington state department of health by the department.

(10) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale, or transported and shall be handled or disposed of in a manner that would not contaminate the environment or cause injury to humans and/or animals. Pesticides with obscured, illegible or damaged labels shall not be displayed or offered for sale.

(11) No person shall distribute or sell any pesticide unless it is in the registrant's or the manufacturer's unbroken, immediate container and the registered pesticide label is affixed to the container.

(12) A user of a pesticide may distribute a properly labelled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter 70.105 RCW.

(13) The distribution and use of DDT and DDD shall be prohibited in this state except for uses allowed by the Environmental Protection Agency or the Center for Disease Control of the United States Department of Health and Human Services.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1231 What are state restricted use pesticides for distribution by licensed pesticide dealers and for use by certified applicators only? (1) Pesticides defined by the following categories or active ingredients are hereby declared state restricted use pesticides and shall be distributed only by licensed pesticide dealers to certified applicators or to their duly authorized agents. The certified applicator must have a valid certification, license or permit to use or purchase the kind and quantity of such pesticide sold or delivered. These pesticides shall be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category.

(a) Any EPA restricted use pesticide.

(b) All formulations ~~((except for low volatile esters, of dicamba and))~~ of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) ~~((;))~~ and dicamba when distributed in ~~((quantities larger than one gallon in))~~ counties located east of the crest of the Cascade Mountains ~~((;~~

~~((e))~~ Low volatile ester formulations of dicamba and phenoxy hormone-type herbicides (e.g., 2,4-D, MCPA, MCPP) distributed in quantities of one gallon or larger in counties located east of the crest of the Cascade Mountains.

~~((d))~~ except as listed below:

(i) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(ii) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

(c) Strychnine and its salts.

~~((e))~~ (d) Aquatic pesticides. All pesticides formulations labeled for application onto or into water to control pests on or in water except as provided in subsection (2) of this section.

~~((f))~~ Pesticides containing the following active ingredients and their isomers are hereby declared state restricted use pesticides for the protection of ground water:

atrazine
bromacil
~~depa~~
disulfoton
diuron
hexazinone
~~metolachlor~~
metribuzin
~~picloram~~
prometon
simazine
tebuthiuron))

(2) Pesticides which are not classified as EPA restricted use pesticides and which are labeled and intended only for the following aquatic uses shall be exempt from the requirements of this section:

- (a) Swimming pools
- (b) Wholly impounded ornamental pools or fountains
- (c) Aquariums
- (d) Closed plumbing and sewage systems
- (e) Enclosed food processing systems
- (f) Air conditioners, humidifiers, and cooling towers
- (g) Industrial heat exchange, air washing and similar industrial systems
- (h) Disinfectants
- (i) Aquatic environments in states other than Washington
- (j) Animal pets
- (k) Use within wholly enclosed structures (with floors) or fumigation chambers.

Greenhouses are not considered as wholly enclosed structures for the purposes of this section

(1) Home and garden control of mosquito larvae.

~~((Products listed in subsection (1)(f) of this section which are))~~ Pesticides containing the following active ingredients and their isomers are declared state restricted use pesticides for the protection of ground water except when labeled and intended only for home and garden use ~~((are exempt from the requirements of this section))~~.

atrazine
bromacil

dcpa
disulfoton
diuron
hexazinone
metolachlor
metribuzin
picloram
prometon
simazine
tebuthiuron

(4) (~~(Dry formulations of dicamba, 2,4-D, MCPA, MCPP and other phenoxy hormone type herbicides labeled and intended only for home and garden use or turf, are exempt from the requirements of this section.~~

(5)) Distribution of pesticides bearing combined labeling of uses onto or into water plus nonaquatic general uses, may be made by licensed pesticide dealers to noncertified applicators if the dealer indicates on the sales slip or invoice that the purchaser of the pesticide agrees that it will not be applied into or onto water. If requested by the department, dealers shall furnish records on the sales of pesticides labeled for application onto or into water, whether sold for that use or not. Records shall include the name and address of the purchaser, the complete product name and ~~((/or))~~ EPA registration number of the pesticide and the amount purchased. Records shall be kept for seven years from the date of distribution.

~~((6))~~ (5) Certified applicators may designate authorized agent(s) for the purpose of purchasing or receiving restricted use pesticides by making previous arrangements with the pesticide dealer, or the authorized agent may provide written authorization by the certified applicator to the dealer at the time of purchase. At the time of purchase by an authorized agent the pesticide dealer shall require the certified applicator's name and license number and positive identification of the authorized agent.

~~((7))~~ (6) Pesticide dealers must positively identify unknown purchasers of restricted use pesticides. Positive identification may be annually at the time of verification of the certified applicator's license number or for each individual purchase if the applicator is unknown to the dealer. Dealers must verify the identification of unknown purchasers of restricted use pesticides for telephone or electronic purchases either by fax (photo identification) or at the time of delivery.

AMENDATORY SECTION (Amending WSR 03-05-033, filed 2/11/03, effective 3/14/03)

WAC 16-228-1262 When are pesticides containing the active ingredient thiamethoxam (~~(restricted)) use restricted pesticides?~~ Pesticides containing the active ingredient thiamethoxam are declared to be ~~((restricted))~~ use restricted pesticides when labeled for use on pome fruits, including apples and pears.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1300 What are the recordkeeping requirements for pesticide dealers? Pesticide dealers shall keep and furnish records to the director immediately upon

request on the distribution of any pesticide except those ~~((labeled only for))~~ determined by the department to be "home and garden use only" products. Records shall be kept for a period of seven years from the date of distribution. General use distribution requests shall be limited to records necessary for investigations of suspected violations, damage complaints, inspections, monitoring distribution and use under provisions of special local needs registrations, emergency exemptions from federal registration and experimental use permits, and monitoring of any pesticide suspected of unreasonable adverse effects on the environment. The records shall contain the following information:

- (1) Full name and address of purchaser;
- (2) Full name and address of certified applicator (if different from subsection (1) of this section for restricted use pesticides);
- (3) Certified applicator's pesticide license number (for restricted use pesticides);
- (4) Full name of authorized agent for restricted use pesticides;
- (5) Brand and specific pesticide name and EPA registration number;
- (6) Number of pounds or gallons of the pesticide distributed;
- (7) Date of distribution;
- (8) Crop and/or site to which pesticide will be applied (for restricted use pesticides).

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1320 What are the recordkeeping requirements for pesticide applicators? (1) Certified applicators and all persons applying pesticides to more than one acre of agricultural land in a calendar year including public entities engaged in roadside spraying, and all persons making landscape applications of pesticides to types of property listed in RCW 17.21.410 (1), (b), (c), (d) and (e) shall keep records for each application which shall include the following:

- (a) The full name and full address of the person for whom the pesticide was applied.
- (b) The address or exact location of the land where the pesticide was applied. If the application is made to one acre or more of agricultural land, the field must be located on the map on the adopted form. Location of agricultural land shall be made using section, township and range, geographical positioning system coordinates, or by irrigation block and farm unit numbers.
- (c) The year, month, day and start and stop time the pesticide was applied.
- (d) The product name used on the registered label and the United States Environmental Protection Agency registration number, if applicable, of the pesticide which was applied.
- (e) The direction from which the wind is blowing and estimated velocity of the wind in miles per hour (mph) and the temperature in degrees Fahrenheit at the time the pesticide was applied: Provided that this subsection (e) shall not apply to applications of baits in bait stations, pesticide appli-

cations within structures and drip or subsurface irrigation applications. Wind and temperature readings shall be obtained in close proximity to the application site.

(f) The total amount of pesticide applied such as pounds, gallons, ounces, etc.

(g) The amount of pesticide applied per acre or one thousand square feet or other appropriate measure.

(i) For PCO classification or residential ornamental applications, the amount shall be recorded to the nearest ounce of product or to the nearest gallon of liquid spray per site.

(ii) Fumigation records shall include the pounds of gas released per one thousand cubic feet of space, the temperature, and the duration of the exposure period.

(h) The concentration of pesticide that was applied. Liquid applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., 1%). For chemigation applications record "inches of water applied" or other appropriate measure.

(i) The pests to be controlled (for PCO classification only).

(j) Specific crop or site to which pesticide was applied.

(k) Apparatus license plate number.

(l) The licensed applicator's full name, certified pesticide applicator license number, complete address, telephone number, and the full name ((and license number(s) if applicable)) of the individual or individuals making the application.

(m) The number of acres or other appropriate measure to which the pesticide was applied.

(n) For commercial applications, the full name and complete address of the commercial firm.

(2) Application records shall be completed and available to the department the same day the pesticides were applied.

(3) Application records shall be kept for a period of seven years from the date of the application of the pesticide to which such records refer. The director shall, upon request in writing, be furnished with a copy of such records immediately by the licensee.

(4) Upon written request, the applicator shall provide the customer with a record of each application of pesticides to his/her land, for the current season, which shall contain the information listed in WAC 16-228-1320(1).

(5) Except as stated in subsection (6) of this section, the information required in subsection (1) of this section shall be provided upon request on the appropriate page of the pesticide record form (figures 1-8): Provided that computerized records may be maintained as long as the records can be produced in the form and format prescribed by the department.

(6) The department may allow by written permit the information required in subsection (1) of this section to be kept in a different form and format than that described in figures 1-8: Provided that the following criteria are met:

(a) The pesticide application recordkeeping system is computerized;

(b) The pesticide application recordkeeping system contains all the information required by subsection (1) of this section, and can be produced in a form and format acceptable to the department.

(7) All apparatus shall be kept in good repair and only that apparatus capable of performing all functions necessary to ensure proper and thorough application of pesticides shall be used. Apparatus shall be cleaned so that no residue remains which may cause injury to land, humans, desirable plants and animals, from subsequent applications.

(8) On demand of the director, the applicator shall make immediately available for inspection the pesticides being applied and the apparatus used for the application: Provided that this inspection is made at the site of application or where the apparatus is located.

(9) The applicator shall make available necessary safety equipment in proper working order and advise employees on its use to meet the safety requirements of the pesticide label.

(10) Maintain a uniform mixture at all times in operating apparatus when applying pesticides.

(11) All containers used for ((prepared)) pesticide mixtures, other than those in an apparatus, shall have a label identifying the contents as a pesticide, the active ingredient, and appropriate ((cautions)) restrictions and precautions.

State of Washington
Department of Agriculture
Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 1)

NOTE: This form must be completed same day as the application and it must be retained for 7 years (Ref. chapter 17.21 RCW)

1. Date of Application - Year: Month: Day: Start Time:
Stop Time:

2. Name of person for whom the pesticide was applied:
Firm Name (if applicable):
Street Address: City: State: Zip:

3. Licensed Applicator's Name (if different from #2 above): License No.:
Firm Name (if applicable): Tel No.:
Street Address: City: State: Zip:

4. Name of person(s) who applied the pesticide (if different from #3 above):
License No(s). If applicable:

5. Application Crop or Site:

6. Total Area Treated (acre, sq. ft., etc.):

7. Was this application made as a result of a WSDA Permit? No Yes (If yes, give Permit No.) #

8. Pesticide Information (please list all information for each pesticide, including adjuvants (buffer, surfactant, etc.), in the tank mix):

a) Full Product Name	b) EPA Reg. No.	c) Total Amount of Pesticide Applied in Area Treated	d) Pesticide Applied/Acre (or other measure)	e) Concentration Applied
			/	
			/	
			/	
			/	
			/	

- 9. Address *or exact location* of application. NOTE: If the application is made to one acre or more of agricultural land, the field location must be shown on the map on page two of this form.
- 10. Wind direction and estimated velocity (mph) during the application:
- 11. Temperature during the application:
- 12. Apparatus license plate number (if applicable):
- 13. Air Ground Chemigation
- 14. Miscellaneous Information:

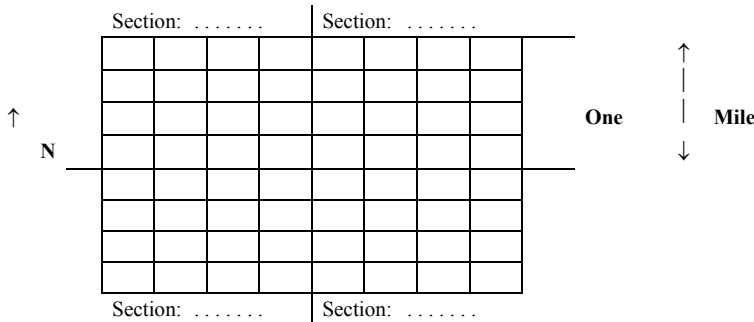
AGR 4226 (Rev. ((5/03)) 4/07)

Location of Application: If the application covers more than one township or range, please indicate the township & range for the top left section of the map only:

Township: N
 Range: E OR W (please indicate:)
 Section(s):
 Block: Farm Unit:
 or GPS:
 County:

PLEASE NOTE:

The map is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.



Miscellaneous Information:

INSTRUCTIONS

Pesticide Application Record (Version 1) AGR 4226 (Rev. ((5/03)) 4/07)

- 1. Date may be spelled out or indicated numerically. Time must be indicated as start and stop times.
- 2. Include first and last name.
- 3. If the person's name is the same as No. 2, write "same" in the space for the licensed applicator's name and include the license number (if applicable) and telephone number.

INSTRUCTIONS

- 4. Include first and last name(s).
- 5. Indicate type of land or site treated, not location. Examples: Wheat, apples, rights of way, lawn, trees and shrubs, crawl space, wall voids, etc.
- 6. May also be stated in terms such as linear feet, cubic feet, etc. (Specify the term to which the number refers.) If spot treatment, write spot treatment.

INSTRUCTIONS

- 7. If the application was made under permit, but no permit number was issued, indicate the date the permit was issued.
- 8.a) Brand name found on the pesticide label including adjuvants (buffer, spreader, sticker, surfactant, (~~dye~~) etc.).
- b) This number is found on the pesticide container label. If the material is being applied under a federal experimental use permit and no EPA Reg. No. exists, list the federal experimental use permit number. If the material is a spray adjuvant (buffer, spreader, sticker, surfactant, etc.) write "adjuvant" in this space and add the state registration number.
- c) Indicate the amount of pesticide formulation (product) applied to the total area listed on line 6.
- d) Other measures may include amount/sq. ft., amount/cu. ft., amount/linear ft., etc.
- e) This may be listed in various ways, such as: Amount of product/100 gallons water, percent formulation in the tank mix (i.e., 1%), gallons per acre of output volume, ppm (or other measure), or inches of water applied (chemigation). Specify the term to which the number refers.

INSTRUCTIONS

- 9. Agricultural land includes such areas as forest lands and range lands. It does not include transportation and utility rights of way.
 - 10. Indicate the direction from which the wind is blowing. Measure wind velocity in mph. If the wind varies in direction and velocity during the application, indicate the range of variance (i.e., S-SW 3-7 mph). Wind readings shall be obtained in close proximity to the application site.
 - 11. Indicate temperature in degrees Fahrenheit. (It may be indicated as the range encountered during application.) Temperature readings shall be obtained in close proximity to the application site.
 - 12. This does not apply to private applicators or public agencies.
 - 13. Check one.
 - 14. Depth of application/inches of water (chemigation).
 - 15. This space is available for any additional information you may wish to include.
- Form AGR 4226 (Rev. (~~5/03~~) 4/07) Pg. 2

State of Washington
 Department of Agriculture
 Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 2)

NOTE: Application information must be completed same day as the application and must be retained for seven years (Ref. chapter 17.21 RCW)

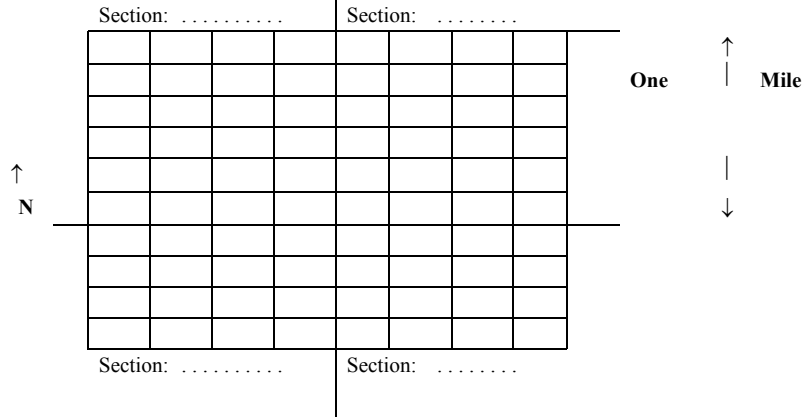
1. Name & Address of Person for Whom Pesticide was Applied					2. Applicator Name and Address (if different from # 1) Tel. No. Lic. No.				
3. Full, complete address or exact location of application (NOTE: If the application is made to one acre or more of agricultural land, the field location must be shown on the map on page two of this form)					4. Misc. Info:				
5. Date and Time of Application (Start and Stop)	6. Crop or Site Treated	7. Acres Treated (or other measure)	8. FULL PRODUCT NAME	9. EPA Registration Number	10. Amount of Product Applied		11. Concentration	12. Weather Conditions (wind direction, velocity, temperature). Apparatus License Plate No. and Name and License No. of person(s) who applied pesticide	
					Rate per acre (or other measure)	Total Product Applied			
	<input type="checkbox"/> Air <input type="checkbox"/> Ground <input type="checkbox"/> Chemigation								
	<input type="checkbox"/> Air <input type="checkbox"/> Ground <input type="checkbox"/> Chemigation								
	<input type="checkbox"/> Air <input type="checkbox"/> Ground <input type="checkbox"/> Chemigation								

	<input type="checkbox"/> Air <input type="checkbox"/> Ground <input type="checkbox"/> Chemigation							
--	---	--	--	--	--	--	--	--

AGR 4235 (Rev. ((5/03)) 4/07)

Location of Application (If the application covers more than one township or range, please indicate the township & range for the top left section of the map only:

Township: N
 Range: E OR W (please indicate) ..
 Section(s):
 Block: Farm Unit:
 or GPS:
 County:



PLEASE NOTE:

The map is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.

AGR 4235 Pg. 2

INSTRUCTIONS

Pesticide Application Record (Version 2) AGR 4235 (Rev. ((5/03)) 4/07)

1. Include first and last name.
2. If the person's name is the same as No. 1, write "same" in the space for the licensed applicator's name and include the license number (if applicable) and telephone number.
3. Agricultural land includes such areas as forest lands and range lands. It does not include transportation and utility rights of way.
4. This space is available for any additional information you may wish to include.
5. Date may be spelled out or indicated numerically. Application start and stop times must be indicated.
6. Indicate type of land or site treated, not location. Examples: Wheat, apples, rights of way, lawn, trees and shrubs, crawl space, wall voids, etc.
7. May also be stated in terms such as linear feet, cubic feet, etc. (Specify the term to which the number refers.) If spot treatment, write spot treatment.
8. Brand name found on the pesticide label including adjuvants (buffer, spreader, sticker, surfactant, etc.).
9. This number is found on the pesticide container label. If the material is being applied under a federal experimental use permit and no EPA Reg. No. exists, list the federal experimental use permit number. If the material is a spray adjuvant (buffer, spreader, sticker, surfactant, etc.) write "adjuvant" in this space and add the state registration number.

INSTRUCTIONS

10. Rate per acre: Other measures may include amount/sq. ft., amount/linear ft., etc. Specify the term to which the number refers. Total product applied is the total product applied between start and stop times.
11. This may be listed in various ways, such as: Amount of product/100 gallons water, percent formulation in the tank mix (i.e., 1%), gallons per acre of output volume, ppm (or other measure), or inches of water applied (chemigation). Specify the term to which the number refers.
12. Weather conditions must include the direction from which the wind is blowing, measure velocity in mph. If the wind varies in direction and velocity during the application, indicate the range of variance (i.e., S-SW 3-7 mph). Temperature must also be indicated in degrees Fahrenheit and may be listed as the range encountered during the application. Wind and temperature readings shall be obtained in close proximity to the application site.
 The apparatus license plate number does not apply to private applicators or public agencies.
 Include first and last name(s) of person(s) who applied the pesticide. Include license number(s) if applicable.

State of Washington
 Department of Agriculture
 Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 3)

NOTE: This form must be completed same day as the application and it must be retained for 7 years
 (Ref. chapter 17.21 RCW)

1. Date of Application - Year: Month: Day(s):
2. Name of person for whom the pesticide was applied:
 Firm Name (if applicable):
 Street Address: City: State: Zip:
3. Licensed Applicator's Name (if different from #2 above): License No.:
 Firm Name (if applicable): Tel. No.:
 Street Address: City: State: Zip:
4. Air Ground Chemigation
5. Application Crop or Site:
6. Total Area Treated (acre. sq. ft., etc.)
7. Was this application made as a result of a WSDA Permit? No Yes (If yes, give Permit No.) #
8. Pesticide Information (list all information for each pesticide including adjuvants in the tank mix):

a) Full Product Name	b) EPA Reg. No.	c) Total Amount of Pesticide Applied in Area Treated	d) Pesticide Applied/Acre (or other measure)	e) Concentration Applied	f) Depth of Application (Chemigation)
			/		
			/		
			/		
			/		

9. Address *or exact location* of application. NOTE: If the application is made to one acre or more of agricultural land, the field location must be shown on the map on page two of this form.

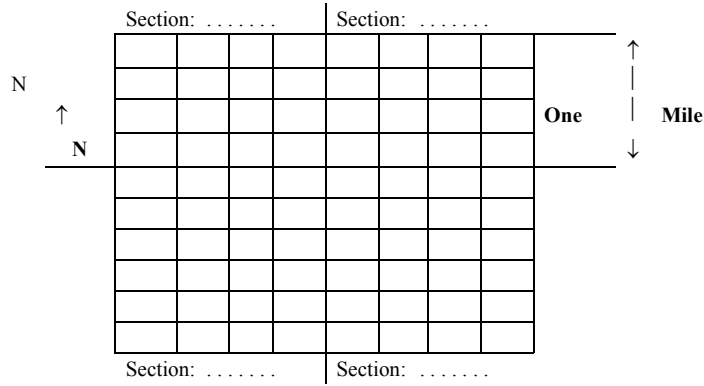
10. Date	11. Name of person(s) making the application	12. License No.	13. Apparatus Lic. Plate No.	14. Time		15. Acres Completed	16. Wind		17. Temp
				Start	Stop		Dir.	Vel. (mph)	

AGR 4236 (Rev. ((5/03)) 4/07)

10. Date	11. Name of person(s) making the application	12. License No.	13. Apparatus Lic. Plate No.	14. Time		15. Acres Completed	16. Wind		17. Temp
				Start	Stop		Dir.	Vel. (mph)	

Location of Application (If the application covers more than one township or range, please indicate the township & range for the top left section of the map only.

Township:
Range: E OR W (please indicate):
Section(s):
Block: Farm Unit:
or GPS:
County:



PLEASE NOTE:

The map is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.

Miscellaneous Information:

INSTRUCTIONS

Pesticide Application Record (Version 3) AGR 4236 (Rev. ((5/03)) 4/07)

- 1. Date may be spelled out or indicated numerically.
2. Include first and last name.
3. If the person's name is the same as No. 2, write "same" in the space for the licensed applicator's name and include the license number (if applicable) and telephone number.
4. Check one.
5. Indicate type of land or site treated, not location. Examples: Wheat, apples, rights of way, lawn, trees and shrubs, crawl space, wall voids, etc.
6. May also be stated in terms such as linear feet or cubic feet. (Specify the term to which the number refers.) If spot treatment, write spot treatment.
7. If the application was made under permit, but no permit number was issued, indicate the date the permit was issued.
8.a) Brand name found on the pesticide label including adjuvants (buffer, spreader, sticker, surfactant, ((eye)) etc.).
b) This number is found on the pesticide container label. If the material is being applied under a federal experimental use permit and no EPA Reg. No. exists, list the federal experimental use permit number. If the material is a spray adjuvant (buffer, spreader, sticker, surfactant, etc.) write "adjuvant" in this space and add the state registration number.
c) Indicate the amount of pesticide formulation (product/adjuvant) applied to the total area listed on line 6.
d) Other measures may include amount/sq. ft., amount/cu. ft., amount/linear ft., etc.

INSTRUCTIONS

- e) This may be listed in various ways, such as: Amount of product/100 gallons water, percent formulation in the tank mix (i.e., 1%), gallons per acre of output volume, ppm (or other measure), or inches of water applied (chemigation). Specify the term to which the number refers.
f) Depth of application (chemigation).
9. Agricultural land includes such areas as forest lands and range lands. It does not include transportation and utility rights of way.
10. List the date of application.
11. Indicate first and last name(s).
12. List license number(s) if applicable.
13. This does not apply to private applicators or public agencies.
14. Application start and stop times must be indicated. Indicate a.m. or p.m.
15. The total of all entries in this column should equal the total listed on line 6.
16. Indicate the direction from which the wind is blowing. Measure wind velocity in mph. If the wind varies in direction and velocity during the application, indicate the range of variance (i.e., S-SW 3-7 mph). Wind readings shall be obtained in close proximity to the application site.
17. Indicate temperature in degrees Fahrenheit. (It may be indicated as the range encountered during the application.) Temperature readings shall be obtained in close proximity to the application site.

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Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 4)
NOTE: This form must be completed same day as the application
and it must be retained for 7 years (Ref. chapter 17.21 RCW)

- A. Date of Application - Year: Month: Day:
B. Firm Name: Telephone No.:
Commercial Applicator's Name: License No.:
Street Address: City: State: Zip:
C. Name of person(s) who applied the pesticide:
License No(s):
D. Pesticide Information (list all information for each pesticide including spray adjuvants (buffer, surfactant, dye, etc.) in the tank mix):

Table with 3 columns: Full Product Name, EPA Reg. No., Concentration. Concentration header: Amount: (Lbs., Qts., etc.) of brand per 100 gallons of tank mix. Amount and unit must be specified.

- E. Application crop or site:
F. Apparatus License Plate No.

Table for application conditions with columns: CUSTOMER (a) full name (b) complete address, AMOUNT APPLIED (gals. of mix), AREA TREATED (sq. ft., etc.), START AND STOP TIME, TEMP (F°), WIND DIR VEL (mph). Rows 1-9 with sub-rows a) and b).

AGR 4234 (Rev. ((5/03)) 4/07)

INSTRUCTIONS

Pesticide Application Record (Version 4) AGR 4234 (Rev. ((5/03)) 4/07)
This form may only be used for commercial residential ornamental and lawn applications. It may not be used to satisfy the application record requirements for agricultural employers.
A. Date may be spelled out or indicated numerically.
B. Include first and last name of the commercial applicator.
C. Include first and last name(s).
D. Product name: Brand name found on the pesticide label including adjuvants (buffer, spreader, sticker, surfactant, (dye,) etc.).

INSTRUCTIONS

E. Indicate type of land treated, not location. Examples: Rights of way, lawn, trees and shrubs, driveways, etc.
F. List the number of the license plate affixed to the apparatus.
G. Customer's name and application information should be listed on line A. Street address should be listed on line B, including city. Additional pages may be added for additional customers on the same day, so long as the information in A through F remains the same.

DAILY PESTICIDE APPLICATION RECORD (Version 5)
For Commercial Pest Control Operators Only

NOTE: This form must be completed same day as the application and retained for seven years (Ref. chapter 17.21 RCW)

- A. FIRM NAME AND ADDRESS:
B. APPLICATOR NAME:
C. PERSON MAKING APPLICATION:
D. DATE:
E. APPARATUS LICENSE NO:

Table with 5 columns: CUSTOMER (a) FULL NAME, (b) FULL ADDRESS OR LOCATION OF APPLICATION, (c) TARGET PEST; (a) EPA REG. NO./FULL PRODUCT NAME(S), (b) CONCENTRATION, (c) TOTAL AMOUNT USED; (a) TIME (IN/OUT), (b) TEMP., (c) WIND DIR./VELOCITY; APPLICATION SITE (C&C, SPOT, VOID, INJECTIONS, ETC.); PESTICIDE APPLIED/ACRE OR OTHER MEASURE. Includes rows 1-7 with sub-rows a, b, c.

AGR 4237 (Rev. ((5/03)) 4/07) OPTIONAL: MILEAGE START MILEAGE END

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1400 What are the requirements for pesticide labels? (1) In addition to the requirements set forth in (2) through (5) below, pesticide labeling shall meet the standards or criteria of FIFRA.

(2) Any pesticide exempted from registration under the provisions of section 18 of FIFRA must be labeled as follows:

(a) Pesticides distributed under section 18 of FIFRA must be accompanied by a label approved by the department prior to distribution. All conditions set forth in the document granting the emergency exemption and all other requirements determined to be necessary by the department must be included on the label.

(b) In situations where a label cannot be developed and approved prior to the intended use period, the department may allow the use of the document granting the emergency exemption in lieu of labeling. Conditions set forth as part of the granting document, and any attached or associated documentation from the department shall be considered labeling for purposes of enforcement.

(3) Labels for spray adjuvants must include the following:

- (a) The product brand name.
(b) The type or function of principal functioning agents.

Terms used to describe adjuvant functions must be consistent with ((American Society for Testing and Materials (ASTM Standard)) ASTM International Standards E 1519 and/or E 609, unless ASTM International has not defined a term. In the absence of an ASTM International definition, the department will determine the appropriate term(s). Functions claimed must be consistent with the principal functioning agents. If two or more functions are claimed, then the functions must be listed in descending order (starting with the primary function).

(c) An ingredient statement that shall include the following:

- (i) "Principal functioning agents." The principal functioning agents must be listed by chemical name in descending order of composition with either individual or total percentage(s). If more than 3 functioning agents are present, only the 3 principal agents need to be listed;

(ii) The percentage of "Constituents ineffective as spray adjuvants," and

(iii) The total percentage of all ingredients which must equal 100%.

(d) Directions for use that must include a description of intended uses and recommended use rates.

(e) Precautionary statements adequate to protect people and the environment that shall include the following:

(i) The statement "Keep Out Of Reach Of Children."

(ii) A signal word (danger, warning or caution) and precautionary statements (including requirements for personal protective equipment, if applicable) consistent with product toxicity data; and

(iii) A statement prohibiting aquatic use, unless the registrant provides data to demonstrate that the proposed use will not cause unreasonable adverse effects to fish and aquatic invertebrates.

(f) An appropriate storage and disposal statement.

(g) The name and address of the registrant or manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, then the name must be qualified by appropriate wording such as "Packaged for" or "Distributed by."

(h) The weight or measure of the contents.

(i) In situations where the department deems it appropriate, the use of alternative language and/or statements may be allowed or required.

(j) Optional information: The spray adjuvant label may also include an exemption from tolerance statement (if applicable), an unsulfonated residue (UR) value (if applicable), the Washington registration number and a label identification code (such as the revision date).

(4) Special local need (SLN) labels issued under section 24c of FIFRA must include the following:

(a) A federal or state Restricted Use Pesticide (RUP) designation statement (when applicable).

(b) The statement "FOR DISTRIBUTION AND USE ONLY WITHIN THE STATE OF WASHINGTON."

(c) The product brand name.

(d) The EPA and SLN registration numbers of the product.

(e) The statement: "It is a violation of federal law to use this product in a manner inconsistent with its labeling."

(f) The statement: "This labeling must be in the possession of the user at the time of application."

(g) One of the following statements:

(i) For agricultural use SLN labels the statement: "Follow all applicable directions, restrictions, worker protection standard requirements, and precautions on the EPA registered label"; or

(ii) For nonagricultural use SLN labels the statement: "Follow all applicable directions, restrictions, and precautions on the EPA registered label."

(h) Directions for use that must include the following: crop or site to be treated, pest(s) to be controlled, application rate and concentration, method of application, frequency and timing of application, and pre-harvest interval.

(i) All restriction or precaution statements (e.g. pollinator protection, herbicide drift, aquatic toxicity, chemigation, seed crop requirements) applicable to the use.

(j) An expiration date statement such as: "This label for (Product name) expires and must not be distributed or used in

accordance with this SLN registration after December 31, (Fifth year)." Fifth year means the fifth year after issuance of the SLN label.

(k) The name and address of the SLN registrant.

(l) A label identification code (such as the revision date).

(m) Any other applicable information required by the EPA or the department.

(n) In situations where the department deems it appropriate, the use of alternative language and/or statements may be allowed or required.

(o) Optional information: The SLN label may also include a waiver of liability statement (if applicable). The waiver of liability statement must be consistent with EPA requirements.

(5) Labels for minimum risk pesticides exempted from federal registration under section 25(b) of FIFRA must include the following:

(a) The product brand name.

(b) The product function. The function(s) claimed must be consistent with product ingredients.

(c) An ingredient statement that shall include the following:

(i) "Active ingredients." These ingredients must be listed by name (in descending order of composition) with individual percentage(s). Only active ingredients listed in 40 CFR 152.25(g) are permitted;

(ii) "Inert ingredients" or "Other ingredients." These ingredients must be listed by name with the cumulative percentage of all inert ingredients stated on the label. Only inert ingredients on EPA Inerts List 4A (40 CFR 180.950) are permitted; and

(iii) The total percentage of all ingredients which must equal 100%.

(d) Directions for use that must include a description of intended uses and use rates. The label must not bear claims either to control or mitigate microorganisms that pose a threat to human health.

(e) Precautionary statements adequate to protect people and the environment that shall include the following:

(i) The statement "Keep Out Of Reach Of Children," and

(ii) A signal word (danger, warning or caution) and precautionary statements (including requirements for personal protective equipment, if applicable) consistent with product toxicity data.

(f) An appropriate storage and disposal statement.

(g) The name and address of the registrant or manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, then the name must be qualified by appropriate wording such as "Packaged for" or "Distributed by."

(h) The weight or measure of the contents.

(i) In situations where the department deems it appropriate, the use of alternative language and/or statements may be allowed or required.

(j) Optional information: The minimum risk pesticide label may also include the Washington registration number and a label identification code (such as the revision date).

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1410 What pesticides are considered home and garden use only pesticides? For purposes of this section, "home and garden use only" means any pesticide determined by the department to be packaged ~~((and))~~, labeled ~~((solely for))~~ and marketed in a manner that clearly indicates the product is intended for personal use by the general public in and around a residence. In making this determination, the department ~~((shall))~~ will consider, but not be limited to, the following criteria:

- (a) Packaging;
- (b) Package size;
- (c) Label instructions;
- (d) Application method;
- (e) Equipment to be used;
- (f) Rates of application.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1520 What are the requirements for the commercial applicator's financial responsibility insurance certificate (FRIC)? (1) A commercial pesticide applicator's license shall not be issued until a ~~((properly executed))~~ financial responsibility insurance certificate is filed with the department which shall certify: (Forms to be supplied by the department).

- (a) Name of insured (identical to name on application form)
- (b) Address of insured
- (c) Policy number
- (d) Aircraft number(s) covered by the insurance (if applicable)
- (e) Effective period
- (f) Amount of insurance. Minimum requirements are:
- (i) Public liability (personal injury) fifty thousand dollars; and property damage fifty thousand dollars; or
- (ii) Alternately providing both public liability (personal injury), and property damage liability coverage within the same limit, providing such policy is issued in an amount of not less than one hundred thousand dollars.
- (iii) Amount of deductible (if applicable): Maximum deductible, five thousand for all applicators.
- (g) List of any pesticides or group of pesticides not covered by the policy.
- (h) Acknowledgement of provisions for ten days' prior written notice of cancellation or reduction of the insurance coverage.

(2) The department may waive the requirements of this section, wholly or in part, if a ~~((properly executed))~~ surety bond in a form prescribed by the director is offered as evidence of financial responsibility, as provided for in RCW 17.21.160 and 17.21.170.

AMENDATORY SECTION (Amending Order 1989, filed 10/19/88)

WAC 16-230-010 ~~((Restricted use pesticides))~~ What are the restrictions on insecticides used on blossoming

alfalfa, clover and mint~~((Area under order))~~² ~~((+))~~
 For the purposes of WAC 16-230-010 through 16-230-079, the following ~~((agricultural))~~ pesticides ~~((are declared to be restricted use pesticides in all counties of the state of Washington))~~ have additional statewide use restrictions when applied to blossoming alfalfa, clover and mint.

COMMON CHEMICAL NAME	ALSO KNOWN AS*
acephate	Orthene
azinphos-methyl	Guthion
carbaryl	Sevin
carbofuran	Furadan
((carbophenothion	Trithion))
chlorpyrifos	Lorsban
((demeton	Systox))
diazinon	
dimethoate	Cygon ((Rebelate))
disulfoton	Di-Syston
endosulfan	Thiodan
((fenthion	Baytex))
fluvalinate	Spur
formetanate hydrochloride	Carzol
malathion	((Cythion)) Fyfanon
methidathion	Supracide
methomyl	Lannate, Nudrin
methoxychlor	Marlate
methyl parathion	
((mevinphos	Phosdrin))
naled	Dibrom
oxamyl	Vydate
oxydemeton-methyl	Metasystox-R
((parathion))	
phorate	Thimet
phosmet	Imidan
trichlorfon	Dylox

* This column is to be used only as a guide and may not include all brand or trade names under which these chemicals are distributed.

~~((2)) Area under order. All counties of the state of Washington.~~

AMENDATORY SECTION (Amending Order 1818, filed 4/10/84)

WAC 16-230-015 ~~((Definition))~~ What definitions apply to this section? (1) The term "blossoming alfalfa, mint or clover" as used in WAC 16-230-010 through 16-230-083 shall ~~((be))~~ apply when there are five or more blooms per square yard on the average in a given field: Provided, That following the first cutting the bloom count shall be taken only on the current crop. For the purpose of this rule, a "bloom" on clover or alfalfa is defined as any alfalfa raceme or clover head containing one or more open flowers. A "bloom" on

mint is defined as any head or spike with one or more open (florets) flowers.

(2) The time of sunrise and sunset shall be that of the official tables, U.S. Weather Bureau, Yakima, Washington.

AMENDATORY SECTION (Amending Order 1989, filed 10/19/88)

WAC 16-230-030 ~~What are the use restrictions for alfalfa and clover~~(~~—Chemical restrictions—~~) **pesticide applications?**

(1) The use or application of any formulation (except where the formulation is specified) of the following listed pesticides (~~(shall be)~~) is prohibited on blossoming alfalfa and clover crops within seven days to blossoming: Provided, That methidathion (Supracide) when used in Kittitas County on timothy hay mixed with alfalfa and/or clover shall only be prohibited within three days to blossoming. See WAC 16-230-076 and 16-230-078 for additional restrictions in certain areas of Walla Walla County.

- (a) Azinphos-methyl (Guthion)
- (b) Carbaryl (Sevin)
- (c) Carbofuran (Furadan)
- (d) Dimethoate (Cygon (~~(or Rebelate)~~))
- (e) Methidathion (Supracide)

(2) The use or application of liquid formulations of chlorpyrifos (Lorsban), (~~(mevinphos (Phosdrin))~~) wettable powder formulations of naled (Dibrom), and liquid or wettable powder formulations of malathion (Fyfanon) and phorate (Thimet) applied as sprays on blossoming alfalfa or clover crops is restricted to applications only within the period beginning at two hours prior to sunset and ending at midnight of the same day.

(3) The use or application of any formulation (except where the formulation is specified) of the following pesticides (~~(shall be)~~) is prohibited on blossoming alfalfa and clover crops:

- (a) Carbaryl (Sevin) see number (1) above
- (b) Diazinon
- (c) Fenthion (Baytex)
- (d) Malathion (~~(dust and)~~) (Fyfanon) ULV and dust
- (e) Methyl parathion
- (f) (~~(Mevinphos (Phosdrin) dust~~)
- ~~(g))~~ Naled (Dibrom) dust
- ~~((h) Parathion~~
- ~~(i))~~ (g) Phosmet (Imidan)

(4) The use or application of the following listed pesticides or any formulation thereof (except where the formulation is specified) on blossoming alfalfa and clover crops is restricted to applications only within the period beginning at two hours prior to sunset and ending at two and one-half hours after sunrise the following morning: Provided, That methomyl (Lannate or Nudrin) shall only be applied to blossoming clover crops pursuant to this rule, and its application to blossoming alfalfa is further restricted to applications only within the period beginning at two hours prior to sunset and ending at midnight the same day: Provided further, That the application of the following (~~(restricted)~~) use restricted pesticides on blossoming alfalfa in Walla Walla County is further restricted to applications only within the period beginning at

sunset and ending at two hours after midnight the following morning:

- (a) (~~(Carbophenothion (Trithion~~)
- ~~(b))~~ Formetanate hydrochloride (Carzol)
- ~~((c) Demethon (Systox)~~
- ~~(d))~~ (b) Naled (Dibrom) emulsifiable concentrate
- ~~((e))~~ (c) Disulfoton (Di-Syston)
- ~~((f))~~ (d) Endosulfan (Thiodan)
- ~~((g))~~ (e) Oxydemeton-methyl (Metasystox-R)
- ~~((h))~~ (f) Methomyl (Lannate or Nudrin)
- ~~((i))~~ (g) Methoxychlor (Marlate)
- ~~((j))~~ (h) Phorate (Thimet) granular
- ~~((k))~~ (i) Trichlorfon (Dylox)
- ~~((l))~~ (j) Oxamyl (Vydate)
- ~~((m))~~ (k) Fluvalinate (Spur)

AMENDATORY SECTION (Amending Order 1989, filed 10/19/88)

WAC 16-230-075 ~~What are the restrictions for blossoming mint~~(~~—Chemical restrictions—~~) **pesticide applications?**

The use or application of malathion dust on blossoming mint is prohibited. The use or application of malathion (Fyfanon) liquid, oxydemeton-methyl (Metasystox-R), and methomyl (Lannate or Nudrin) liquid on blossoming mint is restricted to applications only within the period beginning at two hours prior to sunset and ending at two and one-half hours after sunrise the following morning. The use or application of any formulation of acephate (Orthene) on blossoming mint is restricted to applications only within the period beginning at two and one-half hours prior to sunset and ending at midnight of the same day.

AMENDATORY SECTION (Amending Order 1989, filed 10/19/88)

WAC 16-230-076 (~~(Pesticide use on blossoming alfalfa, clover and mint—)~~) **What are the boundaries and restrictions for Area 1 ((~~o~~))?**

(1) Area 1 description. South central Walla Walla County - all lands lying within a line starting at the junction of the Washington-Oregon border and the Rainville Road; thence north along the Rainville Road to the Frog Hollow Road; thence west along the Frog Hollow Road to the McDonald Road; thence north along the McDonald and Bridge Road to State Highway 12; thence west along Highway 12 to the Woodward Canyon Road; thence north and west along the Woodward Canyon Road to the northeast corner of Section 24, T7N, R33E; thence west along the section lines to the northwest corner of Section 23, T7N, R32E; thence south along the section lines to the Walla Walla River; thence southerly along the Walla Walla River to its intersection with the west section line of Section 7, T6N, R33E; thence south along the section lines to the Washington-Oregon border; thence east along the border to the point of beginning.

(2) Area 1 restrictions. In addition to the restrictions in WAC 16-230-030, the use or application of azinphos-methyl (Guthion), carbofuran (Furadan), phosmet (Imidan), chlorpyrifos (Lorsban), and methidathion (Supracide) on alfalfa and clover crops, (~~(shall be)~~) is prohibited after May 23 of each year, and the use or application of dimethoate (Cygon (~~(or~~

~~Rebelate~~)) on alfalfa and clover crops (~~shall be~~) is prohibited after May 30 of each year.

AMENDATORY SECTION (Amending Order 1989, filed 10/19/88)

WAC 16-230-078 What are the boundaries and restrictions for Area 2((+))? (1) Area 2 description. South central Walla Walla County - all lands lying within a line starting at the junction of the Rainville Road and the Washington-Oregon border; thence north to the Frog Hollow Road; thence east along the Frog Hollow Road to the Valley Chapel Road; thence south along the Valley Chapel Road to the Washington-Oregon border; thence west along the border to the point of beginning.

(2) Area 2 restrictions. In addition to the restrictions in WAC 16-230-030, the use or application of azinphos-methyl (Guthion), carbofuran (Furadan), phosmet (Imidan), chlorpyrifos (Lorsban), and methidathion (Supracide) on alfalfa and clover crops, (~~shall be~~) is prohibited after May 30 of each year, and the use or application of dimethoate (Cygon (~~or Rebelate~~)) on alfalfa and clover crops (~~shall be~~) is prohibited after June 6 of each year.

AMENDATORY SECTION (Amending Order 1971, filed 4/4/88)

WAC 16-230-079 Can the department issue special permits((+))? The department may issue a permit upon receipt of a written request to apply (~~restricted~~) use restricted pesticides listed in WAC 16-230-010 in variation of any restrictions listed in WAC 16-230-015, 16-230-030, and 16-230-075 through 16-230-078. The department (~~shall~~) will consider the hazard to pollinating insects before a permit is issued.

AMENDATORY SECTION (Amending Order 1819, filed 4/10/84)

WAC 16-230-082 What are the use restrictions on pesticides used on pollen shedding corn((—Restricted use pesticides—Area under order-))? (1) The term "pollen shedding corn" as used in WAC 16-230-082 through 16-230-088 shall be that stage of growth when ten percent or more of the corn plants in any one quarter portion of a field are showing spike anthers.

(2) The insecticides* carbaryl (Sevin), diazinon, endosulfan (Thiodan), fenvalerate (Pydrin), malathion (Fyfanon), methomyl (Lannate or Nudrin), methyl parathion, parathion, and permethrin (Ambush or Pounce) are by this order declared to be (~~restricted~~) use restricted insecticides. Such insecticides are restricted in their use in Areas 1, 2 and 3 in eastern Washington.((*)

(3) Area under order. Area 1 - Yakima County; Area 2 - Franklin, Adams and Grant counties; Area 3 - Area within Area 2 in Grant County.

* Listed trade names are to be used as a guide and may not include all the trade or brand names under which the chemicals are distributed.

AMENDATORY SECTION (Amending Order 1819, filed 4/10/84)

WAC 16-230-084 What are the restrictions in Areas 1 and 2((+))? (1) Area 1 description - Yakima County. This area includes all of the irrigable lands encompassed by a line beginning at the southwest corner of Section 18, T8N, R21E; thence north nine miles more or less to the southeast corner of Section 36, T10N, R20E; thence fifteen miles west more or less to the southwest corner of Section 34, T10N, R18E; thence north fifteen miles more or less to the northwest corner of Section 22, T12N, R18E; thence east four miles more or less to the Northern Pacific Railroad tracks; thence following the tracks southeast to the Oldenway Road; thence north along the Oldenway Road and section lines to the Yakima River; thence southeast along the Yakima River to Highway 22 north of Toppenish; thence north along Highway 22 to Highway 12 at Buena; thence southeasterly along Highway 12 to the southern section line of Section 31, T11N, R21E; thence south one-quarter mile more or less to the Yakima River; thence southeast along the Yakima River to the Sunnyside-Mabton Road; thence south one mile to the Boundary Road; thence southwest along the Boundary Road and the Yakima Indian reservation boundary to the northern section line of Section 22, T8N, R22E; thence west nine miles more or less to the point of beginning.

(2) Area 2 description - Franklin, Adams and Grant counties. This area includes all of the irrigable lands encompassed by a line beginning at Highway 12 and the Columbia River; thence north and west following the river the length of Franklin County and into Grant County to the junction of Grant-Douglas County line; thence north on Grant-Douglas County line to the fifth standard parallel north; thence east twenty-five miles more or less to Highway 17; thence southeast seventeen miles more or less on Highway 17 to Highway 90; thence east twelve miles more or less to Grant-Adams County line; thence south on county line twelve miles more or less to the southeast corner of Section 36, T17N, R30E (southeast corner of Grant County); thence south twelve miles more or less (in Adams County) along east boundary of Section 1, 12, 13, 24, 25, 36, T16N, R30E; thence south along east boundary of Sections 1, 12, 13, 24, 25, 36, T15N, R30E continuing south into Franklin County along east boundary of Section 1 and 12, T14N, R30E to southeast corner of said Section 12; thence west one mile to Highway 17 (Franklin County); thence south on Highway 17 seventeen miles more or less to junction with Highway 395; thence south on Highway 395 fifteen miles more or less to Highway 12; thence west and south four miles more or less to Columbia River to the point of beginning.

(3) Area 1 and 2 restrictions.

(a) On and after August 1 to October 1 of any given year, application of carbaryl (Sevin) (except Sevin XLR), (~~parathion~~) methyl parathion and malathion dust in any combination on pollen shedding corn is prohibited.

(b) On and after August 1 to August 15 of any given year, application of diazinon, fenvalerate (Pydrin), endosulfan (Thiodan), Sevin XLR, methomyl (Lannate or Nudrin), malathion liquid, and permethrin (Ambush or Pounce) on pollen shedding corn is prohibited between the hours of 7:00 a.m. and 2:00 p.m.

(c) On and after August 15 to September 1 of any given year, application of diazinon, fenvalerate (Pydrin), endosulfan (Thiodan), Sevin XLR, methomyl (Lannate or Nudrin), malathion (Fyfanon) liquid, and permethrin (Ambush or Pounce) on pollen shedding corn is prohibited between the hours of 8:30 a.m. and 3:30 p.m.

(d) On and after September 1 to October 1 of any given year, application of diazinon, fenvalerate (Pydrin), endosulfan (Thiodan), Sevin XLR, methomyl (Lannate or Nudrin), malathion (Fyfanon) liquid, and permethrin (Ambush or Pounce) on pollen shedding corn is prohibited between the hours of 10:00 a.m. and 4:00 p.m.

(e) The application of microencapsulated methyl parathion shall be prohibited on all pollen shedding corn when properly marked honey bee apiaries occur within a six-mile radius of the pollen shedding corn to be treated.

AMENDATORY SECTION (Amending Order 1819, filed 4/10/84)

WAC 16-230-086 What are the restrictions in Area 3((~~3~~))? (1) Area 3 description - area within Area 2 in Grant County. This area includes all of the irrigable lands encompassed by a line beginning at the junction of West 645 wasteway and White Trail Road and proceeding east four miles more or less on White Trail Road to Winchester wasteway; thence southeast four miles more or less along Winchester wasteway to I-90; thence east on I-90 nine miles more or less to Potholes Reservoir; thence following the west shoreline southeast to the Frenchmen Hills wasteway; thence west along Frenchmen Hills wasteway fourteen miles more or less to its junction with West 645 wasteway; thence northwest and north fourteen miles more or less along West 645 wasteway to junction with White Trail Road, the point of beginning.

(2) Area 3 restriction. This area is unrestricted as to the use of carbaryl (Sevin), diazinon, endosulfan (Thiodan), fenvalerate (Pydrin), malathion (Fyfanon), methomyl (Lannate or Nudrin), methyl parathion(~~(-parathion)~~), and permethrin (Ambush or Pounce) on pollen shedding corn: Provided, That the application of microencapsulated methyl parathion shall be prohibited on all pollen shedding corn when properly marked honey bee apiaries occur within a six-mile radius of the pollen shedding corn to be treated.

AMENDATORY SECTION (Amending Order 1819, filed 4/10/84)

WAC 16-230-088 May a permit((~~it~~)) be issued for a variance from restrictions? Upon receipt of a written request and justification for a variance, the director of the Washington state department of agriculture may issue a permit granting a variance from restrictions pertaining to pollen shedding corn.

AMENDATORY SECTION (Amending Order 2081, filed 4/2/91, effective 5/3/91)

WAC 16-230-150 ((~~Area~~)) What areas are under order((~~—Restricted~~)) for use restricted desiccants and

defoliant((~~s~~))? (1) Area under order: All counties located east of the crest of the Cascade Mountains.

(2) ((~~Restricted~~)) Use restricted desiccants and defoliants: The following desiccants and defoliants are declared to be ((~~restricted~~)) use restricted desiccants and defoliants in the area under order: Diquat; Paraquat; and Endothall.

(3) Additional restrictions ((~~shall~~)) apply for certain areas of Walla Walla County (see WAC 16-230-190).

AMENDATORY SECTION (Amending Order 2081, filed 4/2/91, effective 5/3/91)

WAC 16-230-160 Desiccants and defoliants—Ground equipment—Nozzle and pressure requirements for the entire area under order. The following requirements apply to the entire area under order as listed in WAC 16-230-150:

(1) Nozzle requirements - a minimum orifice diameter of .052 inches shall be used for application of all ((~~restricted~~)) use restricted desiccants and defoliants: Provided, That a RD-2 Raindrop nozzle shall be allowed.

(2) Pressure requirements - maximum pressure at the nozzles for all applications of ((~~restricted~~)) use restricted desiccants and defoliants shall be 30 psi.

(3) The Washington state department of agriculture may issue a permit upon receipt of a written request to apply ((~~restricted~~)) use restricted desiccants and defoliants within the area as described in WAC 16-230-150 with nozzles, nozzle type, drift control additives, and/or arrangements other than those allowed herein. The director will consider safety factors and the possible exposure to susceptible crops in the areas of proposed application before a permit will be issued.

(4) Diesel and other fuel oils are prohibited in all tank mixes with desiccants and defoliants.

AMENDATORY SECTION (Amending Order 2081, filed 4/2/91, effective 5/3/91)

WAC 16-230-170 Desiccants and defoliants—Aerial equipment—Boom length, pressure, nozzle requirement, nozzle height of discharge and smoke device requirements for the entire area under order. The following requirements apply to the entire area under order as listed in WAC 16-230-150:

(1) Boom length restrictions:

(a) Fixed wing: The working boom length shall not exceed 3/4 of the distance from the center of aircraft to wing tip on each side of aircraft.

(b) Helicopters: The working boom length shall not exceed 6/7 of the distance from the center of rotor to rotor tip on each side of the aircraft for rotors 40 feet or under or 3/4 of the distance from the center of rotor to rotor tip on each side of the aircraft where the rotor exceeds 40 feet while applying ((~~restricted~~)) use restricted desiccants and defoliants.

(2) Pressure restrictions: Maximum pressure at the nozzles for all aerial applications of ((~~restricted~~)) use restricted desiccants and defoliants shall be 25 psi.

(3) Nozzle requirements for applications of ((~~restricted~~)) use restricted desiccants and defoliants:

(a) Fixed wing:

(i) Aircraft shall not be equipped with core plates or any device or mechanism which would cause a sheet, cone, fan or other dispersion of the discharged material. Nozzle orifices shall not be less than 0.094 inches: Provided, That the RD8-46 Raindrop® nozzles may be used with a minimum orifice diameter of 0.156 inches;

(ii) Nozzles shall be directed downward and backward 135 degrees from the direction of flight.

(b) Helicopter:

(i) Straight stream jet nozzles, without core plates, with a minimum orifice diameter of 0.063 inches;

(ii) Straight stream jet nozzles with a minimum orifice diameter of 0.125 inches with No. 46 core plates or larger;

(iii) RD8-46 Raindrop® nozzles may be used with a minimum orifice diameter of .075 inches;

(iv) Nozzles shall be directed downward and backward 135 degrees from the direction of flight for applications over 50 miles per hour and 90 degrees downward and backward for applications under 50 miles per hour.

(4) Height of discharge requirements by aircraft of ~~((restricted))~~ use restricted desiccants and defoliant: The nozzles must be closed while either descending onto or ascending from the target field, and also ascending or descending over an obstacle or obstruction within the target field that would alter the height of application more than ten feet.

(5) Smoke device requirements: All aircraft applying ~~((restricted))~~ use restricted desiccants and defoliant shall utilize a smoke device to determine wind directions and temperature inversion situations.

(6) The Washington state department of agriculture may issue a permit upon receipt of a written request to apply ~~((restricted))~~ use restricted desiccants and defoliant within the area under order as described in WAC 16-230-150 with nozzles, nozzle type, drift control additives and/or arrangements other than those allowed herein. The director will consider safety factors and the possible exposure to susceptible crops in the areas of proposed application before a permit will be issued.

(7) Diesel and other fuel oils are prohibited in all tank mixes with desiccants and defoliant.

(8) Aerial applications of desiccants and defoliant are prohibited within a distance of one mile of the city limits of any incorporated city or town and the same distance from the center of any unincorporated city or town comprised of ten or more inhabited, closely grouped residences.

AMENDATORY SECTION (Amending Order 2081, filed 4/2/91, effective 5/3/91)

WAC 16-230-180 (~~Desiccants and defoliant~~)
What are the weather and evening cutoff requirements(-) for desiccants and defoliant? The following requirements apply to the entire area under order as listed in WAC 16-230-150:

(1) Weather conditions: ~~((Restricted))~~ Use restricted desiccants and defoliant shall not be applied when there is a temperature inversion, or if wind or weather conditions are such that damage could result to susceptible crops or ornamentals: Provided, That aircraft applications of Paraquat

shall be prohibited until the temperature inversion ceiling at the site of application is 1,000 feet or greater. Aircraft must be equipped with thermometers to detect the height of the inversion.

(2) Evening cutoff: All applications of ~~((restricted))~~ use restricted desiccants and defoliant ~~((shall be))~~ are prohibited from three hours prior to sunset to one hour after sunrise the following morning: Provided, That ground applications in Area 2 of Walla Walla County may begin at sunrise: Provided further, That ground applications may be allowed at other times by obtaining a written permit from the department.

AMENDATORY SECTION (Amending Order 5071, filed 6/30/95, effective 7/31/95)

WAC 16-230-190 What are the restrictions on the use of desiccants and defoliant in Walla Walla County(-)? The following restrictions shall apply in Walla Walla County:

(1) Area 1 description - town of Walla Walla and vicinity: This area includes all lands lying within the town of Walla Walla and vicinity beginning at the Washington-Oregon border and the west section line of Section 15, T6N, R34E; thence north along section lines and McDonald Road approximately seven miles to the southwest corner of Section 3, T7N, R36E; thence east along section lines approximately twenty miles to the southeast corner of Section 1, T7N, R37E; thence south approximately seven miles to the Washington-Oregon border; thence west approximately fifteen miles to point of beginning.

(2) Area 1 restrictions:

During the period of February 15 through November 1 of any year, any aerial application of ~~((restricted))~~ use restricted desiccants and defoliant ~~((shall))~~ must have prior approval by obtaining a written permit from the Washington state department of agriculture.

(3) Area 2 description - southern portion of Walla Walla County: This area includes all lands lying within an area encompassed by a line beginning at the Washington-Oregon border and the west section line of Section 18, T6N, R33E; thence north along section lines approximately eight miles to the northwest corner of Section 7, T7N, R33E; thence west along section lines approximately nine miles to the southeast corner of Section 4, T7N, R34E; thence south along section lines approximately eight miles to the Washington-Oregon border; thence west along the border approximately nine miles to the point of beginning.

(4) Area 2 restrictions:

(a) Paraquat restrictions:

During the period of February 15 through November 1 of any year, any aerial application of Paraquat or any mixture containing Paraquat ~~((shall))~~ must have prior approval by obtaining a written permit from the Washington state department of agriculture.

(b) Diquat restrictions:

During the period of February 15 through November 1 of any year, any application of Diquat or any mixture containing Diquat is ~~((hereby))~~ restricted to ground apparatus only.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-400 (~~Restricted use herbicides~~)
What is the area under order for use restricted herbicides in Spokane County(~~Area under order~~)? (1) The area under order (~~shall~~) includes all lands lying within the borders of Spokane County. WAC 16-230-410 through 16-230-470 (~~shall apply~~) applies to the area under order.

(2) The distribution, use, and application of (~~restricted~~) use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to (~~restricted~~) use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-410 (~~Restricted~~) **What are use herbicides**(~~Area~~) **in Spokane County**(~~Area~~)? All formulations of (~~Dicamba (Banvel) and all formulations of~~) phenoxy hormone-type herbicides, (~~including~~) (e.g., 2,4-D (~~and~~), 2,4-DB, 2,4-DP (dichlorprop), MCPA (~~are hereby declared to be restricted use herbicides~~), MCPB, MCPP (mecoprop)) and dicamba are declared as use restricted herbicides except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 1678, filed 2/20/80)

WAC 16-230-420 **What are the boundaries and restrictions for Area 2**(~~Area~~)? (1) This area includes all lands lying within a boundary line starting at the intersection of state Highway 2 and Christianson Road; thence north two miles more or less to the northwest corner of Section 17, T25N, R41E; thence east five miles more or less to Hayford Road; thence north eight miles more or less to the northwest corner of Section 6, T26N, R41E; thence east ten miles more or less to the northeast corner of Section 3, T26N, R43E; thence south five miles more or less to the northeast corner of Section 34, T26N, R43E; thence east fourteen miles more or less to the Idaho-Washington border; thence south seven miles more or less to the common boundary line between T24N and 25N; thence west six miles more or less to Chapman Road; thence south one mile more or less along Chapman Road to the common boundary line between Sections 1 and 12, T24N, R44E; thence east thirteen miles more or less to the Cheney-Spokane Road; thence southwesterly along the Cheney-Spokane Road two miles more or less to the common boundary line between Sections 14 and 15, T24N, R42E; thence south one and one-half miles more or less to the southeast corner of Section 22, T24N, R42E; thence west one and one-half miles more or less to the Cheney-Spokane Highway; thence southerly one mile more or less along the Cheney-Spokane Highway to the common boundary line between

Section 28 and 33, T24N, R42E; thence east six miles more or less to Interstate 90; thence southerly three miles more or less to the intersection of Interstate 90 and Salnave Road; thence northwesterly along the Salnave Road three miles more or less to its intersection with the Medical Lake-Tyler Road; thence north four miles more or less to the intersection of Hallet and Richey Road; thence east one mile more or less along Hallet Road to the intersection of Hallet Road and Brooks Road; thence north three miles more or less on Brooks Road to the intersection of Brooks Road and Highway 2; thence east one mile more or less along Highway 2 to the point of beginning.

(2) Area 2 restrictions.

(a) On and after May 1 through October 15, ground applications of (~~restricted~~) use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.036 inches.

(b) For roadside and right of way application drift reduction type systems such as directo-spray, raindrop or invert systems must be used.

(c) The use or application of low volatile ester formulations of (~~restricted~~) use restricted herbicides is prohibited from May 1 through October 15: Provided, That the department, upon written request, may issue a permit for the use of low volatile formulations for special weed control.

(d) The application of (~~restricted~~) use restricted herbicides is prohibited from three hours prior to sunset to sunrise the next day: Provided, That lawn and turf residential weed control, using nonvolatile formulations are exempt from the evening cutoff.

(e) The aerial application of (~~restricted~~) use restricted herbicides is prohibited within Area 2: Provided, That the department may issue a special permit, upon written request, for special weed control.

(f) (~~Restricted~~) Use restricted herbicides shall not be applied on or after May 1 through October 15 when the temperature is 85° or above at the point of application.

(g) Ground applications of (~~restricted~~) use restricted herbicides (~~shall be~~) are allowed when using No. 2RD or 2RA Raindrop nozzles: Provided, That the mean sustained wind velocity is fifteen miles per hour or less.

AMENDATORY SECTION (Amending Order 1678, filed 2/20/80)

WAC 16-230-430 **What are the boundaries and restrictions for Area 3**(~~Area~~)? (1) An area within a distance of two-thirds of a mile of the city limits of incorporated cities and towns and the same distance from the center of any unincorporated town comprised of ten or more inhabited, closely grouped residences within Area 4 exclusive of Area 2.

(2) Area 3 restrictions(~~Area~~).

(a) The aerial application of (~~restricted~~) use restricted herbicides is prohibited within Area 3: Provided, That the department, upon written request, may issue a permit to allow aerial applications of nonvolatile formulations of (~~restricted~~) use restricted herbicides up to one-half mile of the city limits of incorporated towns and cities and up to one-half mile of the center of any unincorporated towns com-

prised of ten or more inhabited ~~((f,))~~ closely grouped residences.

(b) On and after May 1 through October 15, aerial applications shall be made using the danger area restrictions (see WAC 16-230-675).

(c) Ground applications of ~~((restricted))~~ use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.031 inches.

(d) Ground applications of ~~((restricted))~~ use restricted herbicides shall be allowed when using No. 2RD or 2RA Raindrop nozzles: Provided, That the mean sustained wind velocity is fifteen miles per hour or less.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-440 ~~((Restricted use herbicides—Spokane County—Area 4))~~ What are the boundaries and restrictions for Area 4? (1) Area 4 description. All remaining lands in Spokane County not included in WAC 16-230-420 and 16-230-430.

(2) Area 4 restrictions.

(a) On and after May 1 through October 15, ground applications of ~~((restricted))~~ use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.031 inches.

(b) On and after May 1 through October 15, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

(c) Ground applications of ~~((restricted))~~ use restricted herbicides shall be allowed when using No. 2RD or 2RA Raindrop nozzles: Provided, That the mean sustained wind velocity is fifteen miles per hour or less.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-450 ~~((Restricted use herbicides—Spokane County—Farm operator to notify.))~~ What information does an aerial applicator need from the landowner? The landowner or person in charge of the farming operation shall notify the aerial applicator he/she hires of any susceptible crops planted or to be planted bordering the field to which ~~((restricted))~~ use restricted herbicides are to be applied in the area under order (see WAC 16-230-400).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-460 ~~((Restricted use herbicides—Spokane County—Commercial greenhouse notification.))~~ Does a commercial greenhouse need to be notified? The owners of commercial greenhouses located in the area under order shall be notified in person or by certified mail by aerial applicators and public operators at least forty-eight hours prior to the application of allowable ~~((restricted))~~ use restricted herbicides to be applied within one-half mile of the above greenhouses.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-470 ~~((Restricted))~~ When is the application of use restricted herbicides ~~((—Spokane County—))~~ prohibited due to wind conditions ~~((:))~~? The use or application of ~~((restricted))~~ use restricted herbicides shall be prohibited in the area under order when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That applications of ~~((restricted))~~ use restricted herbicides shall be allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending Order 1680, filed 2/20/80)

WAC 16-230-600 Can high volatile ester and dust formulations be used in Washington and what are the areas under order ~~((:))~~ for use restricted herbicides? (1) The distribution, use and application of all high volatile ester and dust formulations of restricted use herbicides ~~((shall be))~~ are prohibited throughout the state.

(2) WAC 16-230-605 through 16-230-675 ~~((shall))~~ apply to all counties located east of the crest of the Cascade Mountains.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-605 ~~((Specific))~~ Can additional county rules ~~((—Eastern Washington.))~~ be applied to herbicides? The rules in WAC 16-230-600 through 16-230-675 shall not preclude any additional restrictions on the application of ~~((restricted))~~ use restricted herbicides provided for in the rules for specific counties located east of the Cascade Mountains.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-610 ~~((Restricted))~~ What are use restricted herbicides ~~((and definitions—))~~ in Eastern Washington ~~((:))~~ ~~((+))~~? ~~((+))~~ All formulations of ~~((Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides ~~((including))~~ (e.g., 2,4-D ~~((and)), 2,4-DB, 2,4-DP (dichlorprop), MCPA~~ ~~((are declared to be restricted use herbicides in all counties located east of the crest of the Cascade Mountains.~~

(2) High and low volatile esters mean those formulations labeled as high and low volatile in Interpretation 17, Revision 1 of Title 7 under the Federal Insecticide, Fungicide, and Rodenticide Act. High volatile 2,4-D includes those esters with five or less carbon atoms, such as but not limited to methyl, ethyl, isopropyl, n butyl, isobutyl, and n pentyl.

(3) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor or for commercial fresh market), MCPB, MCPP (mecoprop))

and dicamba except as listed below are use restricted herbicides.

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending WSR 00-22-045, filed 10/26/00, effective 11/26/00)

WAC 16-230-615 (~~(Restricted use herbicides—Eastern Washington—)~~) What are the restrictions on sale and distribution(=) of use restricted phenoxy-hormone type herbicides and dicamba in Eastern Washington? (~~Liquid formulations of restricted use herbicides distributed in quantities larger than one gallon in counties located east of the crest of the Cascade Mountains~~) Phenoxy-hormone type herbicides and dicamba shall be sold and distributed only by licensed pesticide dealers to certified applicators or their duly authorized representatives except those listed in WAC 16-230-610 (1) and (2).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-625 (~~(Restricted use herbicides—Eastern Washington—)~~) What are the restrictions on mixing and loading(=) use restricted herbicides? The mixing of (~~restricted~~) use restricted herbicides, the loading and decontamination of equipment used to apply (~~restricted~~) use restricted herbicides, and aircraft entering on to and exiting from landing sites shall be done in a manner as to not cause possible damage to susceptible crops.

AMENDATORY SECTION (Amending Order 1680, filed 2/20/80)

WAC 16-230-630 What are the restrictions for storage(=) of use restricted herbicides? (~~Restricted~~) Use restricted herbicides shall not be stored in areas where their use is prohibited unless they are in a sealed container (tight screw-type bungs, tightly closed lids or packages), and the outside of the containers not contaminated with the (~~restricted~~) use restricted herbicide.

AMENDATORY SECTION (Amending Order 1680, filed 2/20/80)

WAC 16-230-635 What are the restrictions on petroleum and vegetable oil(=type) carriers(=emulsifiers,) and (spreader-stickers) spray adjuvants? (~~Oil-type~~) Petroleum and vegetable oil carriers(=emulsifiers) and (~~spreader-stickers~~) spray adjuvants may be used when not in excess of one pint per acre: Provided, That oil-type carriers in excess of one pint per acre may be used with invert systems: Provided further, That invert systems may be used on aircraft by written permit only.

AMENDATORY SECTION (Amending Order 1965, filed 2/12/88)

WAC 16-230-640 (~~(Restricted)~~) Use restricted herbicides—Eastern Washington—Weather and temperature conditions. (~~Restricted~~) Use restricted herbicides shall not be applied on and after April 1 through October 31 of each year when there is a temperature inversion; or throughout the year if weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops and plantings through physical drift or volatilization, or the temperature is 85°F. or above at the point of application: Provided, That application at the rate of fifty gallons or more per acre using nozzles having a minimum orifice diameter of .072 inches shall be exempt from the 85°F. temperature cutoff requirement: Provided further, That when using the invert system, applications may continue up to 95°F. with a maximum wind velocity of fifteen miles per hour and with water carrier at twelve or more gallons per acre.

AMENDATORY SECTION (Amending Order 1923, filed 4/6/87)

WAC 16-230-645 (~~(Restricted use herbicides—Eastern Washington—)~~) What is the evening cutoff(=) for use restricted herbicides? On and after May 1 through October 31 of each year, the application of (~~restricted~~) use restricted herbicides (~~shall be~~) is prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That if there is a mean sustained legal wind velocity of not less than five miles per hour the application of (~~restricted~~) use restricted herbicides (~~shall be~~) is allowed in Areas 3 and 4 up to one hour prior to sunset in all counties as restricted by rule except Benton, Franklin, Yakima, and Walla Walla counties.

AMENDATORY SECTION (Amending Order 1923, filed 4/6/87)

WAC 16-230-650 Can a permit be issued for the application of certain use restricted (use) herbicides(—Eastern Washington—Application permit)? The Washington state department of agriculture may issue a permit, upon receipt of a written request, to mix, load and apply certain (~~restricted~~) use restricted herbicides for purposes of critical weed control when such activities are restricted by rule. The director may consider recommendations of the 2,4-D committee for the county in question: Provided, That the 2,4-D committee is kept current for each county.

AMENDATORY SECTION (Amending Order 1965, filed 2/12/88)

WAC 16-230-655 (~~(Restricted)~~) Use restricted herbicides—Eastern Washington—Ground equipment pressure requirements. Pressure shall not exceed twenty-five pounds per square inch at the nozzles: Provided, That pressure up to fifty pounds per square inch at the nozzle may be used for equipment with handguns, up to ninety pounds per square inch at the nozzle manifold for an invert system: Provided further, That when using a LP 8002 nozzle instead of a

regular 8004 or equivalent, the maximum pressure shall be fifteen pounds per square inch at the nozzle.

AMENDATORY SECTION (Amending Order 1680, filed 2/20/80)

WAC 16-230-660 (~~(Turning and low flying of)~~) Can an aircraft(±) turn or fly low over cities and towns? Aircraft carrying (~~(restricted)~~) use restricted herbicides are prohibited from turning and/or low flying during spraying operations over cities and towns unless authorized by the city or town in question pursuant to an agreement for pesticide applications; or residences, windbreaks, orchards or susceptible crops belonging to any person other than the owner of the property being treated, except by permission of the person whose residence, windbreak, orchard or susceptible crop is involved.

AMENDATORY SECTION (Amending Order 1950, filed 9/1/87)

WAC 16-230-665 (~~(Restricted use herbicides—Eastern Washington—Aircraft)~~) What are the restrictions on aerial applications near vineyards(±)? Aerial application of (~~(restricted)~~) use restricted herbicides (~~(shall be)~~) is prohibited within one mile of any commercial vineyard: Provided, That the Washington state department of agriculture may approve written requests and issue permit for aerial application of (~~(restricted)~~) use restricted herbicides that may be applied to lands located one-half to one mile from commercial vineyards: Provided further, That no distance restrictions shall apply to aerial applications of (~~(restricted)~~) use restricted herbicides near vineyards during the grape dormant season if written permission of the vineyard owner/manager is obtained. EXCEPTIONS are found in Franklin and Grant County restrictions.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-670 (~~(Restricted)~~) Use restricted herbicides—Eastern Washington—Aircraft boom length and pressure requirements. In all Areas 1 and 2, of all counties restricted by rule the working boom length on fixed wing aircraft shall not exceed 3/4 of the wing span and the working boom length on helicopters shall not exceed 6/7 of the total rotor length or 3/4 of the total rotor length where the rotor length exceeds forty feet.

Pressure for aerial equipment shall not exceed 25 psi at the nozzles: Provided, That helicopters shall be allowed to use up to 35 psi in Areas 3 and 4 of all counties restricted by rule: Provided further, That pressure up to 50 psi at the nozzle may be used with invert systems which are allowed by written permit only.

AMENDATORY SECTION (Amending Order 1950, filed 9/1/87)

WAC 16-230-673 (~~(Restricted)~~) Use restricted herbicides—Eastern Washington—Application through irrigation systems. (~~(Restricted)~~) Use restricted herbicides

applied through irrigation systems (~~(shall be)~~) are subject to the same requirements as ground applications of (~~(restricted)~~) use restricted herbicides except for nozzle size and pressure requirements.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-230-675 (~~(Restricted)~~) Use restricted herbicides—Eastern Washington—Minimum nozzle orifice and core plate sizes for aircraft application. Minimum nozzle orifice and core plate sizes shall be as listed in the dormant season, caution, warning, and danger area restrictions.

(1) DORMANT SEASON AREA. (Dormant season only - refer to specific county regulations.)

(a) Fixed wing -

(i) Minimum nozzle orifice of 0.063 inches (no core plate). Nozzles shall be directed downward and backward 135 degrees or more from the direction of flight.

(ii) Minimum nozzle orifice of 0.075 inches (may use No. 45 or larger core plate) and nozzles shall be directed downward and backward 170 degrees or more from the direction of flight.

(b) Helicopter -

Minimum nozzle orifice of 0.047 inches (may use No. 45 or larger core plate) and nozzles shall be directed downward and backward 90 degrees or more from the direction of flight. Pressure over 35 psi is prohibited.

(2) CAUTION AREA.

(a) Fixed wing -

(i) Minimum nozzle orifice of 0.075 inches (no core plate). Nozzles shall be directed downward and backward 135 degrees or more from the direction of flight.

(ii) Minimum nozzle orifice of 0.125 inches (may use No. 45 or larger core plate). Nozzles shall be directed downward and backward 170 degrees or more from the direction of flight.

(b) Helicopter -

(i) Area 2 of all counties restricted by rule -

Minimum nozzle orifice of 0.063 inches (may use No. 46 or larger core plate). Nozzles shall be directed downward and backward 90 degrees or more from the direction of flight.

(ii) Areas 3 and 4 of all counties restricted by rule -

Minimum nozzle orifice of 0.063 inches (may use No. 45 or larger core plate). Nozzles shall be directed downward and backward 90 degrees or more from the direction of flight.

(3) WARNING AREA

(a) Fixed wing -

(i) Minimum nozzle orifice of 0.075 inches (no core plate). Nozzles shall be directed downward and backward 135 degrees or more from the direction of flight.

(ii) Minimum nozzle orifice of 0.125 inches (may use No. 46 or larger core plate in all counties under order except Franklin County and Benton County). Nozzles shall be directed downward and backward 170 degrees or more from the direction of flight: Provided, That RD8 nozzles with orifice size of 0.125 inches and No. 45 core plates may be used. Nozzles shall be directed downward and backward 170 degrees or more from direction of flight.

(iii) No flat fan nozzles shall be allowed.

(b) Helicopter -

(i) Minimum nozzle orifice of 0.047 inches for applications made under sixty miles per hour (no core plate) and minimum orifice of 0.063 for applications made over sixty miles per hour (no core plate). Nozzles shall be directed downward and backward 90 degrees or more from the direction of flight.

(ii) Minimum nozzle orifice of 0.125 inches (may use No. 46 or larger core plate in all counties under order except Franklin County and Benton County). Nozzles shall be directed downward and backward 90 degrees or more from the direction of flight: Provided, That RD8 nozzles with orifice size of 0.125 inches and No. 45 core plates may be used.

(iii) No flat fan nozzles shall be allowed.

(4) DANGER AREA

(a) Fixed wing - minimum nozzle or

(i) Minimum nozzle orifice of 0.075 inches (no core plate): Provided, That RD8 nozzles with orifice size of 0.125 inches and No. 46 core plates may be used. Nozzles shall be directed downward and backward 170 degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

(b) Helicopter -

(i) Minimum nozzle orifice of 0.063 inches (no core plate): Provided, That RD8 nozzles with orifice size of 0.125 inches and core plate No. 46 may be used. Nozzles shall be directed downward and backward 90 degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-800 (~~(Application of pesticides in)~~) **What is the area under order for Benton County**(~~(Area under order)~~)? The area under order (~~(shall)~~) includes:

All lands lying within the boundaries of Benton County.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-810 **What are the restrictions on the application of certain pesticides in Benton County**(~~(Restricted use pesticides)~~)? For the purposes of WAC 16-230-800 through 16-230-870, the following pesticides are declared to be (~~(restricted)~~) use restricted pesticides:

(1) (~~(Restricted)~~) Use restricted herbicides:*

(a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort)

(b) Desiccants and defoliants (such as Paraquat, Diquat, Endothal)

(c) Glyphosate (such as Roundup, Landmaster)

(d) Phenoxy hormone-type herbicides (such as 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop))

(e) Dicamba (such as Banvel)

(f) Bromoxynil (~~(such as Brominal, Buetril, Bronate)~~) except that the cutoff date of April 5 does not apply.

(2) (~~(Restricted)~~) Use restricted insecticides:

(a) (~~(Aerial)~~) Aerial applications of category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations;

(b) (~~(Additionally, all)~~) Aerial applications of category I insecticides, except granular and pellet formulations(~~(are declared to be restricted use)~~) in Area 1 and Area 1A (~~(as described in WAC 16-230-835)~~).

*Listed trade names are to be used as a guide and may not include all the trade or brand names under which the chemicals are distributed.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-813 (~~(Application of pesticides in Benton County—Oil type carriers)~~) **When are oil-type carriers prohibited in Benton County?** On and after April 5 through October 31, oil-type carriers are prohibited for brush control: Provided, That oil-type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-815 (~~(Application of pesticides in Benton County—Paraquat and diquat)~~) **Can Paraquat and Diquat be applied by air in Benton County?** Aerial application of Paraquat (~~(and)~~) or Diquat is prohibited in the entire area under order listed in WAC 16-230-800.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-820 (~~(Application of pesticides in Benton County—Sulfonylurea herbicides)~~) **Can sulfonylurea herbicides be applied by air in Benton County?** Application of sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort) to fallow land or to land during the time between harvest and emergence above the furrows of the subsequent cereal grain crop is prohibited.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-825 (~~(Application of pesticides)~~) **What are the conditions applying to permits in Benton County**(~~(Permits)~~)? The following conditions will apply to all permits issued under the authority of WAC 16-230-800 through 16-230-870.

(1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 21 N. First Avenue Suite 236, Yakima, Washington 98902. Applications may also be taken in person or by facsimile. Permits will not be granted by telephone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all

relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit shall be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-830 (~~(Application of pesticides in Benton County—Emergency clause.)~~ Can use restricted pesticides be applied in an emergency?) In the event of an emergency, as declared by the director, the department may issue permits for the use of (~~restricted~~) use restricted pesticides in variation of any restrictions contained in the area under order as defined in WAC 16-230-800. An emergency under this section may be declared if the director determines that the risk and amount of economic harm to any agriculture crop substantially outweighs the risk and amount of damage likely to occur if a variance permit is issued.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-835 (~~(Application of pesticides in Benton County—Area 1.)~~ What are the boundaries and restrictions for Area 1?) (1) Area 1 description (North Horse Heaven Hills). An area including all lands lying within a boundary line beginning at the northwest corner of Section 31, T8N, R24E; thence east two miles along section lines to the northwest corner of Section 33, T8N, R24E; thence north one mile along section lines to the northwest corner of Section 28, T8N, R24E; thence east seven miles along section lines to the northwest corner of Section 27, T8N, R25E; thence north two miles along section lines to the northwest corner of Section 15, T8N, R25E; thence east eight miles along section lines to the northwest corner of Section 13, T8N, R26E; thence south two miles along section lines to the northwest corner of Section 25, T8N, R26E; thence east two miles along section lines to the northwest corner of Section 29, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 32, T8N, R27E; thence east three miles along section lines to the northwest corner of Section 35, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 2, T7N, R27E; thence east one mile along section lines to the northwest corner of Section 1, T8N, R27E; thence south two miles along section lines to the northwest corner of Section 13, T7N, R27E; thence east four miles along section lines to the northwest corner of Section 15, T7N, R28E; thence south one mile along section lines to the northwest corner of Section 22, T7N, R28E; thence east ten miles along section lines to the northwest corner of Section 20, T7N, R30E; thence south two miles along section lines to the northwest corner of Section 32, T7N, R30E; thence east seven miles along section lines to the Columbia River in Section 29, T7N, R31E; thence south approximately two miles along the Columbia River to the south section line of Section 5, T6N, R31E; thence west approximately eight miles along section lines to the southwest corner of Section 1, T6N, R29E; thence north two miles

along section lines to the southwest corner of Section 25, T7N, R29E; thence west thirteen miles along section lines to the southeast corner of Section 27, T7N, R27E; thence north one mile along the section line to the northeast corner of Section 27, T7N, R27E; thence west one mile along the section line to the northwest corner of Section 27, T7N, R27E; thence north two miles along section lines to the northeast corner of Section 16, T7N, R27E; thence west one mile along the section line to the southeast corner of Section 8, T7N, R27E; thence north one mile along the section line to the northeast corner of Section 8, T7N, R27E; thence west approximately twenty miles along section lines to the Benton-Yakima County line at the southwest corner of Section 6, T7N, R24E; thence north two miles along the county line to the point of beginning.

(2) Area 1 restrictions.

(a) Application by air of (~~restricted~~) use restricted pesticides as defined in WAC 16-230-810 is prohibited: Provided, That the department may issue written permits for application of insecticides not containing the signal words danger/poison on the label.

(b) The use or application of low volatile ester formulations of (~~restricted~~) use restricted herbicides (~~(shall be)~~ is prohibited on and after April 5 through October 31 of each year: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, all applications of (~~restricted~~) use restricted herbicides (~~(shall be)~~ are prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That applications of (~~restricted~~) use restricted herbicides (~~(shall be)~~ are exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the (~~restricted~~) use restricted herbicides (~~(shall be)~~ are exempt from the sunset restrictions: Provided further, That (~~persons licensed to perform~~) applications of (~~restricted~~) use restricted herbicides on small experimental plots for research purposes (~~(shall be)~~ are exempt from the sunset restrictions.

NEW SECTION

WAC 16-230-836 What are the boundaries and restrictions in Area 1A? (1) Area 1A description. All lands lying within a boundary line beginning at the northwest corner of Section 31, T8N, R24E; thence east two miles along section lines to the northwest corner of Section 33, T8N, R24E; thence north one mile along section lines to the northwest corner of Section 28, T8N, R24E; thence east seven miles along section lines to the northwest corner of Section 27, T8N, R25E; thence north two miles along section lines to the northwest corner of Section 15, T8N, R25E; thence east eight miles along section lines to the northwest corner of Section 13, T8N, R26E; thence south two miles along section lines to the northwest corner of Section 25, T8N, R26E; thence east two miles along section lines to the northwest corner of Section 29, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 32, T8N,

R27E; thence east three miles along section lines to the northwest corner of Section 35, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 2, T7N, R27E; thence east one mile along section lines to the northwest corner of Section 1, T8N, R27E; thence south two miles along section lines to the northwest corner of Section 13, T7N, R27E; thence east four miles along section lines to the northwest corner of Section 15, T7N, R28E; thence south one mile along section lines to the northwest corner of Section 22, T7N, R28E; thence east ten miles along section lines to the northwest corner of Section 20, T7N, R30E; thence south two miles along section lines to the northwest corner of Section 32, T7N, R30E; thence east seven miles along section lines to the Columbia River in Section 29, T7N, R31E; thence north approximately three miles to the Kennewick Irrigation District (K.I.D.) Division Four Canal in Section 8, T7N, R31E; thence westerly along the K.I.D. Division Four Canal to the intersection with the K.I.D. Main Irrigation Canal at the Amon Pumping Station located in Section 7, T8N, R29E; thence westerly along the K.I.D. Main Irrigation Canal to its intersection with the east section line of Section 14, T9N, R26E; thence south approximately one mile along the section line to the northwest corner of Section 25, T9N, R26E; thence northwest approximately one and four tenths miles diagonally across Section 23 to the northwest corner of Section 23, T9N, R26E; thence west two miles along section lines to the northwest corner of Section 21, T9N, R26E; thence southwest approximately one and four tenths miles diagonally across Section 20 to the northwest corner of Section 29, T9N, R26E; thence west one mile along section lines to the northwest corner of Section 30, T9N, R26E; thence south one mile along section lines to the northwest corner of Section 31, T9N, R26E; thence west two miles along section lines to the northwest corner of Section 35, T9N, R25E; thence southwest approximately one and four tenths miles diagonally across Section 34 to the northwest corner of Section 3, T8N, R25E; thence west one mile along section lines to the northwest corner of Section 4, T8N, R25E; thence southwest approximately one and four tenths miles diagonally across Section 5 to the northwest corner of Section 8, T8N, R25E; thence west one mile along section lines to the northwest corner of Section 7, T8N, R25E; thence south one mile along section lines to the northwest corner of Section 18, T8N, R25E; thence west two miles along section lines to the northwest corner of Section 14, T8N, R24E; thence south one mile along section lines to the northwest corner of Section 23, T8N, R24E; thence west four miles to the northwest corner of Section 19, T8N, R24E; thence south two miles along the county line to the point of beginning.

(2) Area 1A restrictions.

(a) Application by air of use restricted pesticides as defined in WAC 16-230-810 is prohibited: Provided, That the department may issue written permits for application of insecticides not containing the signal words danger/poison on the label.

(b) The use or application of low volatile ester formulations of use restricted herbicides is prohibited on and after April 5 through October 31 of each year: Provided, That phenoxy hormone-type sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of use restricted herbicides are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of use restricted herbicides are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the use restricted herbicides are exempt from the sunset and sunrise restrictions: Provided further, That applications of use restricted herbicides on small experimental plots for research purposes are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-840 ((Application of pesticides in Benton County—Area 2.)) What are the boundaries and restrictions for Area 2?

(1) Area 2 description. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence south approximately five miles along section lines to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E; thence northwesterly along the Columbia River until its intersection with the United States Department of Energy Hanford Site south boundary line; thence west approximately one mile and south approximately two and one-half miles along the south boundary line to the southeast corner of Section 27, T10N, R28E; thence west seven miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(2) Area 2 restrictions.

(a) Application by air of ((~~restricted~~)) use restricted pesticides as defined in WAC 16-230-810 is prohibited.

(b) The use or application of low volatile ester formulations of ((~~restricted~~)) use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of ((~~restricted~~)) use restricted herbicides ((~~shall be~~)) are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of ((~~restricted~~)) use restricted herbicides ((~~shall be~~)) are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ((~~restricted~~)) use restricted herbicides ((~~shall be~~)) are exempt from the sunset and sunrise restrictions: Provided further, That ((~~persons licensed to perform~~)) applications of ((~~restricted~~)) use restricted herbicides on small experimental plots for research

purposes (~~(shall be)~~) are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-845 (~~(Application of pesticides in Benton County — Area 3.)~~) What are the boundaries and restrictions for Area 3? (1) Area 3 description.

(a) Eastern Yakima Valley. An area including all lands lying within a boundary line beginning at the northwest corner of Section 19, T8N, R24E; thence east four miles along section lines to the southwest corner of Section 14, T8N, R24E; thence north one mile along the section line to the northwest corner of Section 14, T8N, R24E; thence east two miles along section lines to the southwest corner of Section 7, T8N, R25E; thence north one mile along the section line to the northwest corner of Section 7, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 5, T8N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 5 to the northeast corner of Section 5, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 34, T9N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 34 to the northeast corner of Section 34, T9N, R25E; thence east two miles along section lines to the southwest corner of Section 30, T9N, R26E; thence north one mile along the section line to the northwest corner of Section 30, T9N, R26E; thence east one mile along the section line to the southwest corner of Section 20, T9N, R26E; thence northeast approximately one and four-tenths of a mile diagonally across Section 20 to the northeast corner of Section 20, T9N, R26E; thence east two miles along section lines to the northwest corner of Section 23, T9N, R26E; thence southeast approximately one and four-tenths of a mile diagonally across Section 23 to the southeast corner of Section 23, T9N, R26E; thence north six miles along section lines to the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence south approximately eleven miles along the Benton-Yakima county line to the point of beginning.

(b) Cold Creek Area. An area including all lands lying within a boundary line beginning at the intersection of the Benton-Yakima County line and the Columbia River in Section 7, T13N, R24E; thence south approximately six and one-half miles along the Benton-Yakima County line to the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence west approxi-

mately five miles along the Columbia River to the point of beginning.

(c) Horse Heaven Hills southwest buffer zone. An area near Patterson starting at the southeast corner of Section 7, T5N, R26E following section lines north five miles to the northeast corner of Section 19, T6N, R26E; thence west two miles to the northwest corner of Section 24, T6N, R25E; thence south one-half mile along section line; thence west two miles to the common boundary of Sections 21 and 22, T6N, R25E; thence north one-half mile to the northeast corner of Section 21, T6N, R25E; thence west three miles to the northwest corner of Section 19, T6N, R25E; thence south three miles to the southwest corner of Section 31, T6N, R25E; thence east three miles to the southeast corner of Section 33, T6N, R25E; thence south three miles to the southeast corner of Section 16, T5N, R25E; thence west one mile to the northwest corner of Section 21, T5N, R25E; thence south one mile to the southwest corner of Section 21, T5N, R25E; thence east two miles to the southeast corner of Section 22, T5N, R25E; thence north one mile to the northeast corner of Section 22, T5N, R25E; thence east two miles to the southeast corner of Section 13, T5N, R25E; thence north one mile to the northeast corner of Section 13, T5N, R25E; thence east one mile to the point of origin.

(2) Area 3 restrictions.

(a) Application by air of (~~(restricted)~~) use restricted herbicides as defined in WAC 16-230-810 is prohibited.

(b) The use or application of low volatile ester formulations of (~~(restricted)~~) use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of (~~(restricted)~~) use restricted herbicides (~~(shall be)~~) are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of (~~(restricted)~~) use restricted herbicides (~~(shall be)~~) are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the (~~(restricted)~~) use restricted herbicides (~~(shall be)~~) are exempt from the sunset and sunrise restrictions: Provided further, That (~~(persons licensed to perform)~~) applications of the (~~(restricted)~~) use restricted herbicides on small experimental plots for research purposes (~~(shall be)~~) are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-850 (~~(Application of pesticides in Benton County — Area 4.)~~) What are the boundaries and restrictions for Area 4? (1) Area 4 description.

(a) Tri-cities northwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence north two miles along section lines to the northwest corner of Section 13, T10N, R26E; thence east one mile along the section line to the northeast corner of Section 13, T10N, R26E; thence

north approximately one-half mile along the section line to the United States Department of Energy Hanford Site south boundary line; thence easterly approximately ten miles and south approximately two and one-half miles along the south boundary line to the south section line of Section 27, T10N, R28E; thence west approximately six and three-fourths miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(b) Tri-cities northeast buffer zone. An area including all lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River; thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately four miles along section lines and portions of Fraser Drive and Dent Road to the southwest corner of Section 6, T9N, R29E; thence east approximately eight and one-half miles along section lines and a portion of Foster Wells Road to its intersection with the Bonneville Power Administration power line in Section 4, T9N, R30E; thence southeasterly approximately seven miles along the power line to its intersection with SR 124 in Section 32, T9N, R31E; thence easterly approximately two and one-half miles along SR 124 to the east section line of Section 34, T9N, R31E near the intersection of SR 124 and the Union Pacific Railroad; thence south approximately three miles along section lines to the southeast corner of Section 15, T8N, R31E; thence west approximately one-fourth mile along the section line to the Union Pacific Railroad; thence southerly approximately four and one-half miles along the railroad to its intersection with U.S. Highway 12 near the Boise Cascade paper mill; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along I-182 to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the U.S. Department of Energy Hanford Site south boundary line in Section 14, T10N, R28E; thence east approximately one-half mile across the Columbia River to its east shoreline; thence northerly approximately one-half mile to the point of beginning.

(2) Area 4 restrictions.

(a) Application by air of ~~((restricted))~~ use restricted pesticides as defined in WAC 16-230-810 may be made by written permit only.

(b) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides is prohibited. Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year all applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applica-

tions of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions: Provided further, That ~~((persons licensed to perform))~~ applications of the ~~((restricted))~~ use restricted herbicides on small experimental plots for research purposes ~~((shall be))~~ are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-855 (~~(Application of pesticides in Benton County—Area 5.)~~ What are the boundaries and restrictions for Area 5?) (1) Area 5 description.

(a) Cold Creek buffer zone. An area including all lands lying within a boundary line beginning at the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence easterly approximately two miles along the Columbia River to the east section line of Section 6, T13N, R25E, near the Vernita Bridge; thence south approximately eight and one-half miles along section lines to the southeast corner of Section 18, T12N, R25E; thence west seven miles along section lines to the Benton-Yakima County line at the southwest corner of Section 18, T12N, R24E; thence north one mile along the county line to the point of beginning.

(b) Roza buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence north two miles along the county line to the northwest corner of Section 18, T10N, R24E; thence east four miles along section lines to the northeast corner of Section 15, T10N, R24E; thence south one mile along the section line to the southeast corner of Section 15, T10, R24E; thence east seven miles along section lines to the southwest corner of Section 13, T10N, R25E; thence north one mile along the section line to the northwest corner of Section 13, T10N, R25E; thence east six miles along section lines to the northwest corner of Section 13, T10N, R26E; thence south two miles along section lines to the point of beginning.

(c) Horse Heaven Hill southwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 13, T6N, R24E; thence south five miles along section lines to the southwest corner of Section 1, T5N, R24E; thence east three miles along the section lines to the northeast corner of Section 8, T5N, R25E; thence south one mile along the section line to the southeast corner of Section 8, T5N, R25E; thence west one mile along the section line to the southwest corner of Section 8, T5N, R25E;

thence south approximately five miles to the Washington Oregon border; thence northeasterly along the Washington Oregon border until its intersection with the eastern section line of Section 8, T5N, R26E; thence north approximately six miles along section lines to the northeast corner of Section 17, T6N, R26E; thence west nine miles to the point of beginning.

(2) Area 5 restrictions.

(a) Application by air of ~~((restricted))~~ use restricted herbicides as defined by WAC 16-230-810 may be made by written permit only.

(b) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited on and after April 5 through October 31 of each year: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year all applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions: Provided further, That ~~((persons licensed to perform))~~ applications of the ~~((restricted))~~ use restricted herbicides on small experimental plots for research purposes ~~((shall be))~~ are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-860 ((Application of pesticides in Benton County—Area 6:)) What are the boundaries and restrictions for Area 6? (1) Area 6 description. All remaining lands in the area under order.

(2) Area 6 restrictions.

(a) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited on and after April 5 through October 31 of each year: Provided, That phenoxy hormone-type sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(b) On and after April 5 through October 31 of each year all applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset restrictions: Provided further, That ~~((persons licensed to perform))~~ applications of ~~((restricted))~~ use restricted herbicides on small experimental

plots for research purposes ~~((shall be))~~ are exempt from the sunset restrictions.

(c) On and after April 5 through October 31 of each year, aerial applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-861 ((Application of pesticides in Benton County—Wind conditions:)) What are the restrictions on applications due to wind conditions? The use or application of all herbicides and class 1 and 2 insecticides are prohibited in the area under order listed in WAC 16-230-800 when the mean sustained wind velocity is over ten miles per hour throughout the year: Provided, That applications shall be allowed in higher velocity winds when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department prior to application. Approval shall be based on research data: Provided further, That applications of granular and pellet formulations of ~~((restricted))~~ use restricted pesticides defined in WAC 16-230-810 as well as applications made to structures ~~((shall be))~~ are exempt from the wind restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-863 Application of pesticides in Benton County—((Restricted)) Use restricted herbicides ground apparatus nozzle requirements. Ground applications of ~~((restricted))~~ use restricted herbicides in the area under order listed in WAC 16-230-800 shall be made, throughout the year, using nozzles having a single orifice and minimum diameter of .052 inches or a LP 8002 nozzle. Pressure shall not exceed twenty-five pounds per square inch at the nozzle for .052 and other orifice openings and pressure shall not exceed fifteen pounds per square inch at the nozzle for LP 8002 or equivalent nozzle. Pressure up to fifty pounds per square inch at the nozzle may be used for equipment with handguns and up to ninety pounds per square inch at the nozzle manifold for an inert system: Provided, That the department may issue a permit for other nozzles and pressure combinations that are equal or better. Prior to issuing such permits, the request shall be reviewed by a scientific committee established by the director: Provided further, That when Glyphosate is the only ~~((restricted))~~ use restricted herbicide being used during an application for weed control in reduced tillage cropping any nozzles may be used that delivers at a minimum ten gallons of water carrier or greater per treated acre at a pressure not exceeding twenty-five pounds per square inch at the nozzle: Provided further, That Glyphosate applications using a .052 nozzle at twenty-five pounds of pressure or less at the nozzle, and a LP 8002 nozzle at fifteen pounds of pressure or less at the nozzle shall be exempt from the ten-gallon minimum volume: Provided further, That pressurized handsized household devices used to apply ~~((restricted))~~ use restricted herbicides, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such

herbicide applications shall be exempt from nozzle requirements.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-864 Application of pesticides in Benton County—(~~Restricted~~) Use restricted herbicides, aircraft boom length, pressure, and nozzle requirements. The aerial application of (~~restricted~~) use restricted herbicides in the area under order listed in WAC 16-230-800 shall be made in accordance with the following requirements:

(1) The working boom length on fixed wing aircraft shall not exceed three-fourths of the wing span and the working boom length on a helicopter shall not exceed six-sevenths of the total rotor length where the rotor length exceeds forty feet.

(2) Pressure for aerial equipment shall not exceed twenty-five psi at the nozzles.

(3) Nozzles for aircraft:

(a) Fixed wing:

(i) Minimum nozzle orifice of .075 inches (no core plate) provided, that RD8 nozzles with orifice size of 0.125 inches and No. 46 core plates may be used. Nozzles shall be directed downward and backward one hundred seventy degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

(b) Helicopter:

(i) Minimum nozzle orifice of .063 inches (no core plate) provided, that RD8 nozzles with orifice size of .125 inches and core plate No. 46 may be used. Nozzles shall be directed downward and backward ninety degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-866 Application of pesticides in Benton County—(~~Restricted~~) Use restricted herbicides—Temperature conditions. All phenoxy compounds and (~~Banvel~~) dicamba shall not be applied when the temperature is above eighty-five degrees F. or above at the point of application: Provided, That application at the rate of fifty gallons or more per acre using nozzles having a minimum orifice diameter of .072 inches shall be exempt from the eighty-five degrees F. temperature requirement: Provided further, That when using the invert system, applications may continue up to ninety-five degrees F. with a maximum wind velocity of fifteen miles per hour and with water carrier at twelve or more gallons per acre.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-230-868 (~~Application of pesticides in Benton County—Restricted use herbicide weather conditions~~) What are the restrictions due to weather? (~~Restricted~~) Use restricted herbicides shall not be applied throughout the year in the entire area under order when there is a temperature inversion present or weather conditions are

such that damage could result to adjacent and nearby towns, susceptible crops, and plantings through physical drift or volatilization: Provided, That applications of (~~restricted~~) use restricted herbicides (~~shall be~~) are exempt from the inversion requirements when using one hundred gallons or greater of water carrier per treated acre while using no greater than fifteen pounds of pressure per square inch at the nozzle.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-230-620	Low volatile.
WAC 16-230-862	Application of pesticides in Benton County—Area 1A.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-100 (~~Restricted~~) What are the restrictions for pesticide use (~~herbicides~~) in Franklin County(~~—Area under order~~)? (1) The area under order (~~shall~~) includes all lands lying within the boundaries of Franklin County. WAC 16-231-110 through 16-231-183 (~~shall apply~~) applies to the area under order.

(2) The distribution, use, and application of (~~restricted~~) use (~~herbicides~~) restricted pesticides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to (~~restricted~~) use restricted herbicides in WAC 16-230-600 through 16-230-680.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-105 (~~Restricted~~) What are use restricted herbicides(~~is~~) in Franklin County? All formulations of (~~Dicamba (Banvel) and all formulations of~~) phenoxy hormone-type herbicides (~~including~~) (e.g., 2,4-D, (~~2,4,5-T and~~) 2,4-DB, 2,4-DP (dichlorprop), MCPA (~~in Areas 1, 1A, 2, 3, and 4 are by this order declared to be restricted use herbicides~~)), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending WSR 03-11-097, filed 5/21/03, effective 6/21/03)

WAC 16-231-107 (~~Application of~~) What are use restricted pesticides in certain areas of Franklin County(~~—Restricted use pesticides~~)? The following pesticides are declared to be (~~restricted~~) use restricted pesticides in Areas 2A, 4A, and 6:

(1) (~~Restricted~~) Use restricted herbicides*:

- (a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort);
 - (b) Desiccants and defoliants (such as Paraquat, Diquat, Endothall);
 - (c) Glyphosate (such as Roundup, Landmaster);
 - (d) Phenoxy hormone-type herbicides (such as 2,4-D, MCPA);
 - (e) Dicamba (such as Banvel);
 - (f) Bromoxynil (~~((such as Brominal, Buetril, Bronate)))~~)
- except that the cutoff dates of April 5, April 15 and May 16 do not apply.

* This is to be used only as a guide and may not include all brand or trade names under which these chemicals are distributed.

(2) (~~(Restricted use insecticides:))~~)

All aerial applications of Category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations.

AMENDATORY SECTION (Amending Order 1676, filed 2/20/80)

WAC 16-231-110 When are oil-type carriers((-) prohibited? On and after April 5 through October 31, oil-type carriers are prohibited for brush control: Provided, That oil-type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-115 (~~(Restricted)) What are the boundaries and restrictions for use restricted herbicides—Franklin County—Area 1((-))?~~ (1) Area 1 description.

(a) This area includes all lands lying within a boundary line starting at the northwest corner of Section 6, T14N, R28E; thence east along the Adams-Franklin County line thirteen miles more or less to the intersection with State Route 17; thence southeasterly along State Route 17, including the right of way, to the intersection with Highway 395 at the town of Mesa; thence southerly along Highway 395, including the right of way, seven miles more or less to the intersection with the common boundary between Sections 2 and 11, T11N, R30E at the town of Eltopia; thence east along the section line, one mile more or less to the northeast corner of Section 12, T11N, R30E; thence south along the section lines twelve miles more or less to the southeast corner of Section 1, T10N, R30E; thence west two miles along section lines to the southeast corner of Section 3, T9N, R30E; thence north one mile along section lines to the northeast corner of Section 3, T9N, R30E; thence west along section lines three miles to the southeast corner of Section 31, T10N, R30E; thence north two miles along Highway 395 to the intersection with the Selph Landing Road near the northeast corner of Section 30, T10N, R30E; thence seven miles west along Selph Landing Road to the northwest corner of Section 30, T10N, R29E; thence north along section lines and portions of Fraser Drive until the intersection with Road 68, thence northwesterly along Road 68 until its intersection with the Esquatzel Channel; thence west along the Esquatzel Channel until its intersection with the Columbia River; thence northwesterly along the Columbia River to the Grant-Franklin

County line at the north section line of Section 29, T14N, R27E; thence east along the Grant-Franklin County line four miles more or less to the northwest corner of Section 30, T14N, R28E; thence north along the Grant-Franklin County line four miles to the point of beginning.

(b) Also including Levey (Ice Harbor Dam area): This area includes all lands lying within a two-mile radius of Levey within Franklin County.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of (~~(restricted))~~) use restricted herbicides is prohibited on and after April 5 through October 31 of each year: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1 through April 30 of the following year.

(b) On and after April 5 through October 31, ground applications of (~~(restricted))~~) use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of (~~(restricted))~~) use restricted herbicides on asparagus shall be made using nozzles having minimum nozzle orifice diameter of 0.072 inches.

(c) On and after April 5 through October 31, aircraft applications of (~~(restricted))~~) use restricted herbicides (~~(shall be))~~) are prohibited except by written permit issued by the department: Provided, That on and after November 1 through April 4 of the following year, aircraft applications of (~~(restricted))~~) use restricted herbicides (~~(shall be))~~) are allowed using the caution area restrictions (see WAC 16-230-675).

(d) On and after April 5 through October 31, aircraft applications of (~~(restricted))~~) use restricted herbicides (~~(shall be))~~) are prohibited within one mile of any commercial vineyard: Provided, That on and after April 5 through October 31, written requests to apply MCPA to peas and corn located one-half to one mile from commercial vineyards will be considered: Provided further, That on and after April 5 through April 30 written requests to apply 2,4 DB on alfalfa and red clover seed crops located one-half to one mile from commercial vineyards will be considered.

AMENDATORY SECTION (Amending Order 1965, filed 2/12/88)

WAC 16-231-119 (~~(Restricted)) What are the boundaries and restrictions on use restricted herbicides—Franklin County—Area 1A((-))?~~ (1) Area 1A description. This area includes all lands lying within a boundary line starting at the intersection of State Route 17 and the Adams-Franklin County line at the north section line of Section 5, T14N, R30E; thence east along the Adams-Franklin County line five miles more or less to the Burlington Northern Railroad; thence southeasterly along the railroad, including the right of way, four miles more or less to the intersection with Moon Road; thence southerly along Moon Road, including the right of way, two miles more or less to the intersection with State Route 260 at the southeast corner of Section 27, T14N, R31E; thence west along State Route 260, including the right of way, five miles more or less to the intersection with State Route 17; thence northwesterly along State Route 17, excluding the right of way, to the point of beginning.

(2) Area 1A restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 15 through October 31: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1 through April 30 of the following year.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of ~~((restricted))~~ use restricted herbicides on asparagus shall be made using nozzles having minimum orifice diameter of 0.072 inches.

(c) On and after November 1 through April 14 of the following year, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

(d) On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the danger area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-125 ((Restricted)) What are the boundaries and restrictions on use restricted herbicides—Franklin County—Area 2((s))? (1) Area 2 description. This area includes all of the lands lying inside a boundary line starting at the intersection of State Routes 17 and 260 located at the northwest corner of Section 36, T14N, R30E; thence east along State Route 260, excluding the right of way, five miles more or less to the northeast corner of Section 34, T14N, R31E; thence south along the section lines fifteen miles more or less to the Eltopia and Eye Road; thence easterly along the Eltopia and Eye Road, including the right of way, to the Brass Road; thence easterly along the Brass Road, including the right of way, to the Bannenburg Road; thence southeasterly along the Bannenburg Road, including the right of way, to the northwest corner of Section 6, T10N, R33E; thence south along the section line one mile more or less to the Snake River; thence southwesterly along the Snake River to the east section line of Section 23, T9N, R31E; thence northerly along section lines approximately two miles until the intersection with the Pasco Kahlotus Road at the northeast corner of Section 11, T9N, R31E; thence west approximately five miles along section lines and a portion of the Pasco Kahlotus Road to the intersection of the southeast corner of Section 1, T9N, R30E; thence north along the section lines twelve miles more or less to the southeast corner of Section 1, T11N, R30E; thence west along the section line one mile more or less to Highway 395; thence northerly along Highway 395, excluding the right of way, seven miles more or less to its intersection with State Route 17 at the town of Mesa; thence northerly along State Route 17, excluding the right of way, seven miles more or less to the point of beginning, excluding lands in Franklin County within a two-mile radius of the town of Levey.

(2) Area 2 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 5 through October 31 of each year.

(b) On and after April 5 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.

(c) On and after April 5 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited except by written permit issued by the Washington state department of agriculture.

AMENDATORY SECTION (Amending Order 1973, filed 4/12/88)

WAC 16-231-130 ((Restricted)) What are the boundaries and restrictions on use restricted herbicides—Franklin County—Area 3((s))? (1) Area 3 description. (Dry land area south and east of Connell.) An area beginning at the northeast corner of Section 3, T14N, R33E and the Reeder Road; thence south along the Reeder Road to and along the Black Road to the Swanson Road; thence east and south along the Swanson Road to state Highway 260; thence southerly along state Highway 260 to the Munt Road; thence south along the Munt Road to the Largent Road; thence east along the Largent Road to the Pasco-Kahlotus Highway to the Walker Road; thence southerly along the Walker Road to the Snake River; thence southerly along the Snake River to the east boundary line of Area 2; thence northerly along the east boundary line of Area 2 and Area 1A to the Franklin-Adams County line; thence east fifteen miles more or less along the county line to the point of beginning.

(2) Area 3 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited on and after May 16 through October 31 of each year.

(b) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.

(c) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1676, filed 2/20/80)

WAC 16-231-135 What are the boundaries and restrictions on use restricted herbicides in Area 4((s))? (1) Area 4 description. (Dry land area.) All of the remaining lands in Franklin County lying east of Area 3.

(2) Area 4 restrictions.

(a) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(b) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be

made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-140 What are the restrictions on mixing or loading aircraft~~(?)~~? The loading and/or mixing of ~~((restricted))~~ use restricted herbicides in Areas 1, 1A, 2, 3, and 4 is restricted to those formulations which may be applied in the area in which the airstrip is located.

AMENDATORY SECTION (Amending Order 1973, filed 4/12/88)

WAC 16-231-145 ~~((Restricted))~~ What are the wind restrictions for use restricted herbicides—Franklin County~~((—Wind conditions:))~~? The use or application of ~~((restricted))~~ use restricted herbicides shall be prohibited in Areas 1, 1A, 2, 3, and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such applications shall be prohibited in Area 1 on and after April 1 through October 31 when the mean sustained wind velocity is over ten miles per hour: Provided further, That applications of ~~((restricted))~~ use restricted herbicides shall be allowed in winds up to and including twenty miles per hour when an approved hooded boom sprayer is used and allowed by the label. Hooded boom sprayers shall be approved by the department of agriculture. The department shall consider the recommendations of the pesticide advisory board 2,4-D ad hoc committee in determining the criteria of what constitutes an approved hooded boom sprayer. Approval shall be based on research data.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-149 ~~((Restricted))~~ What are the boundaries and restrictions on use restricted herbicides—Franklin County—Area 2A~~(?)~~? (1) Area 2A description. An area including all lands lying in a boundary line beginning at the Columbia River and Interstate 182 near the east section line of Section 13, T9N, R28E; thence along Interstate 182 until its intersection with U.S. Highway 12; thence southeasterly along Highway 12 until its intersection with the Snake River in Section 35, T9N, R30E; thence southwesterly along the Snake River until its intersection with the Columbia River; thence northwesterly along the Columbia River to the point of beginning.

(2) Area 2A restrictions.

(a) Application by air of ~~((restricted))~~ use restricted pesticides as defined in WAC 16-231-107 is prohibited.

(b) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides

~~((shall be))~~ are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions: Provided further, That ~~((persons licensed to perform))~~ applications of ~~((restricted))~~ use restricted herbicides on small experimental plots for research purposes ~~((shall be))~~ are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-153 ~~((Restricted))~~ What are the boundaries and restrictions on use restricted herbicides—Franklin County—Area 4A~~(?)~~? (1) Area 4A description. An area including all lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River; thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately four miles along section lines and portions of Fraser Drive and Dent Road to the southwest corner of Section 6, T9N, R29E; thence east approximately eight and one-half miles along section lines and a portion of Foster Wells Road to its intersection with the Bonneville Power Administration power line in Section 4, T9N, R30E; thence southeasterly along the power line until its intersection with the Snake River near the east line of Section 25, T9N, R30E; thence southwesterly along the Snake River until its intersection with U.S. Highway 12 in Section 35, T9N, R30E; thence northwesterly along Highway 12 until its intersection with Interstate 182; thence westerly along Interstate 182 until its intersection with the Columbia River along the east section line of Section 13, T9N, R28E; thence northerly along the Columbia River to the point of beginning.

(2) Area 4A restrictions.

(a) Application by air of ~~((restricted))~~ use restricted pesticides as defined in WAC 16-231-107 may be made by written permit only.

(b) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, all applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions: Provided further, That ~~((persons~~

~~licensed to perform~~) applications of the ~~((restricted))~~ use restricted herbicides on small experimental plots for research purposes ~~((shall be))~~ are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-156 ((Restricted)) What are the boundaries and restrictions on use restricted herbicides—Franklin County—Area 6((=))? (1) Area 6 description. An area including all lands lying within a boundary line beginning at the northwest corner of Section 30, T10N, R29E; thence east seven miles along Selph Landing Road until its intersection with Highway 395 near the northeast corner of Section 30, T10N, R30E; thence south two miles along Highway 395 to the southeast corner of Section 31, T10N, R30E; thence east three miles along section lines to the northeast corner of Section 3, T9N, R30E; thence south one mile along section lines to the southeast corner of Section 3, T9N, R30E; thence east seven miles along section lines and a portion of the Pasco-Kahlotus Road until its intersection with the Ice Harbor Dam Road at the northeast corner of Section 11, T9N, R31E; thence southerly approximately two miles along section lines until the intersection with the Snake River; thence southwesterly along the Snake River until its intersection with the Bonneville Power Administration power line in Section 25, T9N, R30E; thence northwesterly along the power line until its intersection with Foster Wells Road in Section 4, T9N, R30E; thence west approximately eight and one-half miles along section lines and portions of the Foster Wells Road to the southwest corner of Section 6, T9N, R29E; thence north along section lines approximately three miles to the point of beginning.

(2) Area 6 restrictions.

(a) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited on and after April 5 through October 31 of each year: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(b) On and after April 5 through October 31 of each year, all applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset restrictions: Provided further, That ~~((persons licensed to perform))~~ applications of ~~((restricted))~~ use restricted herbicides on small experimental plots for research purposes ~~((shall be))~~ are exempt from the sunset restrictions.

(c) On and after April 5 through October 31 of each year, aerial applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-159 ((Application of pesticides in Franklin County—Areas 2A, 4A, and 6—Paraquat and diquat.)) Can Paraquat or Diquat be applied by air in Franklin County? Aerial application of Paraquat and Diquat is prohibited in Areas 2A, 4A, and 6.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-162 ((Application of pesticides in Franklin County—Areas 2A, 4A, and 6—Sulfonylurea herbicides.)) Can sulfonylurea herbicides be applied in Franklin County? Application of sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort) to fallow land or to land during the time between harvest and emergence above the furrows of the subsequent cereal grain crop is prohibited in Areas 2A, 4A, and 6.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-165 ((Application of pesticides in Franklin County—Areas 2A, 4A, and 6—Permits.)) What are conditions applying to permits in Franklin County? The following conditions will apply to all permits issued in Areas 2A, 4A, and 6.

(1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 21 N. 1st Avenue Suite 236, Yakima, Washington 98902. Applications may also be taken in person or by facsimile. Permits will not be granted by telephone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit shall be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-168 ((Application of)) Can use restricted pesticides ((in Franklin County—Areas 2A, 4A, and 6—)) be applied in an emergency clause((=))? In the event of an emergency, as declared by the director, the department may issue permits for the use of ~~((restricted))~~ use restricted pesticides in variation of any restrictions contained in Areas 2A, 4A, and 6. An emergency under this section may be declared if the director determines that the risk and amount of economic harm to any agriculture crop substan-

tially outweighs the risk and amount of damage likely to occur if a variance permit is issued.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-171 (~~(Application of pesticides)~~) What are the restrictions on applications in Franklin County(~~(—Areas 2A, 4A, and 6—)~~) due to wind (~~(conditions)~~)? The use or application of all herbicides and class 1 and 2 insecticides are prohibited in Areas 2A, 4A, and 6 when the mean sustained wind velocity is over ten miles per hour throughout the year: Provided, That applications shall be allowed in higher velocity winds when an approved ground apparatus is used. Ground apparatus shall be approved by the department prior to application. Approval shall be based on research data: Provided further, That applications of granular and pellet formulations of (~~restricted~~) use restricted pesticides defined in WAC 16-231-107 as well as applications made to structures (~~shall be~~) are exempt from the wind restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-174 Application of pesticides in Franklin County—Areas 2A, 4A, and 6—(~~(Restricted)~~) Use restricted herbicides ground apparatus nozzle requirements. Ground applications of (~~restricted~~) use restricted herbicides in Areas 2A, 4A, and 6 shall be made, throughout the year, using nozzles having a single orifice and minimum diameter of .052 inches or a LP 8002 nozzle. Pressure shall not exceed twenty-five pounds per square inch at the nozzle for .052 and other orifice openings and pressure shall not exceed fifteen pounds per square inch at the nozzle for LP 8002 or equivalent nozzle. Pressure up to fifty pounds per square inch at the nozzle may be used for equipment with handguns and up to ninety pounds per square inch at the nozzle manifold for an inert system: Provided, That the department may issue a permit for other nozzles and pressure combinations that are equal or better. Prior to issuing such permits, the request shall be reviewed by a scientific committee established by the director: Provided further, That when Glyphosate is the only (~~restricted~~) use restricted herbicide being used during an application for weed control in reduced tillage cropping any nozzles may be used that delivers at a minimum ten gallons of water carrier or greater per treated acre at a pressure not exceeding twenty-five pounds per square inch at the nozzle: Provided further, That Glyphosate applications using a .052 nozzle at twenty-five pounds of pressure or less at the nozzle, and a LP 8002 nozzle at fifteen pounds of pressure or less at the nozzle shall be exempt from the ten-gallon minimum volume: Provided further, That pressurized handsized household devices used to apply (~~restricted~~) use restricted herbicides, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such herbicide applications shall be exempt from nozzle requirements.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-177 Application of pesticides in Franklin County—Areas 2A, 4A, and 6—(~~(Restricted)~~) Use restricted herbicides, aircraft boom length, pressure, and nozzle requirements. The aerial application of (~~restricted~~) use restricted herbicides in Areas 2A, 4A, and 6 shall be made in accordance with the following requirements:

(1) The working boom length on fixed wing aircraft shall not exceed three-fourths of the wing span and the working boom length on a helicopter shall not exceed six-sevenths of the total rotor length where the rotor length exceeds forty feet.

(2) Pressure for aerial equipment shall not exceed twenty-five psi at the nozzles.

(3) Nozzles for aircraft:

(a) Fixed wing:

(i) Minimum nozzle orifice of .075 inches (no core plate): Provided, That RD8 nozzles with orifice size of 0.125 inches and No. 46 core plates may be used. Nozzles shall be directed downward and backward one hundred seventy degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

(b) Helicopter:

(i) Minimum nozzle orifice of .063 inches (no core plate): Provided, That RD8 nozzles with orifice size of .125 inches and core plate No. 46 may be used. Nozzles shall be directed downward and backward ninety degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-180 (~~(Application)~~) What are the restrictions on applications of pesticides in Franklin County—Areas 2A, 4A, and 6—(~~(Restricted)~~) Use restricted herbicides(~~(—)~~) due to temperature conditions(~~(-)~~)? All phenoxy compounds and (~~Banvel shall~~) dicamba must not be applied when the temperature is above eighty-five degrees F. or above at the point of application: Provided, That application at the rate of fifty gallons or more per acre using nozzles having a minimum orifice diameter of .072 inches (~~shall be~~) is exempt from the eighty-five degrees F. temperature requirement: Provided further, That when using the invert system, applications may continue up to ninety-five degrees F. with a maximum wind velocity of fifteen miles per hour and with water carrier at twelve or more gallons per acre.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-231-183 What are the restrictions on application of pesticides in Franklin County(~~(—Restricted use herbicide)~~) due to weather conditions(~~(-)~~)? (~~(Restricted)~~) Use restricted herbicides shall not be applied throughout the year in the entire area under order when there is a temperature inversion present or weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops,

and plantings through physical drift or volatilization: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the inversion requirements when using one hundred gallons or greater of water carrier per treated acre while using no greater than fifteen pounds of pressure per square inch at the nozzle.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-200 ~~((Restricted use herbicides — Yakima County — Area under order.))~~ What are the restrictions for herbicide use in Yakima County? (1) The area under order ~~((shall))~~ includes all lands lying within the boundaries of Yakima County. WAC 16-231-205 through 16-231-235 ~~((shall apply))~~ applies to the area under order.

(2) The distribution, use, and application of ~~((restricted))~~ use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to ~~((restricted))~~ use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-205 ~~((Restricted))~~ What are use restricted herbicides~~((—))~~ in Yakima County~~((:))~~? All formulations of ~~((Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides ~~((including))~~ (e.g., 2,4-D ((and)), 2,4-DB, 2,4-DP (dichlorprop), MCPA ((are declared to be restricted use herbicides in the area under order as listed in WAC 16-231-200)), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-210 ~~((Restricted use herbicides — Yakima County — Oil-type carriers.))~~ When are oil-type carriers prohibited in Yakima County? On and after April 5 through October 31, oil-type carriers are prohibited in the area under order for brush control: Provided, That oil-type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending Order 1923, filed 4/6/87)

WAC 16-231-215 ~~((Restricted use herbicides — Yakima County — Area 1.))~~ What are the boundaries and restrictions for Area 1 in Yakima County? (1) Area 1 description. (An area south of the Yakima firing center including the upper and lower Yakima Valley.) An area starting at the Yakima-Benton County line and the northeast corner of Section 1, T11N, R23E; thence west along section lines seventeen miles more or less to the southeast corner of

Section 31, T12N, R21E; thence north eight miles along section lines to the northeast corner of Section 30, T13N, R21E; thence west along section lines eleven miles to the Yakima River; thence northwesterly along the Yakima River four miles more or less to the junction of the Yakima and Naches Rivers; thence northwesterly along the Naches River for seven miles more or less to the northwest corner of Section 31, T14N, R18E; thence south one mile along the section line to the southwest corner of Section 31, T14N, R18E; thence west along section lines six miles to the northwest corner of Section 6, T13N, R17E; thence south twenty-four miles along section lines to the southwest corner of Section 31, T10N, R17E; thence east twenty-four miles along section lines to the southeast corner of Section 36, T10N, R20E; thence south six miles along section lines to the southwest corner of Section 31, T9N, R21E; thence east six miles along section lines to the northwest corner of Section 6, T8N, R22E; thence south six miles along section lines to the southwest corner of Section 31, T8N, R22E; thence east twelve miles along section lines to the Benton County line; thence north twenty-four miles to the point of beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 5 through October 31: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops at any time.

(b) On and after April 5 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of ~~((restricted))~~ use restricted herbicides on asparagus shall be made using nozzles having minimum nozzle orifice diameter of 0.072 inches.

(c) Aircraft applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed only on nonirrigated lands on and after November 1 through April 4 of the following year and shall be made using the caution area restrictions (see WAC 16-230-675). Aircraft applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited on and after April 5 through October 31: Provided, That hormone sprays may be applied to orchards to prevent fruit drop: Provided further, That aircraft applications ~~((shall be))~~ are allowed by written permit issued by the Washington state department of agriculture in those dry land wheat growing areas east of Moxee and on the Rattlesnake Ridge and the area south of Horse Heaven Hills Ridge contained in Sections 25, 26, 27, 28, 32, 33, 34, 35 and 36, T8N, R23E up to within one mile of commercial grape plantings and to within one-quarter mile of other susceptible crops.

AMENDATORY SECTION (Amending Order 1675, filed 2/20/80)

WAC 16-231-220 What are the boundaries and restrictions for Area 1A~~((:))~~ in Yakima County? (1) Area 1A description. (Tieton-Naches Area.) That portion of T14N, R17E and those portions of Sections 31, 32 and 33, T15N, R17E, lying southwest of the Naches-Selah Canal; and that portion of T14N, R16E, and those portions of Sec-

tions 35 and 36 lying southeast of the Tieton and Naches rivers.

(2) Area 1A restrictions. On and after April 15 through October 31, the use and application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited. On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed using the warning area restrictions (see WAC 16-230-675) on dry land wheat up to within one-quarter mile of susceptible crops.

AMENDATORY SECTION (Amending Order 1965, filed 2/12/88)

WAC 16-231-225 ~~((Restricted use herbicides—Yakima County—Area 2:))~~ What are the boundaries and restrictions for Area 2 in Yakima County? (1) Area 2 descriptions. All remaining lands in Yakima County.

(2) Area 2 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 5 through October 31.

(b) On and after April 5 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after April 5 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1675, filed 2/20/80)

WAC 16-231-230 What are the restrictions on mixing ~~((and))~~ or loading ~~((:))~~ for aircraft? The mixing and/or loading of ~~((restricted))~~ use restricted herbicides is limited to those formulations which may be applied in that area. The loading of aircraft is prohibited in any area where aerial application of ~~((restricted))~~ use restricted herbicides is prohibited.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-235 ~~((Restricted use herbicides—Yakima County—Wind conditions:))~~ What are the restrictions due to wind conditions? The use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited in Areas 1, 1A and 2 when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such application ~~((shall be))~~ are prohibited in Areas 1 and 1A on and after April 1 through October 31 when the mean sustained wind velocity is over ten miles per hour: Provided further, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used. Ground apparatus shall be approved by the department of agriculture. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-300 ~~((Restricted use herbicides—Adams County—Area under order:))~~ What are the restrictions for herbicide use in Adams County? (1) The area under order ~~((shall))~~ includes all lands lying within the boundaries of Adams County. WAC 16-231-305 through 16-231-340 ~~((shall apply))~~ applies to the area under order.

(2) The distribution, use, and application of ~~((restricted))~~ use restricted herbicides in the area under order ~~((shall))~~ must comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to ~~((restricted))~~ use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-305 ~~((Restricted))~~ What are use restricted herbicides ~~((—))~~ in Adams County ~~((:))~~? All formulations of ~~((Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides ~~((including))~~ (e.g., 2,4-D ~~((and)), 2,4-DB, 2,4-DP (dichlorprop), MCPA ~~((are declared to be restricted use herbicides in the area under order as listed in WAC 16-231-300)), MCPB, MCPP (mecoprop)) and dicamba except as listed below:~~~~

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-310 ~~((Restricted use herbicides—Adams County—Oil type carriers:))~~ When are oil-type carriers prohibited in Adams County? On and after May 16 through October 31, oil-type carriers are prohibited in the area under order for brush control: Provided, That oil-type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending Order 1674, filed 2/20/80)

WAC 16-231-315 What are the boundaries and restrictions for Area 1 ~~((:))~~? (1) Area 1 description. (Lands generally lying within the Columbia Basin irrigation project east of Warden and in the Othello area.) An area starting at the intersection of the East Low Canal and Grant-Adams County line in Section 18, T18N, R31E; thence southerly along the East Low Canal to the intersection of the East Low Canal and the Grant-Adams County line near the southwestern corner of Section 17, T17N, R31E; thence north six miles more or less to the point of beginning; and also all lands within a line starting at the intersection of the East Low Canal and the Grant-Adams County line near the corner of Section 6, T16N, R30E; thence southeasterly along the East Low Canal to the Adams-Franklin County line and the southwest

corner of Section 31, T15N, R28E; thence north along the Grant-Adams County line beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 15 through October 31: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1 through April 30 of the following year.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of ~~((restricted))~~ use restricted herbicides on asparagus shall be made using nozzles having minimum nozzle orifice diameter of 0.072 inches.

(c) On and after November 1 through April 14 of the following year, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

(d) On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the danger area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1674, filed 2/20/80)

WAC 16-231-320 What are the boundaries and restrictions for Area 2((s))? (1) Area 2 description. (Buffer area east of Area 1.) Beginning at the Grant-Adams County line Section 6, T18N, R31E; thence east six miles more or less along the Burlington Northern Railroad tracks to Kulm Road; thence south three miles more or less along Kulm Road to Franz Road; thence east one mile along Franz Road to Roxboro Road; thence south fourteen miles along the Roxboro Road to Cunningham Road; thence southeasterly one mile more or less along Cunningham Road to Lind-Hatton Road; thence southerly three miles more or less along Lind-Hatton Road to Roxboro Road; thence southerly three miles more or less to the Adams-Franklin County line; thence west seven miles more or less along Adams-Franklin County line to the East Low Canal; thence northwesterly along the East Low Canal to the Grant-Adams County line; thence east five miles more or less and three miles north more or less along the Grant-Adams County line to the East Low Canal; thence northeasterly along East Low Canal to the Grant-Adams County line; thence north two miles more or less along Grant-Adams County line to the point of beginning.

(2) Area 2 restrictions.

(a) On and after May 1 through October 31, the use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited.

(b) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.

(c) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be

made using the warning area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1674, filed 2/20/80)

WAC 16-231-325 What are the boundaries and restrictions for Area 3((s))? (1) Area 3 description. An area starting at the northwest corner of Section 6, T20N, R31E, on the Lincoln-Adams County line; thence east twenty-three miles more or less on the Davis Road to Paha-Packard Road; thence south seventeen miles more or less along the Paha-Packard Road to the intersection of Paha-Packard Road and SR 395; thence southwesterly twenty-six miles more or less along SR 395 to the Adams-Franklin County line; thence west one mile more or less along Muse Road to the Roxboro Road; thence northerly and westerly thirty-one miles more or less along the east and north boundary of Area 2 to the Grant-Adams County line; thence north twelve miles more or less along the Grant-Adams County line to the point of beginning.

(2) Area ~~((2))~~ 3 restrictions.

(a) On and after May 16 through October 31, the use and application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited.

(b) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-330 ~~((Restricted use herbicides—Adams County—Area 4.))~~ What are the boundaries and restrictions for Area 4? (1) Area 4 description. Outlying area east of Area 3.

(2) Area 4 restrictions. On and after May 16 through October 31, aircraft applications or ~~((restricted))~~ use restricted herbicides shall be made using caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1674, filed 2/20/80)

WAC 16-231-335 ~~((Aerial))~~ What are the restrictions on applications near vineyards((s))? Aerial applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited within one mile of any commercial vineyard in the area under order: Provided, That aerial application of ~~((restricted))~~ use restricted herbicides to lands located within one-half mile to one mile from commercial vineyards shall be considered through written request to the Washington state department of agriculture.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-340 (~~(Restricted use herbicides—Adams County—Wind conditions.)~~) **What are the restrictions on applications due to wind conditions?** (1) Area 1 and 2.

(a) The use or application of (~~restricted~~) use restricted herbicides shall be prohibited on and after April 16 through October 31 when the mean sustained wind velocity is over ten miles per hour.

(b) The use or application of (~~restricted~~) use restricted herbicides (~~shall be~~) is prohibited on and after November 1 through April 15 of the following year when the mean sustained wind velocity is over twelve miles per hour: Provided, That application of allowable (~~restricted~~) use restricted herbicides (~~shall be~~) is exempt from these wind restrictions when applying fifty gallons or more per acre.

(2) Area 3 and 4. The use or application of (~~restricted~~) use restricted herbicides (~~shall be~~) is prohibited when the mean sustained wind velocity is over twelve miles per hour: Provided, That ground applications of (~~restricted~~) use restricted herbicides are allowed when using No. 2RD or 2RA Raindrop nozzles when the mean sustained wind velocity is fifteen miles per hour or less: Provided further, That application of allowable (~~restricted~~) use restricted herbicides (~~shall be~~) is exempt from these wind restrictions when applying fifty gallons or more per acre: And provided further, That applications of (~~restricted~~) use restricted herbicides (~~shall be~~) are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used. Ground apparatus shall be approved by the department of agriculture. Approval (~~shall~~) will be based on research data.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-400 (~~(Restricted)~~) **Use restricted herbicides—Columbia County—Area under order.** (1) The area under order (~~shall~~) includes all lands lying within the boundaries of Columbia County. WAC 16-231-405 through 16-231-425 (~~shall apply~~) applies to the area under order.

(2) The distribution, use, and application of (~~restricted~~) use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to (~~restricted~~) use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-405 (~~(Restricted)~~) **What are use restricted herbicides(—) in Columbia County(=)?** All formulations of (~~(Dicamba (Banvel) and all formulations of)~~) phenoxy hormone-type herbicides (~~(including)~~) (e.g., 2,4-D (~~and~~), 2,4-DB, 2,4-DP (dichlorprop), MCPA (~~are declared to be restricted use herbicides in the area under order as listed in WAC 16-231-400~~), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-410 (~~(Restricted use herbicides—Columbia County—Oil type carriers.)~~) **When are oil-type carriers prohibited in Columbia County?** On and after May 1 through October 31, oil-type carriers are prohibited in the area under order for brush control: Provided, That oil-type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending Order 1849, filed 3/15/85)

WAC 16-231-413 **What are the boundaries and restrictions for Area 1(=) in Columbia County?** (1) Area 1 description. That area within a distance of one-half mile of the city limits of Dayton.

(2) Area 1 restrictions. Aircraft applications of (~~restricted~~) use restricted herbicides are prohibited on and after April 5 through October 31: Provided, That upon written request to the Washington state department of agriculture, aircraft applications by permit shall be considered for purposes of critical weed control.

AMENDATORY SECTION (Amending Order 1673, filed 2/20/80)

WAC 16-231-415 **What are the boundaries and restrictions for Area 2(=) in Columbia County?** (1) Area 2 description. (Huntsville, Dayton, Baileysburg, and vicinity.) Sections 1 through 12, T9N, R38E; Sections 24, 25, 26 and 30 through 36, T10N, R38E; Sections 19, 20 and 28 through 33, T10N, R39E; Sections 2 through 11, 15 through 17, 21 and 22 and that portion of Section 20 lying east of the Payne Hollow Road in T9N, R39E in Columbia County.

(2) Area 2 restrictions.

(a) The use or application of low volatile formulations of (~~restricted~~) use restricted herbicides (~~shall be~~) is prohibited on and after May 1 through October 31.

(b) On and after May 1 through October 31, ground applications of (~~restricted~~) use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches. On and after November 1 through April 30, ground application shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after May 1 through October 31, aircraft applications of (~~restricted~~) use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675). On and after November 1 through April 30, aircraft applications of (~~restricted~~) use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-420 (~~(Restricted use herbicides—Columbia County—Area 4.)~~) **What are the boundaries and restrictions for Area 4 for Columbia County?** (1) Area 4 description. This area includes all remaining lands in Columbia County not included in WAC 16-231-413 and 16-231-415.

(2) Area 4 restrictions.

(a) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(b) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-425 (~~(Restricted use herbicides—Columbia County—Wind conditions.)~~) **What are the use restrictions due to wind conditions for Columbia County?**

The use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited in Area 2 and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such application ~~((shall be))~~ is prohibited in Area 2 on and after May 1 through October 31 when the mean sustained wind velocity is over seven miles per hour: Provided further, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval shall be based on research data.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-500 (~~(Restricted use herbicides—Whitman County—Area under order.)~~) **What are restrictions for herbicide use in Whitman County?** (1) The area under order ~~((shall))~~ includes all lands lying within the boundaries of Whitman County. WAC 16-231-505 through 16-231-530 ~~((shall apply))~~ applies to the area under order.

(2) The distribution, use, and application of ~~((restricted))~~ use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to ~~((restricted))~~ use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-505 (~~(Restricted)~~) **What are use restricted herbicides(—) in Whitman County(=)?** All formulations of ~~((Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides ~~((including))~~ (e.g., 2,4-D ~~((and)), 2,4-DB, 2,4-DP (dichlorprop), MCPA ((are declared~~

~~to be restricted use herbicides in the area under order as listed in WAC 16-231-500)), MCPB, MCPP (mecoprop)) and dicamba except as listed below:~~

~~(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less:~~

~~(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.~~

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-510 (~~(Restricted use herbicides—)~~) **What are the boundaries and restrictions for Whitman County—Area 1(=)?** (1) Area 1 description. (Cities and/or towns and Pullman vicinity.) The areas within a distance of one mile of the city limits of any incorporated city or town and the same distance from the center of any unincorporated town comprised of ten or more inhabited, closely grouped residences within Whitman County: Provided, That the area under this section shall also include all of the lands in Section 28 through 33, T15N, R45E; Sections 25, 26, 27, 34, 35, and 36, T15N, R44E; Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, and 21, T14N, R45E; Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24, T14N, R44E.

(2) Area 1 restrictions.

(a) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited throughout the year: Provided, That the low volatile formulation of MCPA ~~((shall be))~~ is allowed on and after November 1 through April 15 of each year.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.

(c) On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1672, filed 2/20/80)

WAC 16-231-515 **What are the boundaries and restrictions for Whitman County Area 3(=)?** (1) Area 3 description. (Eastern portion of Whitman County.) An area east of a north-south line starting at the Whitman-Spokane County line and State Highway 195; thence southerly along Highway 195 to Colfax; thence southerly along County Roads No. 478 and No. 141 to the junction of County Roads No. 141 and No. 451; thence southerly on County Road No. 451 to County Road No. 143; thence southerly along County Road No. 143 to Almota and the Snake River.

(2) Area 3 restrictions.

(a) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(b) On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be

made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1672, filed 2/20/80)

WAC 16-231-520 What are the boundaries and restrictions for Whitman County Area 4((:))? (1) Area 4 description. (Outlying area west of Area 3.) All remaining lands in Whitman County west of Area 3.

(2) Area 4 restrictions.

(a) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(b) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-525 ~~((Restricted))~~ What are the notification requirements of farm operators for use restricted herbicides((—)) in Whitman County((—Farm operator to notify-))? The landowner or person in charge of farming operations shall notify the aerial applicator he/she hires of any susceptible crops planted or to be planted bordering the field to which ~~((restricted))~~ use restricted herbicides are to be applied in the area under order.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-530 ~~((Restricted use herbicides—Whitman County—Wind restrictions.))~~ What are restrictions due to wind conditions? (1) Areas 1 and 3.

(a) On and after April 15 through October 31, the use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited when the mean sustained wind velocity is over seven miles per hour.

(b) On and after November 1 through April 14 the following year, the use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited when the mean sustained wind velocity is over twelve miles per hour.

(2) Area 4. The use or application of ~~((restricted))~~ use restricted herbicides is prohibited when the mean sustained wind velocity is over twelve miles per hour: Provided, That ground applications of ~~((restricted))~~ use restricted herbicides are allowed when using No. 2RD or No. 2RA Raindrop nozzles when the mean sustained wind velocity is fifteen miles per hour or less and allowed by the label.

(3) All areas. Applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-600 ~~((Restricted use herbicides—))~~ What are restrictions for herbicide use in Klickitat County((—Area under order-))? (1) The area under order ~~((shall))~~ includes all lands lying within the boundaries of Klickitat County. WAC 16-231-605 through 16-231-620 ~~((shall apply))~~ applies to the area under order.

(2) The distribution, use, and application of ~~((restricted))~~ use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to ~~((restricted))~~ use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-605 ~~((Restricted))~~ What are use restricted herbicides((—)) in Klickitat County((:))? All formulations of ~~((Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides ~~((including))~~ (e.g., 2,4-D ((and)), 2,4-DB, 2,4-DP (dichlorprop), MCPA ((are declared to be restricted use herbicides in the area under order as listed in WAC 16-231-600)), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-610 ~~((Restricted use herbicides—Klickitat County—))~~ When are oil-type carriers((:)) prohibited in Klickitat County? On and after May 1 through September 30, oil-type carriers are prohibited in the area under order for brush control: Provided, That oil-type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending Order 1849, filed 3/15/85)

WAC 16-231-613 What are the boundaries and restrictions for Area 2((:))? (1) Area 2 description. (South-east corner of Klickitat County.) Sections 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36, Township 5 north, Range 23 east; Sections 21, 22, south half of Section 23, Sections 26, 27, 28, 33, 34, west half of Section 35, Township 5 north, Range 22 east; Sections 1, 2, 11, 12, Township 4 north, Range 23 east.

(2) Area 2 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited on and after April 15 through October 31: Provided, That upon written request to the Washington state department of agriculture, a permit may be issued for purposes of critical weed control.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.

(c) On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using danger area restrictions (see WAC 16-230-675): Provided, That aircraft applications shall be prohibited within one mile of commercial vineyards and within one-half mile of other susceptible crops: Provided further, That upon written request to the Washington state department of agriculture, aircraft applications from one-half mile to one mile of commercial vineyards and within one-half mile of other susceptible crops by permit shall be considered for purposes of critical weed control. On and after November 1 through April 14 of the following year, aircraft applications shall be made using caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-615 ~~((Restricted use herbicides—Klickitat County—))~~ What are the boundaries and restrictions for Area 3(±) in Klickitat County? (1) Area 3 description. All remaining lands within the boundaries of Klickitat County not included in WAC 16-231-613.

(2) Area 3 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited on and after May 1 through September 30 of each year: Provided, That on and after May 1 through May 14 of each year, low volatile formulations shall be considered through written request to the department of agriculture.

(b) On and after May 1 through September 30, ground applications of ~~((restricted))~~ use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after May 1 through September 30, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-620 ~~((Restricted use herbicides—Klickitat County—))~~ What are restrictions due to wind conditions(±)? The use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited in the area under order when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-700 ~~((Restricted use herbicides—))~~ What are restrictions for herbicide use in Okanogan County(~~(—Area under order.))~~? (1) The area under order ~~((shall))~~ includes all lands lying within the boundaries of Okanogan County. WAC 16-231-705 through 16-231-725 ~~((shall apply))~~ applies to the area under order.

(2) The distribution, use, and application of ~~((restricted))~~ use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to ~~((restricted))~~ use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-705 ~~((Restricted))~~ What are use restricted herbicides(—) in Okanogan County(±)? All formulations of ~~((Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides ~~((including))~~ (e.g., 2,4-D ((and), 2,4-DB, 2,4-DP (dichlorprop), MCPA ((are declared to be restricted use herbicides in the area under order as listed in WAC 16-231-700)), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 1666, filed 2/20/80)

WAC 16-231-710 What are the boundaries and restrictions for Okanogan County Area 1(±)? (1) Area 1 description. (Okanogan County) An area starting at the intersection of the east boundary line of Section 24, T29N, R25E, and the Columbia River; thence north 19 miles more or less to the southwest corner of Section 7, T32N, R26E; thence east three miles to the southeast corner of Section 9; thence north two miles to the northeast corner of Section 4; thence east three miles more or less to the southeast corner of Section 36, T33N, R26E; thence north four miles to the southwest corner of Section 7, T33N, R27E; thence east two miles to the southeast corner of Section 8; thence north six miles to the northeast corner of Section 17, T34N, R27E; thence west eight miles to the northwest corner of Section 18, T34N, R26N; thence south four miles to the southwest corner of Section 31; thence west three miles to the northwest corner of Section 3, T33N, R25E; thence south four miles to the southwest corner of Section 22, T33N, R25E; thence west three miles to the northwest corner of Section 30; thence south two miles to the southwest corner of Section 31; thence west two miles to the northwest corner of Section 2, T32N, R24E; thence south ten miles to the southwest corner of Section 23, T31N, R24E; thence west four miles to the northwest corner of Section 30; thence south seven miles more or less to the

north bank of the Columbia River; thence easterly along the north bank of the Columbia River to the point of beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited on and after April 15 through October 31 of each year.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made with nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after April 15 through October 31, aerial applications of ~~((restricted))~~ use restricted herbicides shall be made using caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-715 ~~((Restricted use herbicides))~~ What are the boundaries and restrictions for Okanogan County~~((--))~~Area 4~~((--))~~? (1) Area 4 description. This area includes all remaining lands in Okanogan County not included in WAC 16-231-710.

(2) Area 4 restrictions. On and after May 1 through October 31, aerial applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-720 ~~((Restricted use herbicides—Okanogan County—Wind conditions))~~ What are the restrictions due to wind conditions? The use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited in the area under order when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending Order 1666, filed 2/20/80)

WAC 16-231-725 What are the restrictions on mixing or loading aircraft~~((--))~~? The loading and/or mixing of ~~((restricted))~~ use restricted herbicides is restricted to those formulations which may be applied in the area in which the airstrip is located.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-800 ~~((Restricted use herbicides))~~ What are restrictions for herbicide use in Douglas and Chelan counties~~((--Area under order--))~~? (1) The area under order ~~((shall))~~ includes all lands lying within the boundaries of Douglas and Chelan counties. WAC 16-231-

805 through 16-231-840 ~~((shall apply))~~ applies to the area under order.

(2) The distribution, use, and application of ~~((restricted))~~ use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to ~~((restricted))~~ use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-805 ~~((Restricted))~~ What are use restricted herbicides~~((--))~~ in Douglas and Chelan counties~~((--))~~? All formulations of ~~((Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides, ~~((including))~~ (e.g., 2,4-D ~~((and))~~, 2,4-DB, 2,4-DP (dichlorprop), MCPA ~~((are declared to be restricted use herbicides in the area under order as listed in WAC 16-231-800))~~, MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 1667, filed 2/20/80)

WAC 16-231-810 What are the boundaries and restrictions for Area 1~~((--))~~? (1) Area 1 description - Chelan County. An area starting at the southeast corner of Section 32, T21N, R22E; thence west one mile to the southwest corner of Section 32; thence north five miles more or less to the right of way of the Malaga Road; thence along and including the Malaga Road right of way to the city limits of Wenatchee; thence east to the Columbia River, and along the west bank of the Columbia River to the point of beginning.

(2) Area 1 description - Douglas County. An area on the east bank of the Columbia River, beginning at the southwest corner of Section 33, T21N, R22E; thence east one mile to the southeast corner of Section 33; thence north one mile to the southwest corner of Section 27; thence east one mile to the southeast corner of Section 27; thence north one mile to the southwest corner of Section 23, thence east one mile to the southeast corner of Section 23; thence north one mile to the northeast corner of Section 23; thence west one mile to the northwest corner of Section 23; thence north one mile to the northeast corner of Section 15; thence west one mile to the northwest corner of Section 15; thence north two miles to the northeast corner of Section 4; thence west one mile more or less to and including the right of way of State Road 28; thence northwest along the highway right of way to the east section line of Section 25, T22N, R21E; thence north five miles more or less to the northeast corner of Section 1, T22N, R21E; thence west eight miles more or less to the east bank of the Columbia River; thence southeasterly along the east bank of the Columbia River to the point of beginning.

(3) Area 1 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 15 through October 31.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.

(c) On and after April 15 through October 31, aerial applications of ~~((restricted))~~ use restricted herbicides shall be made using the danger area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1667, filed 2/20/80)

WAC 16-231-815 What are the boundaries and restrictions for Area 2((+))? (1) Area 2 description. (Buffer area — a protective area around Azwell, Manson, and the mouth of the Moses-Coulee.)

(a) Chelan County - those areas lying within a one mile radius from the center of the towns of Azwell and Manson. Sections 13, 14, 15 and 16, T28N, R21E.

(b) Douglas County - (Moses-Coulee and Bridgeport area.) Section 1, 2, 3, 10, 11, 12, 13, 14, 24, 25, 26, 34, 35, and 36, N21N, R22E, and Sections 1, 2, 3, 4, 9, 10, 11, 12 and those portions of Sections 13, 14, 15 and 16, T20N, R22E.

(2) Area 2 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after May 1 through October 31.

(b) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.

(c) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1667, filed 2/20/80)

WAC 16-231-820 What are the boundaries and restrictions for Area 3((+))? (1) Area 3 description. (Buffer area between Rock Island and Palisades.) An area starting at the northwest corner of Section 6, T22N, R22E; thence east along the township line twelve miles to the Douglas-Grant county line; thence southwesterly along the county line to the east boundary line of Area 2; thence north and west along the Area 2 boundary line to the Area 1 boundary line; thence northerly along the Area 1 boundary line to the point of beginning.

(2) Area 3 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after May 1 through October 31.

(b) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-825 ~~((Restricted-use herbicides—Douglas and Chelan counties—))~~ What are the boundaries and restrictions for Area 4((+))? (1) Area 4 description. All remaining lands in Douglas County not included in WAC 16-231-810, 16-231-815 and 16-231-820.

(2) Area 4 restrictions. On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1667, filed 2/20/80)

WAC 16-231-830 What are the restrictions on mixing and loading aircraft((+))? The loading and/or mixing of ~~((restricted))~~ use restricted herbicides is restricted to those formulations which may be applied in the area in which the airstrip is located.

AMENDATORY SECTION (Amending Order 1667, filed 2/20/80)

WAC 16-231-835 What are restrictions for aerial applications near vineyards((+))? Aerial application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited within one mile of any commercial vineyard in the area under order: Provided, That aerial application of ~~((restricted))~~ use restricted herbicides to lands located within one-half mile to one mile from commercial vineyards ~~((shall))~~ will be considered through written request to the Washington state department of agriculture.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-840 ~~((Restricted-use herbicides—Douglas and Chelan counties—))~~ What are restrictions due to wind conditions((+))? The use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited in Areas 2, 3 and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year and in Area 1 when the mean sustained wind velocity is over twelve miles per hour on and after November 1 through April 15 of the following year, and over seven miles per hour from April 16 through October 31: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-900 (~~(Restricted use herbicides— Grant County Area under order.)~~) **What are restrictions for herbicide use in Grant County?** (1) The area under order (~~shall~~) includes all lands lying within the boundaries of Grant County. WAC 16-231-905 through 16-231-935 (~~shall apply~~) applies to the area under order.

(2) The distribution, use, and application of (~~restricted~~) use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to (~~restricted~~) use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-905 (~~(Restricted)~~) **What are use restricted herbicides(—) in Grant County(—)?** All formulations of (~~Dicamba (Banvel) and all formulations of~~) phenoxy hormone-type herbicides (~~including~~) (e.g., 2,4-D (~~and~~), 2,4-DB, 2,4-DP (dichlorprop), MCPA (~~are declared to be restricted use herbicides in the area under order as listed in WAC 16-231-900~~), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 1950, filed 9/1/87)

WAC 16-231-910 (~~(Restricted use herbicides—)~~) **What are the boundaries and restrictions for Grant County(—)Area 1(—)?** (1) Area 1 description. (Lands generally within the Columbia Basin irrigation project.) An area starting at the southwest corner of Section 21, T14N, R27E; thence east along the county line four miles more or less to the southeast corner of Section 24, T14N, R27E; thence north along the county line sixteen miles to the southwest corner of Section 31, T17N, R28E; thence east along the county line thirteen miles more or less to the East Low Canal; thence northerly and easterly along the East Low Canal to the Adams County line; thence north along the Grant-Adams County lines six miles more or less to the East Low Canal; thence northwesterly along the East Low Canal to the southeast boundary of Block 70; thence easterly, northerly, and westerly, encompassing Block 70, Soap Lake and Block 701, to the West Main Canal; thence southwesterly along the West Main Canal to the north boundary line of Unit 1, Block 73; thence westerly along the northern boundary line of Block 73 to the northwest corner of Unit 278; then due west to the Willow Springs Draw; thence down Willow Springs Draw to the Columbia River; thence southerly along the Columbia River to the south boundary line of Section 11, T15N, R23E; thence east along the crest of the Saddle Mountains approximately eighteen miles to the northwest boundary of the atomic

energy reservation; thence southwesterly along the atomic energy reservation boundary to Highway 24; thence south and west along Highway 24 to Vernita Bridge; thence easterly along the Columbia River to the point of beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile formulations of (~~restricted~~) use restricted herbicides is prohibited on and after April 15 through October 31: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1 through April 30 of the following year.

(b) On and after April 15 through October 31, ground applications of (~~restricted~~) use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of (~~restricted~~) use restricted herbicides on asparagus shall be made using nozzles having minimum nozzle orifice diameter of 0.072 inches.

(c) On and after November 1 through April 14 of the following year, aircraft applications of (~~restricted~~) use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

(d) On and after April 15 through October 31, aircraft applications of (~~restricted~~) use restricted herbicides shall be made using the danger area restrictions (see WAC 16-230-675).

(e) On and after April 15 through October 31, aircraft applications of (~~restricted~~) use restricted herbicides (~~shall be~~) are prohibited within one mile of any commercial vineyard: Provided, That on and after April 15 through October 31, written requests to apply MCPA to peas and corn located one-half to one mile from commercial vineyards will be considered: Provided further, That on and after April 15 through April 30 written request to apply 2,4-DB on alfalfa and red clover seed crops located one-half to one mile from commercial vineyards will be considered.

AMENDATORY SECTION (Amending Order 1965, filed 2/12/88)

WAC 16-231-912 (~~(Restricted use herbicides—)~~) **What are the boundaries and restrictions for Grant County(—)Area 1A(—)?** (1) Area 1A description. Lands generally in the Mattawa area in the southwestern part of the county starting at the west end of the crest of Saddle Mountain at the Columbia River, south boundary line of Section 11, T15N, R23E; thence east along the crest of the Saddle Mountains approximately eighteen miles to the northwest boundary of the atomic energy reservation; thence southwesterly along the atomic energy reservation boundary to Highway 24; thence following Highway 24 to the Vernita Bridge at the Columbia River; thence northwesterly along the Columbia River to the point of beginning.

(2) Area 1A restrictions.

(a) The use or application of low volatile formulations of (~~restricted~~) use restricted herbicides is prohibited on and after April 5 through October 31: Provided, That low volatile ester formulations of 2,4-DB may be applied to alfalfa and red clover seed crops on and after November 1 through April 30 of the following year.

(b) On and after April 5 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.052 inches: Provided, That applications of ~~((restricted))~~ use restricted herbicides on asparagus shall be made using nozzles having a minimum nozzle orifice diameter of 0.072 inches.

(c) On and after November 1 through April 4 of the following year, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675.)

(d) On and after April 5 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited except by written permit issued by the Washington state department of agriculture.

AMENDATORY SECTION (Amending Order 1670, filed 2/20/80)

WAC 16-231-915 What are the boundaries and restrictions for Grant County Area 2((-))? (1) Area 2 description. (Buffer area.) An area lying north and east of Area 1 starting at the junction of the Grant-Douglas County line and the Columbia River near Trinidad; thence north and easterly along the county line to the southwest corner of Section 35, T23N, R26E; thence east along section lines twelve miles to Grant County Road J/NW; thence south one mile along Grant County Road J/NW to the Burlington Northern Railroad tracks; thence east fourteen miles more or less to the Grant-Lincoln County line; thence south twenty-five miles more or less along the Grant-Lincoln and Grant-Adams County line to the northern boundary line of Area 1 (East Low Canal); thence northerly and westerly along the northern boundary line of Area 1 to the point of beginning; and also an area near Warden starting at the East Low Canal near the southeast corner of Section 13, T17N, R30E; thence westerly and southerly along the East Low Canal to the Grant-Adams County line near the corner of Section 32, T17N, R30E; thence east five miles and north three miles along the Grant-Adams County line to the point of beginning.

(2) Area 2 restrictions.

(a) On and after May 1 through October 31, the use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited.

(b) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches.

(c) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the warning area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1670, filed 2/20/80)

WAC 16-231-920 What are the boundaries and restrictions for Grant County Area 3((-))? (1) Area 3 description. (Outlying area.) An area starting at the intersection of the Burlington Northern Railroad tracks near the northeast corner of Section 13, T22N, R30E; thence north

nineteen miles more or less along the Grant County line to Highway 2; thence westerly along Highway 2 to the Douglas County line; thence southwesterly along the Douglas County line to the southwest corner of Section 35, T23N, R26E; thence east along section lines twelve miles to Grant County Road J/NW; thence south one mile along Grant County Road J/NW to the Burlington Northern Railroad tracks near Stratford; thence easterly along the Burlington Northern Railroad tracks fourteen miles more or less to the point of beginning.

(2) Area 3 restrictions.

(a) On and after May 16 through October 31, the use and application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited.

(b) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1670, filed 2/20/80)

WAC 16-231-925 What are the boundaries and restrictions for Grant County Area 4((-))? (1) Area 4 description. All remaining lands in Grant County lying north of Highway 2.

(2) Area 4 restrictions. On and after May 16 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1670, filed 2/20/80)

WAC 16-231-930 What are the restrictions on ((air-strips-)) mixing and loading aircraft? The loading and/or mixing of ~~((restricted))~~ use restricted herbicides is restricted to those formulations which may be applied in the area in which the airstrip is located.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-231-935 ~~((Restricted use herbicides— Grant County—)) What are restrictions due to wind conditions((-)?~~ The use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited in Areas 2, 3, and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year and in Area 1 and 1A when the mean sustained wind velocity is over twelve miles per hour on and after November 1 through March 31 of the following year, and over ten miles per hour from April 1 through October 31: Provided, That applications of allowable ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from these wind restrictions when applying fifty gallons or more per acre: Provided further, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when an

approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-001 ~~((Restricted use herbicides—))~~ What are restrictions for pesticide use in Walla Walla County~~((—Area under order.))~~? (1) The area under order ~~((shall))~~ includes all lands lying within the boundaries of Walla Walla County. WAC 16-232-005 through 16-232-077 ~~((shall apply))~~ applies to the area under order.

(2) The distribution, use, and application of ~~((restricted))~~ use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to ~~((restricted))~~ the use of use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-005 ~~((Restricted))~~ What are use restricted herbicides~~((:))~~ in Walla Walla County? All formulations of ~~((Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides, ~~((including))~~ (e.g., 2,4-D, ~~((2,4,5-T and))~~ 2,4-DB, 2,4-DP (dichlorprop), MCPA ~~((in areas 1, 2, 2A, 3, and 3A are by this order declared to be restricted use herbicides)),~~ MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-007 ~~((Application of pesticides in))~~ What are restricted use pesticides in certain areas of Walla Walla County~~((—Restricted use pesticides.))~~? The following pesticides are declared to be ~~((restricted))~~ use restricted pesticides in areas 2B, 4, and 6:

(1) ~~((Restricted))~~ Use restricted herbicides*:

(a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort);

(b) Desiccants and defoliant (such as Paraquat, Diquat, Endothall);

(c) Glyphosate (such as Roundup, Landmaster);

(d) Phenoxy hormone-type herbicides (such as 2,4-D, MCPA);

(e) Dicamba (such as Banvel);

(f) Bromoxynil ~~((such as Brominal, Buetril, Bronate))~~ except that the cutoff dates of April 5, April 15 and May 15 do not apply.

*This is to be used only as a guide and may not include all brand or trade names under which these chemicals are distributed.

(2) ~~((Restricted use insecticides:))~~ All aerial applications of Category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-010 ~~((Restricted))~~ What are the boundaries and restrictions on use restricted herbicides—Walla Walla County—Area 1~~((:))~~? (1) Area 1 description. (Columbia River Buffer area.) An area starting at the intersection of the common boundary line between Sections 14 and 15, T6N, R32E and the Washington-Oregon state line; thence north along the section lines ten miles more or less to the southeast corner of Section 22, T8N, R32E; thence east along the section lines two miles to the southeast corner of Section 24, T8N, R32E; thence north along the section lines five miles more or less to the intersection with the Northern Pacific Railroad; thence northeasterly seven miles more or less along the railroad, including the right of way, to the intersection with State Route 124 and C.M. Rice Road at the northeast corner of Section 2, T9N, R33E; thence northerly along C.M. Rice Road, including the right of way, to the Snake River; thence southwesterly along the Snake River to a point near the east section line of Section 23 T9N, R31E; thence south approximately twelve miles to the Walla Walla River; thence west along the Walla Walla River until its intersection with the Columbia River and the Walla Walla-Benton County line; thence southwesterly along the Columbia River approximately three and one-half miles to the intersection of the Washington-Oregon state line; thence east along the Washington-Oregon state line to the point of beginning.

(2) Area 1 restrictions.

(a) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 5 through October 31.

(b) On and after April 5 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of .052 inches or a LP8002 or equivalent nozzle.

(c) On and after April 5 through October 31, aerial applications ~~((shall be))~~ of use restricted herbicides are prohibited except by written permit issued by the department.

AMENDATORY SECTION (Amending Order 1989, filed 10/19/88)

WAC 16-232-015 ~~((Restricted))~~ What are the boundaries and restrictions on use restricted herbicides—Walla Walla County—Area 2~~((:))~~? (1) Area 2 description. (Walla Walla and vicinity, Dixie, Waitsburg, and Prescott areas.) Those areas lying within a one mile radius from the center of the town of Dixie and within one mile of the city limits of the towns of Waitsburg and Prescott and an area starting at the intersection of the common boundary line between Sections 15 and 16, T6N, R36E and the Washington-Oregon state line; thence north along the section line one mile more or less to the southwest corner of Section 3, T6N, R36E; thence east along the section lines two miles to the southeast corner of Section 2, T6N, R36E; thence north along the section lines three miles to the southwest corner of Section 24, T7N,

R36E; thence east along the section line one mile to the southeast corner of Section 24, T7N, R36E; thence north along the section line one mile to the southwest corner of Section 18, T7N, R37E; thence east along the section line one mile to the southeast corner of Section 18, T7N, R37E; thence north along the section line one mile to the northeast corner of Section 18, T7N, R37E; thence west along the section lines nine miles to the northwest corner of Section 14, T7N, R35E; thence south along the section line one mile to the northeast corner of Section 22, T7N, R35E; thence west along the section line one mile to the northwest corner of Section 22, T7N, R35E; thence south along the section lines one mile more or less to State Route 12; thence westerly along State Route 12, including the right of way, three miles more or less to the intersection with Detour Road; thence southwesterly along Detour Road, including the right of way, one-half mile more or less to the intersection with Forest Road; thence south along Forest Road, including the right of way, one mile more or less to the intersection with Frog Hollow Road at the southwest corner of Section 6, T6N, R35E; thence east along Frog Hollow Road, including the right of way, one mile more or less to the intersection with Locher Road; thence south along Locher Road, including the right of way, one mile more or less to the Washington-Oregon state line; thence east along the state line eight miles more or less to the point of beginning.

(2) Area 2 restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 15 through October 31.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after November 1 through April 14 of the following year, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675). Aircraft applications shall be prohibited on and after April 15 through October 31: Provided, That:

(i) The aerial application of MCPA shall be allowed using warning area restrictions (see WAC 16-230-675).

(ii) Aerial applications of nonvolatile formulations of ~~((restricted))~~ use restricted herbicides from one-half to one mile of the center of the town of Dixie and from the city limits of Waitsburg, Prescott and Walla Walla shall be considered through written request to the Washington state department of agriculture.

(iii) Those portions of the city of Walla Walla which fall within Sections 13, 14, 22, 23 and 24, T7N, R35E of Walla Walla County ~~((shall))~~ are not ~~((be))~~ considered as part of the city limits of Walla Walla for purposes of issuing permits by the department for aerial application of nonvolatile formulations of restricted use pesticides.

(d) Restrictions on the use of airstrips. The loading and/or mixing of ~~((restricted))~~ use restricted herbicides is prohibited on any airstrip, airfield or any location within Area 2: Provided, That the municipal airport located northeast of Walla Walla shall not be subject to this provision.

AMENDATORY SECTION (Amending Order 1965, filed 2/12/88)

WAC 16-232-020 ((Restricted)) What are the boundaries and restrictions on use restricted herbicides—Walla Walla County—Area 2A(±)2 (1) Area 2A description. (Buffer area surrounding Dixie and Walla Walla.) An area, excluding a one mile radius from the center of the town of Dixie, starting at the intersection of the common boundary line between Sections 14 and 15, T6N, R32E and the Washington-Oregon state line; thence north along the section lines six miles more or less to the northwest corner of Section 14, T7N, R32E; thence east along the section lines ten miles to the southwest corner of Section 9, T7N, R34E; thence north along the section line one mile to the northwest corner of Section 9, T7N, R34E; thence east along the section lines two miles to the southwest corner of Section 2, T7N, R34E; thence north along the section line one mile to the northwest corner of Section 2, T7N, R34E; thence east along the section lines two miles to the southwest corner of Section 31, T8N, R35E; thence north along the section lines six miles to the northwest corner of Section 6, T8N, R35E; thence east along the section lines and the Columbia-Walla Walla County line twenty-four miles to the northeast corner of Section 1, T8N, R38E; thence south along the Columbia-Walla Walla County line fourteen miles more or less to the Washington-Oregon state line; thence west along the state line fifteen miles to the common boundary line between Sections 15 and 16, T6N, R36E; thence north along the section line one mile more or less to the northwest corner of Section 10, T6N, R38E; thence east along the section lines two miles to the southwest corner of Section 1, T6N, R36E; thence north along the section lines three miles to the northwest corner of Section 25, T7N, R36E; thence east along the section line one mile to the southwest corner of Section 19, T7N, R37E; thence north along the section line one mile to the northwest corner of Section 19, T7N, R37E; thence east along the section line one mile to the northeast corner of Section 19, T7N, R37E; thence north along the section line one mile to the southwest corner of Section 8, T7N, R37E; thence west along the section lines nine miles to the northeast corner of Section 15, T7N, R35E; thence south along the section line one mile to the southeast corner of Section 15, T7N, R35E; thence west along the section line one mile to the southwest corner of Section 15, T7N, R35E; thence south along the section lines one mile more or less to State Route 12; thence westerly along State Route 12, excluding the right of way, three miles more or less to the intersection with Detour Road; thence southwesterly along Detour Road, excluding the right of way, one-half mile more or less to the intersection with Forest Road; thence south along Forest Road, excluding the right of way, one mile more or less to the intersection with Frog Hollow Road at the southwest corner of Section 6, T6N, R35E; thence east along Frog Hollow Road, excluding the right of way, one mile more or less to the intersection with Locher Road; thence south along Locher Road, excluding the right of way, one mile more or less to the Washington-Oregon state line; thence west along the state line fifteen miles more or less to the point of beginning.

(2) Area 2A restrictions.

(a) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 15 through October 31: Provided, That 2,4-DB ~~((shall be))~~ is allowed on alfalfa seed crops at any time.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1965, filed 2/12/88)

WAC 16-232-025 ~~((Restricted))~~ What are the boundaries and restrictions on use restricted herbicides—Walla Walla County—Area 3((:))? (1) Area 3 description. All of the remaining lands within the border of Walla Walla County.

(2) Area 3 restrictions.

(a) The use and application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited on and after May 15 through October 31.

(b) On and after May 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after May 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1965, filed 2/12/88)

WAC 16-232-027 ~~((Restricted))~~ What are the boundaries and restrictions on use restricted herbicides—Walla Walla County—Area 3A((:))? (1) Area 3A description. An area beginning at the southwest corner of Section 11, T7N, R32E; thence east along the section lines six miles more or less to the intersection with the Touchet North Road at the southeast corner of Section 10, T7N, R33E; thence northerly along the Touchet North Road, including the right of way, to the intersection with State Route 124; thence west one-half mile more or less along State Route 124, excluding the right of way, to the intersection with the Northern Pacific Railroad at the northwest corner of Section 1, T9N, R33E; thence southwesterly seven miles more or less along the railroad, excluding the right of way, to the intersection with the common boundary line between Section 25, T9N, R32E and Section 30, T9N, R33E; thence south along the section lines five miles more or less to the northeast corner of Section 25, T8N, R32E; thence west along the section lines two miles to the northwest corner of Section 26, T8N, R32E; thence south along the section lines four miles to the point of beginning.

(2) Area 3A restrictions.

(a) The use and application of low volatile formulations of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited on and after April 15 through October 31.

(b) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 1665, filed 2/20/80)

WAC 16-232-030 What are the restrictions on aerial applications near vineyards((:))? Aerial applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited within one mile of any commercial vineyard: Provided, That aerial application of ~~((restricted))~~ use restricted herbicides to lands located within one-half to one mile from commercial vineyards ~~((shall))~~ will be considered through written request of the Washington state department of agriculture.

AMENDATORY SECTION (Amending Order 1973, filed 4/12/88)

WAC 16-232-035 ~~((Restricted))~~ What are the restrictions on use restricted herbicides((—)) in Walla Walla County((—)) due to wind conditions((:))? The use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ is prohibited in Areas 1, 2, 2A, 3, and 3A when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such applications ~~((shall be))~~ are prohibited in Areas 1 and 2 on and after April 1 through October 31 when the mean sustained wind velocity is over seven miles per hour: Provided further, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when allowed by the label and when an approved hooded boom sprayer is used. Hooded boom sprayers shall be approved by the department of agriculture. The department ~~((shall))~~ will consider the recommendations of the pesticide advisory board 2,4-D ad hoc committee in determining the criteria of what constitutes an approved hooded boom sprayer. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-041 ~~((Restricted))~~ What are the boundaries and restrictions on use restricted herbicides—Walla Walla County—Area 2B((:))? (1) Area 2B description. An area including all lands lying within a boundary line beginning at the intersection of the Union Pacific Railroad and U.S. Highway 12 in Section 10, T7N, R31E; thence southerly along Highway 12 approximately three miles until its intersection with the Walla Walla River; thence west along the Walla Walla River until its intersection with the Columbia River and the Walla Walla-Benton County line; thence northwesterly along the Columbia River approximately ten miles

until its intersection with the Snake River; thence northeasterly along the Snake River until its intersection with Highway 12 in Section 35, T9N, R30E; thence southeasterly along Highway 12 to the point of beginning.

(2) Area 2B restrictions.

(a) Application by air of ~~((restricted))~~ use restricted pesticides as defined in WAC 16-232-007 is prohibited.

(b) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions: Provided further, That ~~((persons licensed to perform))~~ applications of ~~((restricted))~~ use restricted herbicides on small experimental plots for research purposes ~~((shall be))~~ are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-044 ((Restricted)) What are the boundaries and restrictions on use restricted herbicides—Walla Walla County—Area 4((:))2 (1) Area 4 description. An area including all lands lying within a boundary line beginning at the intersection of the Snake River and the Bonneville Power Administration power line near the east section line of Section 25, T9N, R30E; thence southeasterly along the Bonneville Power Administration power line until its intersection with SR 124 in Section 32, T9N, R31E; thence approximately two and one-half miles along SR 124 to the east section line of Section 34, T9N, R31E; thence south approximately three miles along section lines to the southeast corner of Section 15, T8N, R31E; thence west approximately one-fourth mile along the section line to the Union Pacific Railroad; thence southerly approximately four and one-half miles along the railroad until its intersection with U.S. Highway 12 near the Boise Cascade paper mill; thence northwesterly along Highway 12 to the point of its intersection with the Snake River in Section 35, T9N, R30E; thence northeasterly along the Snake River to the point of beginning.

(2) Area 4 restrictions.

(a) Application by air of ~~((restricted))~~ use restricted pesticides as defined in WAC 16-232-007 may be made by written permit only.

(b) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides is prohibited: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, all applications of ~~((restricted))~~ use restricted herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset and sunrise restrictions: Provided further, That ~~((persons licensed to perform))~~ applications of the ~~((restricted))~~ use restricted herbicides on small experimental plots for research purposes ~~((shall be))~~ are exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-047 ((Restricted)) What are the boundaries and restrictions on use restricted herbicides—Walla Walla County—Area 6((:))2 (1) Area 6 description. An area including all lands lying within a boundary line beginning at the Snake River and the east section line of Section 23, T9N, R31E; thence south approximately twelve miles along section lines to the Walla Walla River; thence west along the Walla Walla River until its intersection with the Columbia River and the Walla Walla-Benton County line; thence northwesterly along the Columbia River approximately two miles to the southern section line of Section 8, T7N, R31E; thence east approximately two miles along the section line until its intersection with U.S. Highway 12 in Section 10, T7N, R31E; thence northwesterly along U.S. Highway 12, approximately three-quarters of a mile until its intersection with the Union Pacific Railroad; thence northerly approximately four miles along the railroad until its intersection with the southern section line in Section 15, T8N, R31E; thence east approximately one-quarter mile along the section line to the southeast corner of Section 15, T8N, R31E; thence north approximately three miles until its intersection with SR 124; thence west along SR 124 approximately two and one-half miles until its intersection with the Bonneville Power Administration power line in Section 32, T9N, R31E; thence northwesterly along the power line until its intersection with the Snake River in Section 25, T9N, R30E; thence northeasterly along the Snake River to the point of beginning.

(2) Area 6 restrictions.

(a) The use or application of low volatile ester formulations of ~~((restricted))~~ use restricted herbicides shall be prohibited on and after April 5 through October 31 of each year: Provided, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(b) On and after April 5 through October 31 of each year, all applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset to sunrise the following morning: Provided, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated

acre at twenty pounds of pressure or less at the nozzle: Provided further, That applications of granular and pellet formulations of the ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are exempt from the sunset restrictions: Provided further, That ~~((persons licensed to perform))~~ applications of ~~((restricted))~~ use restricted herbicides on small experimental plots for research purposes ~~((shall be))~~ are exempt from the sunset restrictions.

(c) On and after April 5 through October 31 of each year, aerial applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited daily from three hours prior to sunset until two hours after sunrise the following morning.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-050 ~~((Application of pesticides in Walla Walla County—Areas 2B, 4, and 6—))~~ When are oil-type carriers~~(s)~~ prohibited in Walla Walla County? On and after April 5 through October 31, oil-type carriers are prohibited for brush control in areas 2B, 4, and 6: Provided, That oil-type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-053 ~~((Application of pesticides))~~ Can Paraquat or Diquat be applied by air in Walla Walla County~~((—Areas 2B, 4, and 6— Paraquat and diquat.))?~~ Aerial application of Paraquat and Diquat is prohibited in areas 2B, 4, and 6.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-056 ~~((Application of pesticides))~~ Can sulfonylurea herbicides be applied in Walla Walla County~~((—Areas 2B, 4, and 6— Sulfonylurea herbicides.))?~~ Application of sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort) to fallow land or to land during the time between harvest and emergence above the furrows of the subsequent cereal grain crop is prohibited in areas 2B, 4, and 6.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-059 ~~((Application of pesticides in Walla Walla County—Areas 2B, 4, and 6—))~~ What are the conditions applying to permits~~(s)~~ in Walla Walla County? The following conditions will apply to all permits issued in areas 2B, 4, and 6.

(1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 21 N. 1st Avenue Suite 236 Yakima, Washington 98902. Applications may also be taken in person or by facsimile. Permits will not be granted by telephone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any

time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit ~~((shall))~~ will be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-062 ~~((Application of pesticides in Walla Walla County—Areas 2B, 4, and 6—Emergency clause.))~~ Can use restricted pesticides be applied in an emergency? In the event of an emergency, as declared by the director, the department may issue permits for the use of ~~((restricted))~~ use restricted pesticides in variation of any restrictions contained in areas 2B, 4, and 6. An emergency under this section may be declared if the director determines that the risk and amount of economic harm to any agriculture crop substantially outweighs the risk and amount of damage likely to occur if a variance permit is issued.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-065 ~~((Application of pesticides))~~ What are the restrictions on applications in Walla Walla County~~((—Areas 2B, 4, and 6—Wind conditions.))~~ due to wind? The use or application of all herbicides and class 1 and 2 insecticides are prohibited in areas 2B, 4, and 6 when the mean sustained wind velocity is over ten miles per hour throughout the year: Provided, That applications ~~((shall be))~~ are allowed in higher velocity winds when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department prior to application. Approval shall be based on research data: Provided further, That applications of granular and pellet formulations of ~~((restricted))~~ use restricted pesticides defined in WAC 16-232-007 as well as applications made to structures ~~((shall be))~~ are exempt from the wind restrictions.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-068 Application of pesticides in Walla Walla County—Areas 2B, 4, and 6—~~((Restricted))~~ Use restricted herbicides ground apparatus nozzle requirements. Ground applications of restricted use herbicides in areas 2B, 4, and 6 shall be made, throughout the year, using nozzles having a single orifice and minimum diameter of .052 inches or a LP 8002 nozzle. Pressure shall not exceed twenty-five pounds per square inch at the nozzle for .052 and other orifice openings and pressure shall not exceed fifteen pounds per square inch at the nozzle for LP 8002 or equivalent nozzle. Pressure up to fifty pounds per square inch at the nozzle may be used for equipment with handguns and up to ninety pounds per square inch at the nozzle manifold for an

inert system: Provided, That the department may issue a permit for other nozzles and pressure combinations that are equal or better. Prior to issuing such permits, the request shall be reviewed by a scientific committee established by the director: Provided further, That when Glyphosate is the only restricted use herbicide being used during an application for weed control in reduced tillage cropping any nozzles may be used that delivers at a minimum ten gallons of water carrier or greater per treated acre at a pressure not exceeding twenty-five pounds per square inch at the nozzle: Provided further, That Glyphosate applications using a .052 nozzle at twenty-five pounds of pressure or less at the nozzle, and a LP 8002 nozzle at fifteen pounds of pressure or less at the nozzle shall be exempt from the ten-gallon minimum volume: Provided further, That pressurized handsized household devices used to apply restricted use herbicides, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such herbicide applications shall be exempt from nozzle requirements.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-071 Application of pesticides in Walla Walla County—Areas 2B, 4, and 6—(~~Restricted~~) Use restricted herbicides, aircraft boom length, pressure, and nozzle requirements. The aerial application of restricted use herbicides in areas 2B, 4, and 6 shall be made in accordance with the following requirements:

(1) The working boom length on fixed wing aircraft shall not exceed three-fourths of the wing span and the working boom length on a helicopter shall not exceed six-sevenths of the total rotor length where the rotor length exceeds forty feet.

(2) Pressure for aerial equipment shall not exceed twenty-five psi at the nozzles.

(3) Nozzles for aircraft:

(a) Fixed wing:

(i) Minimum nozzle orifice of .075 inches (no core plate): Provided, That RD8 nozzles with orifice size of 0.125 inches and No. 46 core plates may be used. Nozzles shall be directed downward and backward one hundred seventy degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

(b) Helicopter:

(i) Minimum nozzle orifice of .063 inches (no core plate): Provided, That RD8 nozzles with orifice size of .125 inches and core plate No. 46 may be used. Nozzles shall be directed downward and backward ninety degrees or more from the direction of flight.

(ii) No flat fan nozzles (~~shall be~~) are allowed.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-074 (~~Application of pesticides~~) What are the restrictions on applications in Walla Walla County(~~—Areas 2B, 4, and 6—Restricted use herbicides—~~) due to temperature (~~conditions~~)? All phenoxy compounds and (~~Banvel~~) dicamba shall not be applied when the temperature is above eighty-five degrees F. or

above at the point of application: Provided, That application at the rate of fifty gallons or more per acre using nozzles having a minimum orifice diameter of .072 inches (~~shall be~~) is exempt from the eighty-five degrees F. temperature requirement: Provided further, That when using the invert system, applications may continue up to ninety-five degrees F. with a maximum wind velocity of fifteen miles per hour and with water carrier at twelve or more gallons per acre.

AMENDATORY SECTION (Amending WSR 00-24-002, filed 11/22/00, effective 12/23/00)

WAC 16-232-077 What are the restrictions on applications of pesticides in Walla Walla County(~~—Restricted use herbicide~~) due to weather conditions(~~(-)~~)? (~~Restricted~~) Use restricted herbicides shall not be applied throughout the year in the entire area under order when there is a temperature inversion present or weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops, and plantings through physical drift or volatilization: Provided, That applications of (~~restricted~~) use restricted herbicides shall be exempt from the inversion requirements when using one hundred gallons or greater of water carrier per treated acre while using no greater than fifteen pounds of pressure per square inch at the nozzle.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-100 (~~Restricted use herbicides~~) What are restrictions for herbicide use in Lincoln County(~~—Area under order~~)? (1) The area under order (~~shall~~) includes all lands lying within the boundaries of Lincoln County. WAC 16-232-105 through 16-232-120 (~~shall apply~~) applies to the area under order.

(2) The distribution, use, and application of (~~restricted~~) use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to (~~restricted~~) use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-105 (~~Restricted~~) What are use restricted herbicides(~~(—)~~) in Lincoln County(~~(-)~~)? All formulations of (~~Dicamba (Banvel) and all formulations of~~) phenoxy hormone-type herbicides (~~(including)~~) (e.g., 2,4-D (~~and~~), 2,4-DB, 2,4-DP (dichlorprop), MCPA (~~are declared to be restricted use herbicides in the area under order as listed in WAC 16-232-100~~), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-110 (~~(Restricted use herbicides—Lincoln County—Oil-type carriers.)~~) **When are oil-type carriers prohibited in Lincoln County?** On and after May 15 through October 31, oil-type carriers are prohibited in the area under order for brush control: Provided, That oil-type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending Order 1669, filed 2/20/80)

WAC 16-232-115 **What are the boundaries and restrictions for Area 3((s))?** (1) Area 3 description. (Southwestern Lincoln County.) Beginning at the Grant-Lincoln County line and state Highway 2; thence northeasterly two and one-half miles more or less along state Highway 2 to the Almira South Road; thence south seven miles more or less along the Almira South Road to the Monson Road; thence east six miles more or less along the Monson Road to state Highway 21; thence south twenty-seven miles more or less along state Highway 21 to the Lincoln-Adams County line; thence west thirteen and one-half miles more or less along the common boundary line between Lincoln and Adams counties to the Grant County line; thence north twenty-nine and one-half miles more or less along the common boundary line between Grant County and Lincoln County to the point of beginning.

(2) Area 3 restrictions.

(a) The use or application of low volatile formulations of (~~restricted~~) use restricted herbicides shall be prohibited on and after May 16 through October 31 of each year.

(b) On and after May 16 through October 31 of each year, ground applications of (~~restricted~~) use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after May 16 through October 31, aircraft applications of (~~restricted~~) use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-120 (~~(Restricted use herbicides—Lincoln County—Area 4.)~~) **What are the boundaries and restrictions for Area 4?** (1) Area 4 description. All remaining lands in Lincoln County not included in WAC 16-232-115.

(2) Area 4 restrictions. On and after May 16 through October 31, aircraft applications of (~~restricted~~) use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-200 (~~(Restricted)~~) **What are the restrictions for use restricted herbicides—Garfield County(—Area under order.)?** (1) The area under order (~~shall~~)

includes all lands lying within the boundaries of Garfield County. WAC 16-232-205 through 16-232-225 (~~shall apply~~) applies to the area under order.

(2) The distribution, use, and application of (~~restricted~~) use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to (~~restricted~~) use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-205 (~~(Restricted)~~) **What are use restricted herbicides(—) in Garfield County((s))?** All formulations of (~~Dicamba (Banvel) and all formulations of~~) phenoxy hormone-type herbicides (~~including~~) (e.g., 2,4-D (~~and~~), 2,4-DB, 2,4-DP (dichlorprop), MCPA (~~are declared to be restricted use herbicides in the area under order as listed in WAC 16-232-200~~), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 1671, filed 2/20/80)

WAC 16-232-210 **What are the boundaries and restrictions for Area 2((s))?** (1) Area 2 description. The city of Pomeroy and those sections and partial sections lying within one mile east, one mile south and one mile west of the city limits of Pomeroy.

(2) Area 2 restrictions.

(a) On and after May 1 through October 31, ground applications shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(b) Aerial applications of (~~restricted~~) use restricted herbicides (~~shall be~~) are prohibited.

AMENDATORY SECTION (Amending Order 1671, filed 2/20/80)

WAC 16-232-215 **What are the boundaries and restrictions for Area 3((s))?** (1) Area 3 description. An area starting at the intersection of the Snake River and the west boundary of Section 18, T14N, R43E; thence south to and along the Lambie Grade Road to and along the Casey Creek Road to the southeast corner of Section 8, T13N, R43E; thence east along section lines one and one-half miles more or less to the Snake River; thence northwesterly along the Snake River to the point of beginning.

(2) Area 3 restrictions.

(a) The use and application of low volatile formulations of (~~restricted~~) use restricted herbicides (~~shall be~~) is prohibited on and after April 16 through August 31.

(b) On and after April 16 through October 31, ground applications of (~~restricted~~) use restricted herbicides shall be

made using nozzles having a minimum orifice diameter of 0.031 inches.

(c) On and after April 16 through October 31, aerial applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-220 ((Restricted)) What are the boundaries and restrictions for use restricted herbicides—Garfield County—Area 4((:))? (1) Area 4 description. This area includes all remaining lands in Garfield County not included in WAC 16-232-210 and 16-232-215.

(2) Area 4 restrictions.

(a) On and after May 1 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.031 inches.

(b) On and after May 1 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using the caution area restrictions (see WAC 16-230-675).

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-225 ((Restricted)) What are the restrictions on applications of use restricted herbicides((—)) in Garfield County((—)) due to wind conditions((:))? The use or application of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are prohibited in Areas 2, 3, and 4 when the mean sustained wind velocity is over twelve miles per hour throughout the year: Provided, That such applications ~~((shall be))~~ are prohibited in Areas 2 and 3 on and after May 1 through October 31 when the mean sustained wind velocity is over seven miles per hour: Provided further, That applications of ~~((restricted))~~ use restricted herbicides ~~((shall be))~~ are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval ~~((shall))~~ will be based on research data.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-300 ((Restricted)) What are the restrictions for use restricted herbicides((—)) in Kittitas County((—Area under order.))? (1) The area under order ~~((shall))~~ includes all lands lying within the boundaries of Kittitas County. WAC 16-232-305 through 16-232-315 ~~((shall apply))~~ applies to the area under order.

(2) The distribution, use, and application of ~~((restricted))~~ use restricted herbicides in the area under order shall comply with rules relating to the use of pesticides in chapter 16-228 WAC, and rules relating to ~~((restricted))~~ use restricted herbicides in WAC 16-230-600 through 16-230-675.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-305 ((Restricted)) What are use restricted herbicides((—)) in Kittitas County((:))? All formulations ~~((of Dicamba (Banvel) and all formulations of))~~ phenoxy hormone-type herbicides ~~((including))~~ (e.g., 2,4-D ((and)), 2,4-DB, 2,4-DP (dichlorprop), MCPA ((are declared to be restricted use herbicides in the area under order as listed in WAC 16-232-300)), MCPB, MCPP (mecoprop)) and dicamba except as listed below:

(1) Salt formulations, including amine and sodium, distributed in quantities of one gallon or less;

(2) Dry formulations of phenoxy hormone-type herbicides (e.g., 2,4-D, 2,4-DB, 2,4-DP (dichlorprop), MCPA, MCPB, MCPP (mecoprop)) and dicamba labeled and intended only for home and garden use or for turf.

AMENDATORY SECTION (Amending Order 1754, filed 3/31/82)

WAC 16-232-310 What are the boundaries and restrictions for Area 1((:))? (1) Area 1 description. An area starting at the intersection of Canyon Road and Thrall Road on the south line of Section 30, T17 N, R19E, thence east along Thrall Road three and one-half miles more or less to Billeter Road; thence south approximately one-half mile; thence east approximately one and one-half miles to Wilson Road; thence south on Wilson Road for one-half mile to intersection of Fourth Parallel Road; thence east on Fourth Parallel Road for approximately three-fourths mile to Anderson Road; thence south on Anderson Road for one-half mile more or less to E. Kern Road; thence east on E. Kern Road for approximately one-half mile; thence south approximately one and one-half miles to the north boundary of Section 18, T16, R20; thence west for two and one-half miles to intersection of I82; thence northwest for approximately three miles to the northeast corner of Section 5, T16, R19; thence west for two miles more or less to the Canyon Road; thence north for one mile more or less on the Canyon Road to the point of beginning.

(2) Area 1 restrictions.

(a) On and after April 15 through October 31, aircraft applications of ~~((restricted))~~ use restricted herbicides shall be made using danger area restrictions (see WAC 16-230-675). On and after April 15 through October 31, aircraft applications are prohibited within 500 feet of all orchards: Provided, That aircraft applications may be allowed when written permission is received from the owner of the orchard.

(b) The use or application of low volatile formulations of ~~((restricted))~~ use restricted herbicides is prohibited on and after April 15 through October 31 of each year on all lands within 500 feet of all orchards: Provided, That low volatile ester formulations may be used when written permission is received from the owner of the orchard.

(c) On and after April 15 through October 31, ground applications of ~~((restricted))~~ use restricted herbicides shall be made using nozzles having a minimum orifice diameter of 0.036 inches on all lands within 500 feet of all orchards.

AMENDATORY SECTION (Amending Order 2073, filed 2/26/91, effective 3/29/91)

WAC 16-232-315 ((Restricted)) What are the restrictions on applications of use restricted herbicides((—)) in Kittitas County((—)) due to wind conditions((:))? The use or application of ((restricted)) use restricted herbicides ((shall be)) is prohibited in Area 1 when the mean sustained wind velocity is over twelve miles on and after April 15 through October 31: Provided, That applications of allowable ((restricted)) use restricted herbicides ((shall be)) are exempt from these wind restrictions when applying fifty gallons or more per acre: Provided further, That applications of ((restricted)) use restricted herbicides ((shall be)) are allowed in winds up to and including twenty miles per hour when an approved ground apparatus is used and allowed by the label. Ground apparatus shall be approved by the department of agriculture. Approval ((shall)) will be based on research data.

WSR 07-07-073

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 16, 2007, 8:03 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending WAC 246-08-400 Allowable fees for searching and duplicating medical records.

Hearing Location(s): Department of Health, 310 Israel Road, Room 153, Tumwater, WA 98501, on April 26, 2007, at 9:00 a.m.

Date of Intended Adoption: April 26, 2007.

Submit Written Comments to: Sherry Thomas, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by April 19, 2007.

Assistance for Persons with Disabilities: Contact Sherry Thomas by April 16, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There are two proposed changes. The first proposed change adjusts the fees medical providers are allowed to charge for searching and duplicating medical records based on the change in the consumer price index for all consumers for the Seattle/Tacoma metropolitan area for the previous biennium. The anticipated effect is that fees will increase to allow for inflation. The second proposed change is to correct the statutory authority referenced in the WAC from RCW 70.02.010(14) to 70.02.010(15). The subsection number was changed by ESSB 6106, chapter 235, Laws of 2006.

Reasons Supporting Proposal: The proposed rule helps to provide patients with access to their medical records by setting reasonable fees providers are allowed to charge for cost recovery. This adjustment is mandated by statute to occur every two years. The fees were last adjusted in July 2005. Further, the department would like to correct the stat-

utory authority reference to the new subsection to alleviate confusion in the rule.

Statutory Authority for Adoption: RCW 70.02.010(15) and 43.70.040.

Statute Being Implemented: RCW 70.02.010(15).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sherry Thomas, 310 Israel Road, Tumwater, WA 98501, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt under RCW 34.05.310 (4)(c) and (f) because it incorporates by reference without material change Washington state statute and sets or adjusts fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from the cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) and (vi) because it incorporates by reference without material change Washington state statute and sets or adjusts fees or rates pursuant to legislative standards.

March 15, 2007

B. White

for M. C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 06-11-166, filed 5/24/06, effective 6/24/06)

WAC 246-08-400 How much can a medical provider charge for searching and duplicating medical records? RCW 70.02.010((14)) (15) allows medical providers to charge fees for searching and duplicating medical records. The fees a provider may charge cannot exceed the fees listed below:

(1) Copying charge per page:

(a) No more than ((~~ninety-one~~)) ninety-six cents per page for the first thirty pages;

(b) No more than ((~~sixty-nine~~)) seventy-three cents per page for all other pages.

(2) Additional charges:

(a) The provider can charge a ((~~twenty-one~~)) twenty-two dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.

(3) This section is effective July 1, ((2005)) 2007, through June 30, ((2007)) 2009.

(4) HIPAA covered entities: See HIPAA regulation Section 164.524 (c)(4) to determine applicability of this rule.

WSR 07-07-074
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed March 16, 2007, 8:05 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 246-235 WAC, Radioactive materials—Specific licenses and chapter 246-240 WAC, Radioactive materials—Medical use of radioactive material. This proposal makes technical corrections necessary for conformance with United States Nuclear Regulatory Commission (NRC) regulations.

Proposed changes are amending WAC 246-235-100, 246-235-102, 246-240-010, 246-240-025, 246-240-066, 246-240-069, 246-240-072, 246-240-081, 246-240-110, 246-240-151, 246-240-154, 246-240-157, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-219, 246-240-269, 246-240-278 and 246-240-399; and repealing WAC 246-240-451, 246-240-454, 246-240-457, 246-240-460, 246-240-463, 246-240-466, 246-240-469, 246-240-472, 246-240-475, 246-240-478, 246-240-481, 246-240-484, and 246-240-487.

Hearing Location(s): Department of Health (DOH), Town Center 2, Room 530, 111 Israel Road S.E., Tumwater, WA 98501, on April 24, 2007, at 10:30 a.m.

Date of Intended Adoption: April 24, 2007.

Submit Written Comments to: Terry C. Frazee, Western Regional Director, DOH, Office of Radiation Protection, Box 47827, Olympia, WA 98504-7827, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2255, by April 17, 2007.

Assistance for Persons with Disabilities: Contact C. DeMaris by April 17, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this change is to clarify, and correct omissions in, the previous rule, as well as to remove obsolete requirements and correct certain punctuation and typographical errors consistent with technical amendments.

Reasons Supporting Proposal: The state of Washington, as an agreement state, must keep its rules compatible with those of the NRC.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.050.

Rule is necessary because of federal law, final amendments to 10 C.F.R. as published in 71 F.R. 15005.

Name of Proponent: Washington department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Curt DeMaris, 111 Israel Road S.E., Tumwater, WA, (360) 236-3223; Implementation and Enforcement: Arden Scroggs, 111 Israel Road S.E., Tumwater, WA, (360) 236-3221.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adopts NRC regulations without material change. Under RCW 19.85.025, 19.85.061, and 34.05.3150(4), a small business economic impact statement is not required for rules that adopt federal regulations without material change. The revisions to chapters 246-235 and 246-240 WAC are necessary to conform

DOH rules to recent NRC amendments to 10 C.F.R. Parts 20, 32, 35 and 73. See 71 Fed. Reg. 15005 (March 27, 2006). The amendments will maintain compatibility of DOH rules with those of the NRC.

A cost-benefit analysis is not required under RCW 34.05.328. These rules adopt NRC regulations without material change and the DOH is required adopt them in order to maintain compatibility under agreement with the NRC. Under RCW 34.05.328 (5)(b)(iii), the cost-benefit requirement does not apply to rules adopting federal regulations without material change.

March 15, 2007

B. White

for M. C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-235-100 Manufacture, preparation, or commercial transfer of radiopharmaceuticals for medical use.

(1) An application for a specific license to manufacture and, prepare, or transfer for commercial distribution radiopharmaceuticals containing radioactive material for use by persons licensed under chapter 246-240 WAC for medical use in humans will be approved if:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020;

(b) The applicant submits evidence that:

(i) The applicant is registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer; or

(ii) The applicant is licensed as a nuclear pharmacy by the state board of pharmacy;

(c) The applicant submits information on the radionuclide, chemical and physical form, maximum activity per vial, syringe, generator, or other container of the radiopharmaceutical, and shielding provided by the packaging of the radioactive material which is appropriate for safe handling and storage of radiopharmaceuticals by medical use licensees; and

(d) The applicant satisfies the labeling requirements specified by the state board of pharmacy in WAC 246-903-020. For a drug manufacturer, the labels required by this subsection are in addition to the labeling required by the Food and Drug Administration (FDA) and may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

(2) A nuclear pharmacy licensee:

(a) May prepare radiopharmaceuticals for medical use provided the radiopharmaceutical is prepared by or under the supervision of an authorized nuclear pharmacist.

(b) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) This individual qualifies as an authorized nuclear pharmacist as defined in WAC 246-240-010;

(ii) This individual meets the state board of pharmacy requirements in WAC 246-903-030, Nuclear pharmacists, and the requirements of WAC 246-240-081 and the licensee

has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) This individual is designated as an authorized nuclear pharmacist in accordance with (d) of this subsection.

(c) The actions authorized in (a) and (b) of this subsection are permitted in spite of more restrictive language in license conditions.

(d) May designate a pharmacist as an authorized nuclear pharmacist if the individual is identified as of December 2, 1994, as an "authorized user" on a nuclear pharmacy license issued by the department, the U.S. NRC, or an agreement state.

(e) Shall provide to the department a copy of each individual's letter of notification from the state board of pharmacy recognizing the individual as a nuclear pharmacist, within thirty days of the date the licensee allows the individual to work as an authorized nuclear pharmacist under (b) of this subsection.

(3) A manufacturer or nuclear pharmacy licensee shall possess and use instrumentation to measure the radioactivity of radiopharmaceuticals. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radiopharmaceuticals, prior to transfer for commercial distribution. In addition, the licensee shall:

(a) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) Check each instrument for constancy and proper operation at the beginning of each day of use.

(4) Nothing in this section relieves the licensee from complying with applicable FDA, other federal, and state requirements governing radiopharmaceuticals.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-235-102 Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under chapter 246-240 WAC for use as a calibration, transmission, or reference source or for the uses listed in WAC 246-240-251, 246-240-301, and 246-240-351 will be approved if:

(1) The applicant satisfies the general requirements in WAC 246-235-020;

(2) The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(a) The radioactive material contained, its chemical and physical form and amount;

(b) Details of design and construction of the source or device;

(c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity

under stresses likely to be encountered in normal use and accidents;

(d) For devices containing radioactive material, the radiation profile of a prototype device;

(e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(f) Procedures and standards for calibrating sources and devices;

(g) Legend and methods for labeling sources and devices as to their radioactive content; and

(h) Instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device: Provided that instructions which are too lengthy for the label may be summarized on the label and printed in detail on a brochure which is referenced on the label.

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the named source or device is licensed by the department for distribution to persons licensed under chapter 246-240 WAC or under equivalent regulations of the United States Nuclear Regulatory Commission, an agreement state or a licensing state: Provided that the labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source.

(4) If the applicant desires that the source or device be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source.

(5) In determining the acceptable interval for test of leakage of radioactive material, the department will consider information that includes, but is not limited to:

(a) Primary containment (source capsule);

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical sources or devices or similarly designed and constructed sources or devices.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-010 Definitions. Address of use means the building or buildings that are identified on the license and

where radioactive material may be received, prepared, used, or stored.

Area of use means a portion of an address of use that has been set aside for the purpose of receiving, preparing, using, or storing radioactive material.

Authorized medical physicist means an individual who:

(1) Meets the requirements in WAC 246-240-072 and 246-240-081; or

(2) Is identified as an authorized medical physicist or teletherapy physicist on:

(a) A specific medical use license issued by the department, the U.S. Nuclear Regulatory Commission or an agreement state ~~((prior to October 5, 2005))~~;

~~((3))~~;

(b) A medical use permit issued by a U.S. NRC master material licensee;

(c) A permit issued by a ~~((commission))~~ U.S. NRC or agreement state broad scope medical use licensee ~~((prior to October 5, 2005))~~; or

~~((4))~~ (d) A permit issued by a ~~((commission))~~ U.S. NRC master material license broad scope medical use permittee ~~((prior to October 5, 2005))~~.

Authorized nuclear pharmacist means a pharmacist who:

(1) Meets the requirements in WAC 246-240-075 and 246-240-081; or

(2) Is identified as an authorized nuclear pharmacist on:

(a) A specific license issued by the department, the U.S. NRC or an agreement state ~~((prior to October 5, 2005))~~, that authorizes medical use or the practice of nuclear pharmacy;

(b) A permit issued by a U.S. NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(c) A permit issued by a U.S. NRC or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

(d) A permit issued by a U.S. NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

(3) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

~~(4) A permit issued by a commission master material licensee that authorizes medical use or the practice of nuclear pharmacy;~~

~~(5) A permit issued by a commission or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or~~

~~(6) A permit issued by a commission master material licensee board scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or~~

~~(7))~~ Is designated as an authorized nuclear pharmacist in accordance with WAC 246-235-100(2).

Authorized user means a physician, dentist, or podiatrist who:

(1) Meets the requirements in WAC 246-240-081 and 246-240-154, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-278, 246-240-301, or 246-240-399; or

(2) Is identified as an authorized user on:

(a) A department, U.S. NRC, or agreement state license ~~((prior to October 5, 2005))~~ that authorizes the medical use of radioactive material~~((:))~~;

~~((3))~~ (b) A permit issued by a ~~((commission))~~ U.S. NRC master material licensee that is authorized to permit the medical use of ~~((by-product))~~ radioactive material;

~~((4))~~ (c) A permit issued by a ~~((commission))~~ department, U.S. NRC, or agreement state specific licensee of broad scope that is authorized to permit the medical use of ~~((by-product))~~ radioactive material; or

~~((5))~~ (d) A permit issued by a ~~((commission))~~ U.S. NRC master material license broad scope permittee that is authorized to permit the medical use of ~~((by-product))~~ radioactive material.

Brachytherapy means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal, or interstitial application.

Brachytherapy source means a radioactive source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

Client's address means the area of use or a temporary job site for the purpose of providing mobile medical service in accordance with WAC 246-240-125.

Dedicated check source means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

Dentist means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

High dose-rate remote afterloader, as used in this chapter, means a brachytherapy device that remotely delivers a dose rate in excess of 12 gray (1200 rads) per hour at the point or surface where the dose is prescribed.

Low dose-rate remote afterloader, as used in this chapter, means a brachytherapy device that remotely delivers a dose rate of less than or equal to 2 gray (200 rads) per hour at the point or surface where the dose is prescribed.

Management means the chief executive officer or other individual having the authority to manage, direct, or administer the licensee's activities, or that person's delegate or delegates.

Manual brachytherapy, as used in this chapter, means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

Medical event means an event that meets the criteria in WAC 246-240-651.

Medical institution means an organization in which more than one medical discipline is practiced.

Medical use means the intentional internal or external administration of radioactive material or the radiation from radioactive material to patients or human research subjects under the supervision of an authorized user.

Medium dose-rate remote afterloader, as used in this chapter, means a brachytherapy device that remotely delivers a dose rate of greater than 2 gray (200 rads), but less than or

equal to 12 grays (1200 rads) per hour at the point or surface where the dose is prescribed.

Mobile medical service means the transportation of radioactive material to and its medical use at the client's address.

Output means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a brachytherapy source or a teletherapy, remote afterloader, or gamma stereotactic radiosurgery unit for a specified set of exposure conditions.

Patient intervention means actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

Podiatrist means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

Preceptor means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

Prescribed dosage means the specified activity or range of activity of unsealed radioactive material as documented:

- (1) In a written directive; or
- (2) In accordance with the directions of the authorized user for procedures performed under WAC 246-240-151 and 246-240-157.

Prescribed dose means:

- (1) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;
- (2) For teletherapy, the total dose and dose per fraction as documented in the written directive;
- (3) For manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or
- (4) For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

Pulsed dose-rate remote afterloader, as used in this chapter, means a special type of remote afterloading brachytherapy device that uses a single source capable of delivering dose rates in the "high dose-rate" range, but:

- (1) Is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources; and
- (2) Is used to simulate the radiobiology of a low dose-rate treatment by inserting the source for a given fraction of each hour.

Radiation safety officer means an individual who:

- (1) Meets the requirements in WAC 246-240-069 and 246-240-081; or
- (2) Is identified as a radiation safety officer on a specific medical use license issued by the department prior to October 5, 2005, the U.S. NRC or an agreement state; or
- (3) A medical use permit issued by a commission master material licensee.

Sealed source and device registry means the national registry that contains all the registration certificates, generated by both the U.S. NRC and the agreement states, that summarize the radiation safety information for the sealed

sources and devices and describe the licensing and use conditions approved for the product.

Stereotactic radiosurgery means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

Structured educational program means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

Teletherapy, as used in this chapter, means a method of radiation therapy in which collimated gamma rays are delivered at a distance from the patient or human research subject.

Temporary job site means a location where mobile medical services are conducted other than those location(s) of use authorized on the license.

Therapeutic dosage means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

Therapeutic dose means a radiation dose delivered from a source containing radioactive material to a patient or human research subject for palliative or curative treatment.

Treatment site means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

Type of use means use of radioactive material under WAC 246-240-151, 246-240-157, 246-240-201, 246-240-251, 246-240-301, 246-240-351, or 246-240-501.

Unit dosage means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

Written directive means an authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in WAC 246-240-060.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-025 Notifications. (1) A licensee shall notify the department no later than thirty days after:

(a) An authorized user, an authorized nuclear pharmacist, a radiation safety officer, or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

(b) The licensee's mailing address changes;

(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in WAC 246-232-050(2); ((~~or~~))

(d) The licensee has added to or changed the areas of use identified in the application or on the license where radioactive material is used under either WAC 246-240-151 or 246-240-157; or

(e) The licensee permits an authorized user or an individual qualified to be a radiation safety officer, under WAC 246-240-069 and 246-240-081, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer in accordance with WAC 246-240-051(3).

(2) The licensee shall send the documents required in this section to the department at P.O. Box 47827, Olympia WA 98504-7827.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-066 Suppliers for sealed sources or devices for medical use. For medical use, a licensee may only use:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued under WAC 246-235-102.

(2) Sealed sources or devices noncommercially transferred from a U.S. NRC or agreement state medical use licensee; or

(3) Teletherapy sources manufactured and distributed in accordance with a license issued under chapter 246-232 WAC.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-069 Training for radiation safety officer. Except as provided in WAC 246-240-078, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer under WAC 246-240-051 to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, the U.S. NRC, or an agreement state, and who meets the requirements of subsections (4) and (5) of this section. (Specialty boards whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page, at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of twenty college credits in physical science;

(b) Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

(c) Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(i) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(ii) Have two years of full-time practical training and/or supervised experience in medical physics:

(A) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the commission or an agreement state; or

(B) In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of phy-

sicians who meet the requirements for authorized users ~~((under these rules before October 24, 2005))~~ in WAC 246-240-163 or 246-240-210; and

(iii) Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(d) Obtain written certification signed by a preceptor radiation safety officer that the individual has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; or

(2)(a) Has completed a structured educational program consisting of both:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Radiation biology; and

(E) Radiation dosimetry; and

(ii) One year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a department or agreement state license or license issued by the U.S. NRC that authorizes similar type(s) of use(s) of radioactive material involving the following:

(A) Shipping, receiving, and performing related radiation surveys;

(B) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

(C) Securing and controlling radioactive material;

(D) Using administrative controls to avoid mistakes in the administration of radioactive material;

(E) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

(F) Using emergency procedures to control radioactive material; and

(G) Disposing of radioactive material; or

(b) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, the U.S. NRC, or an agreement state under WAC 246-240-072 and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as radiation safety officer and who meets the requirements in subsections (4) and (5) of this section; or

(3) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license or a medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state under WAC 246-240-072 and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities; and

(4) Has obtained written certification, signed by a preceptor radiation safety officer, that the individual has satis-

factorily completed the requirements in subsection (5) of this section, and in subsection (1)(a) and (b), or (c)(i) and (ii) of this section, or subsection (2)(a) or (b) of this section, or subsection (3) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

(5) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by an authorized medical physicist, authorized user, authorized nuclear pharmacist, or radiation safety officer, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-072 Training for an authorized medical physicist. Except as provided in WAC 246-240-078, the licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements in subsections (2)(b) and (3) of this section. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(b) Have two years of full-time practical training and/or supervised experience in medical physics:

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the commission or an agreement state; or

(ii) In clinical radiation facilities providing high energy, external beam therapy (photons and electrons with energies greater than or equal to one million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in WAC 246-240-278 or 246-240-399;

(c) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2)(a) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use modalities for which the individual is seeking authorization. This training and work experience must be

conducted in clinical radiation facilities that provide high energy, external beam therapy and brachytherapy services and must include:

(i) Performing sealed source leak tests and inventories;

(ii) Performing decay corrections;

(iii) Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(b) Has obtained written certification that the individual has satisfactorily completed the requirements in subsections (1)(a) and (b) and (3), or (2)(a) and (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written certification must be signed by a preceptor authorized medical physicist who meets the requirements in WAC 246-240-072 or equivalent U.S. NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the type(s) of use in the modalities for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-081 Recentness of training. Training and experience specified in WAC 246-240-069, 246-240-072, 246-240-075, 246-240-078, 246-240-154, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-278, 246-240-281, and 246-240-399(~~and 246-240-451 through 246-240-487 (inclusive)~~), must have been obtained within the seven years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-110 Authorization for calibration, transmission, and reference sources. Any person authorized by WAC 246-240-016 for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use:

(1) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed under WAC 246-235-102 or equivalent agreement state or U.S. NRC regulations.

(2) Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under WAC 246-235-102, or equivalent agreement state or U.S. NRC regulations if the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.

(3) Any radioactive material with a half-life not longer than one hundred twenty days in individual amounts not to exceed 0.56 GBq (15 mCi).

(4) Any radioactive material with a half-life longer than one hundred twenty days in individual amounts not to exceed the smaller of 7.4 MBq (200 μ Ci) or 1000 times the quantities in Schedule B of WAC 246-232-120.

(5) Technetium-99m in amounts as needed.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-151 Use of unsealed radioactive material for uptake, dilution, and excretion studies for which a written directive is not required. Except for quantities that require a written directive under WAC 246-240-060(2), a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution, or excretion studies that is:

(1) Obtained from a manufacturer or preparer licensed under WAC 246-235-100(1) or equivalent U.S. NRC or agreement state requirements; or

(2) Prepared by an authorized nuclear pharmacist, or a physician who is an authorized user and who meets the requirements specified in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or an individual under the supervision of either as specified in WAC 246-240-057; or

(3) Obtained from and prepared by an agreement state or U.S. NRC licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a radioactive drug research committee-approved application or an investigational new drug (IND) protocol accepted by FDA.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-154 Training for uptake, dilution, and excretion studies. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-151 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements of subsection (3)(b) of this section. (Specialty boards whose certification process has been recognized by the department, the U.S. NRC or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Meet the requirements in subsection (3)(a) of this section; and

(b) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under WAC 246-240-163 or 246-240-210 or equivalent agreement state or U.S. NRC requirements; or subsection (3)(a) of this section; or

(3)(a) Has completed sixty hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:

(i) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use; and

(E) Radiation biology; and

(ii) Work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-154, 246-240-163, or 246-240-210 or equivalent U.S. NRC or agreement state requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(E) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(b) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in WAC 246-240-154, 246-240-163, or 246-240-210 or equivalent agreement state or U.S. NRC requirements, that the individual has satisfactorily completed the requirements in (a) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-151.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-157 Use of unsealed radioactive material for imaging and localization studies for which a written directive is not required. Except for quantities that require a written directive under WAC 246-240-060(2), a licensee may use any unsealed radioactive material prepared for medical use for imaging and localization studies that is:

(1) Obtained from a manufacturer or preparer licensed under WAC 246-235-100(1) or equivalent agreement state or U.S. NRC requirements; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or an individual under the supervision of either as specified in WAC 246-240-057;

(3) Obtained from and prepared by an agreement state or U.S. NRC licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug (IND) protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with a radioactive drug research committee-approved application or an investigational new drug (IND) protocol accepted by FDA.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-163 Training for imaging and localization studies. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-157 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state and who meets the requirements in subsection (3)(b) of this section. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the U.S. NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Satisfy the requirements in subsection (3)(a) of this section; and

(b) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;

(2) Is an authorized user under WAC 246-240-210 and meets the requirements in WAC 246-240-163 (3)(a)(ii)(G) and 246-240-210 or equivalent agreement state or U.S. NRC requirements (~~prior to October 24, 2005~~); or

(3)(a) Has completed seven hundred hours of training and experience, including a minimum of eighty hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include, at a minimum:

(i) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use;

(E) Radiation biology; and

(ii) Work experience, under the supervision of an authorized user, who meets the requirements in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G), or equivalent agreement state or U.S. NRC requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(E) Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(G) Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in WAC 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G) or equivalent agreement state or U.S. NRC requirements, that the individual has satisfactorily completed the requirements in (a) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-151 and 246-240-157.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-210 Training for use of unsealed radioactive material for which a written directive is required. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-201 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty that includes seven hundred hours of training and experience as described in subsection (2) of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association;

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed by-product material; and

(c) Obtain written certification that the individual has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-201. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-210 or equivalent U.S. NRC or agreement state requirements. The preceptor authorized user, who meets the requirements in WAC 246-240-210 must have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status; or

(2) Has completed seven hundred hours of training and experience, including a minimum of two hundred hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:

(a) Classroom and laboratory training in the following areas:

- (i) Radiation physics and instrumentation;
- (ii) Radiation protection;
- (iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Work experience, under the supervision of an authorized user who meets the requirements in subsection (1) or (2) of this section, or equivalent U.S. NRC or agreement state requirements. A supervising authorized user, who meets the requirements in this subsection, must also have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status. The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

(vi) Eluting generator systems, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(vii) Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

(A) Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131 for which a written directive is required;

(B) Oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131. Experience with at least three cases in this also satisfies the requirement in (b)(vii)(A) of this subsection;

(C) Parenteral administration of any beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV for which a written directive is required; and/or

(D) Parenteral administration of any other radionuclide for which a written directive is required; and

(E) Has obtained written certification that the individual has satisfactorily completed the requirements in subsection (1)(a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under WAC 246-240-201. The written certification must be signed by a preceptor authorized user who meets the requirements in this section, or equivalent U.S. NRC or agreement state requirements. The preceptor authorized user, who meets the requirements in this subsection (2), must also have experience in administering dosages in the same dosage category or categories (i.e., this section) as the individual requesting authorized user status.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-213 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries). Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3) of this section and whose certification has been recognized by the department, the U.S. Nuclear Regulatory Commission or an agreement state. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>); or

(2) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(A) and (B), ((~~¶~~)) 246-240-216, or equivalent agreement state or U.S. NRC requirements; or

(3)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-210, 246-240-213, 246-240-216, or equivalent agreement state or U.S. NRC requirements. A supervising autho-

rized user who meets the requirements in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(A) or (B). The work experience must involve:

- (i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- (ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- (iii) Calculating, measuring, and safely preparing patient or human research subject dosages;
- (iv) Using administrative controls to prevent a medical event involving the use of radioactive material;
- (v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
- (vi) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and
- (c) Has obtained written certification that the individual has satisfactorily completed the requirements in (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under WAC 246-240-201. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-210, 246-240-213, 246-240-216, or equivalent agreement state or U.S. NRC requirements. A preceptor authorized user, who meets the requirement in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(A) or (B).

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-216 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries). Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries), to be a physician who:

- (1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3) of this section and whose certification has been recognized by the department, the U.S. NRC or an agreement state. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>); or
- (2) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(B), or equivalent agreement state or U.S. NRC requirements; or
- (3)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:
 - (i) Radiation physics and instrumentation;
 - (ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-210, 246-240-216, or equivalent agreement state or U.S. NRC requirements. A supervising authorized user, who meets the requirements in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(B).

The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of radioactive material;

(v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under WAC 246-240-201. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-210, 246-240-216, or equivalent agreement state or U.S. NRC requirements. A preceptor authorized user, who meets the requirements in WAC 246-240-210(2), must have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(B).

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-219 Training for the parenteral administration of unsealed radioactive material requiring a written directive. Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

(1) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2)(b)(vii)(C) or (D), or equivalent agreement state or U.S. NRC requirements; or

(2) Is an authorized user under WAC 246-240-278 or 246-240-399, or equivalent agreement state or U.S. NRC requirements and who meets the requirements in subsection (4) of this section; or

(3) Is certified by a medical specialty board whose certification process has been recognized by the U.S. NRC or an agreement state under WAC 246-240-278 or 246-240-399,

and who meets the requirements in subsection (4) of this section.

(4)(a) Has successfully completed eighty hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training must include:

- (i) Radiation physics and instrumentation;
- (ii) Radiation protection;
- (iii) Mathematics pertaining to the use and measurement of radioactivity;
- (iv) Chemistry of radioactive material for medical use;

and

(v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-210 ~~((or))~~, 246-240-219, or equivalent agreement state or U.S. NRC requirements, in the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in WAC 246-240-210 ~~((or 246-240-460))~~ must have experience in administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(C) and/or (D). The work experience must involve:

- (i) Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;
- (ii) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;
- (iii) Calculating, measuring, and safely preparing patient or human research subject dosages;
- (iv) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- (v) Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that include at least three cases involving the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV and/or at least three cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

(5) Has obtained written certification that the individual has satisfactorily completed the requirements in subsection (2) or (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-210, 246-240-219, or equivalent agreement state or U.S. NRC requirements. A preceptor authorized user, who meets the requirements in WAC 246-240-210 ~~((or 246-240-219))~~, must have experience in

administering dosages as specified in WAC 246-240-210 (2)(b)(vii)(C) and/or (D).

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-269 Calibration measurements of brachytherapy sources. (1) Before the first medical use of a brachytherapy source on or after ~~((October 24))~~ March 9, 2006, a licensee shall have:

- (a) Determined the source output or activity using a dosimetry system that meets the requirements of WAC 246-240-366(1);
- (b) Determined source positioning accuracy within applicators; and
- (c) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of (a) and (b) of this subsection.

(2) A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (1) of this section.

(3) A licensee shall mathematically correct the outputs or activities determined in subsection (1) of this section for physical decay at intervals consistent with one percent physical decay.

(4) A licensee shall retain a record of each calibration in accordance with WAC 246-240-599.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-278 Training for use of manual brachytherapy sources. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under WAC 246-240-251 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the U.S. NRC, or an agreement state. (Specialty boards whose certification process has been recognized by the commission or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association;

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of high and low dose-rate brachytherapy; and

(c) Obtain written certification, signed by a preceptor authorized user who meets the requirements in WAC 246-240-278 or equivalent U.S. NRC or agreement state requirements, that the individual has achieved a level of competency sufficient to function independently as an authorized user of

manual brachytherapy sources for the medical uses authorized in WAC 246-240-251; or

(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(ii) Five hundred hours of work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-278 or equivalent agreement state or U.S. NRC requirements at a medical institution, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Checking survey meters for proper operation;

(C) Preparing, implanting, and removing brachytherapy sources;

(D) Maintaining running inventories of material on hand;

(E) Using administrative controls to prevent a medical event involving the use of radioactive material;

(F) Using emergency procedures to control radioactive material; and

(b) Has completed three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in WAC 246-240-278 or equivalent U.S. NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by (a)(ii) of this subsection; and

(c) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in WAC 246-240-278 or equivalent agreement state or U.S. NRC requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) of this section, or (a) and (b) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under WAC 246-240-251.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-399 Training for use of remote after-loader units, teletherapy units, and gamma stereotactic radiosurgery units. Except as provided in WAC 246-240-078, the licensee shall require an authorized user of a sealed source for a use authorized under WAC 246-240-351 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, the

U.S. NRC, or an agreement state. (Specialty boards whose certification process has been recognized by the ~~(commission)~~ NRC or an agreement state will be posted on the NRC's web page at <http://www.nrc.gov>.) To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, high and low dose-rate brachytherapy, and external beam therapy;

(2)(a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(ii) Five hundred hours of work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-399 or equivalent agreement state or U.S. NRC requirements at a medical institution, involving:

(A) Reviewing full calibration measurements and periodic spot-checks;

(B) Preparing treatment plans and calculating treatment doses and times;

(C) Using administrative controls to prevent a medical event involving the use of radioactive material;

(D) Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;

(E) Checking and using survey meters; and

(F) Selecting the proper dose and how it is to be administered; and

(b) Has completed three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in WAC 246-240-399 or equivalent U.S. NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by (a)(ii) of this subsection; and

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in subsection (1)(a) of this section, or (a) and (b), and (d) of this subsection and has achieved a level of competency sufficient to function

independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written certification must be signed by a preceptor authorized user who meets the requirements in WAC 246-240-399 or equivalent U.S. NRC or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(d) Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-240-451	Radiation safety officer.
WAC 246-240-454	Training for uptake, dilution, and excretion studies.
WAC 246-240-457	Training for imaging and localization studies.
WAC 246-240-460	Training for therapeutic use of unsealed radioactive material.
WAC 246-240-463	Training for treatment of hyperthyroidism.
WAC 246-240-466	Training for treatment of thyroid carcinoma.
WAC 246-240-469	Training for use of brachytherapy sources.
WAC 246-240-472	Training for ophthalmic use of strontium-90.
WAC 246-240-475	Training for use of sealed sources for diagnosis.
WAC 246-240-478	Training for use of therapeutic medical devices.
WAC 246-240-481	Training for authorized medical physicist.
WAC 246-240-484	Training for an authorized nuclear pharmacist.
WAC 246-240-487	Training for experienced nuclear pharmacists.

WSR 07-07-084

PROPOSED RULES

SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

[Filed March 16, 2007, 12:21 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Name change to Spokane Regional Clean Air Agency. The board of Spokane County Air Pollution Control Authority has directed staff to change the agency's name to Spokane Regional Clean Air Agency (SRCAA). The amendments to Regulation I are for the most part to change the agency's name wherever it occurs, except for Article VI, Section 6.17, Articles IX and X, which during this revision are being revised by others. The equivalent revisions will be included in their submittals. In addition, an administrative change was made to Section 1.04 - Definitions to delete the lettering system for the definitions in order to make addition or deletion of definitions more flexible. The definition "agency" is being included in Section 1.04.

Article II, Section 2.13 is being revised to include the federal regulation reference dates in the state of Washington's WAC 173-400-115, 173-400-075(1), and 173-400-075 (6)(a). The aforementioned sections of chapter 173-400 WAC are being adopted into SCAPCA's regulation by reference. This will allow SCAPCA to use the more recent date between SCAPCA and ecology rules for enforcement of federal standards.

Articles and sections within SCAPCA's regulation being revised to incorporate the name change are: Article I, Sections 1.01, 1.02, 1.03, and 1.04; Article II, Sections 2.13, and 2.14; Article V, Section 5.04; and Article VI, Sections 6.01, 6.11, 6.14, and 6.15.

Hearing Location(s): Spokane County Public Works Building, 1206 West Broadway, Hearing Room Lower Level, Spokane, WA 99201, on May 3, 2007, at 9:00 a.m.

Date of Intended Adoption: May 3, 2007.

Submit Written Comments to: Charles E. Studer, Spokane County Air Pollution Control Authority, 1101 West College, Suite #403, Spokane, WA 99201, e-mail cestuder@scapca.org, fax (509) 466-6828, by 4:30 p.m., April 10, 2007.

Assistance for Persons with Disabilities: Contact Charles Studer by 4:30 p.m., April 2, 2007, (509) 477-4727 ext. 107.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Change the name of the agency from Spokane County Air Pollution Control Authority to Spokane Regional Clean Air Agency throughout the regulation, except for Article VI, Section 6.17, Articles IX and X, which will be revised in a separate submittal.

Change the agency acronym from SCAPCA to SRCAA, throughout the regulation, except for Articles IX and X, which will be revised in a separate submittal.

Administratively remove the lettering scheme in Section 1.04 and add the definition for "agency."

Revise the federal regulation reference date so that it includes the more recent date of Article I Section 2.13 or the

dates listed in WAC 173-400-115, 173-400-075(1), and 173-400-075 (6)(a).

Adopt by reference, WAC 173-400-115, 173-400-075(1), and 173-400-075 (6)(a).

Revise an inaccurate reference in Section 2.14.A.1.a. (3)(a)(i) from RCW 70.94.161 to 70.94.154.

Reasons Supporting Proposal: Name change, administrative changes to make revisions to Section 1.04 easier, corrections to references, and adopting certain sections of chapter 173-400 WAC into SCAPCA's regulation to enhance enforcement of federal rules and standards.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

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

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Charles E. Studer, Spokane County Air Pollution Control Authority, (509) 477-4727 ext. 107.

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

A cost-benefit analysis is not required under RCW 34.05.328. This is a local air pollution control authority rule. RCW 34.05.328 does not apply to local air pollution control authority rule development/amendments.

March 16, 2007
William O. Dameworth
Director

ARTICLE I

POLICY, SHORT TITLE, AND DEFINITIONS...

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

SECTION 1.01 POLICY

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

It is hereby declared to be the public policy of the ~~((Spokane County Air Pollution Control Authority))~~ Spokane Regional Clean Air Agency to secure and maintain such levels of air quality that protect human health and safety, includ-

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

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

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

SECTION 1.02 NAME OF AUTHORITY

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

Any reference to the Spokane County Air Pollution Control Authority, SCAPCA, or the Authority in any document previously issued by the Authority, including without limitation regulations, orders, permits, judgments, letters and the like shall be deemed reference to the Spokane Regional Clean Air Agency or SRCAA.

AMENDATORY SECTION (Amending Order Initial Adoption, Filed 6/9/1969)

SECTION 1.03 SHORT TITLE

This regulation shall be known and cited as "Regulation I of the ~~((Spokane County Air Pollution Control Authority))~~ Spokane Regional Clean Air Agency."

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

SECTION 1.04 GENERAL DEFINITIONS...

Unless otherwise defined differently in an Article of this Regulation, the following definitions apply to all of this Regulation:...

Agency means the same as "Authority"....

~~((L-))~~ Authority means ~~((Spokane County Air Pollution Control Authority (SCAPCA)))~~ Spokane Regional Clean Air Agency (SRCAA), or with regard to new source review, any other designated permitting agency....

~~((P-))~~ Board means Board of Directors of the ~~((Spokane County Air Pollution Control Authority))~~ Spokane Regional Clean Air Agency....

~~((Z-))~~ Control Officer means the Air Pollution Control Officer for the ~~((Spokane County Air Pollution Control Authority))~~ Spokane Regional Clean Air Agency or his/her duly authorized representative....

ARTICLE II

GENERAL PROVISIONS...

AMENDATORY SECTION (Amending Order Res. 06-08, Filed 07/13/2006)

SECTION 2.13 FEDERAL REGULATION REFERENCE DATE

A. Whenever federal laws or regulations are referenced in this Regulation, the effective date shall be the most recent date of either July 1, 2006, unless otherwise noted or the applicable adoption date listed in:

1. WAC 173-400-115 for standards presented in 40 CFR Part 60 and Appendices, which is hereby adopted by reference.

2. WAC 173-400-075(1) for standards presented in 40 CFR Part 61 and Appendices, which is hereby adopted by reference, or

3. WAC 173-400-075 (6)(a) for standards presented in 40 CFR Part 63 and Appendices, which is hereby adopted by reference.

AMENDATORY SECTION (Amending Order Res. 06-10, Filed 08/03/2006)

SECTION 2.14 WASHINGTON ADMINISTRATIVE CODES (WACS)

A. The Authority implements and enforces the following Washington State WACs:

1. Chapter 173-400 WAC - General regulations for air pollution sources

a. Except for the following sections;

(1) Source Registration....

(a) WAC 173-400-100 - (~~Registerable-s~~) Source classifications

(b) WAC 173-400-102 - Scope of registration and reporting requirements

(i) ~~((SCAPCA))~~ **SRCAA Regulation I, Article IV, replaces the registration requirements in WACs 173-400-100 & 102 for all air pollution sources in Spokane County.**

(2) Stationary, portable and temporary source permitting

(a) WAC 173-400-035 - Portable and temporary sources,

(i) ~~((SCAPCA))~~ **SRCAA Regulation I, Article V, Sections 5.02.A.9, 5.02.I, and 5.08 replace the permitting requirements in WAC 173-400-035 for all portable and temporary sources in Spokane County.**

(b) WAC 173-400-110 - New source review,

(i) ~~((SCAPCA))~~ **SRCAA Regulation I, Article V replaces the permitting requirements in WAC 173-400-110 for all new stationary sources installed or operated in Spokane County.**

(3) Fees ~~((SCAPCA))~~ **SRCAA** has its own fee structure).

(a) WAC 173-400-045 - Control technology fees,

(i) ~~((SCAPCA))~~ **SRCAA Regulation I, Article X, Sections 10.08.C replaces the review fees in WAC 173-400-045 for performing a Reasonably Available Control Technology (RACT) determination pursuant to Chapter 173-**

400-040 WAC and/or RCW 70.94.((+6+))154 in Spokane County.

(b) WAC 173-400-104 - Registration fees,

(i) ~~((SCAPCA))~~ **SRCAA Regulation I, Article X, Sections 10.06 replaces registration fees assessed in WAC 173-400-104 for each air pollution source registered with** ~~((SCAPCA))~~ **SRCAA.**

(c) WAC 173-400-116 - New source review fees,

(i) ~~((SCAPCA))~~ **SRCAA Regulation I, Article X, Sections 10.07 replaces the fees assessed in WAC 173-400-116 to each facility that installs or operates a new air pollution source in Spokane County.**

(4) Prevention of significant deterioration (PSD) program....

(c) WAC 173-400-750 Revisions to PSD permits.

(i) **Ecology administers the Prevention of significant deterioration program (PSD); however, ((SCAPCA)) SRCAA enforces it in Spokane County....**

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

ARTICLE V

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

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

SECTION 5.04 INFORMATION REQUIRED

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

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

b. If ~~((SCAPCA))~~ the Authority is the lead agency for review of an Environmental Checklist (SEPA) or Environmental Impact Statement (EIS) related to the Notice of Construction or *Notice of Intent to Install and Operate a Temporary Stationary Source* application being submitted, then the person filing the SEPA shall pay a SEPA review fee according to Article X, Section 10.07.E. of this Regulation. This fee shall be paid without regard to whether a Determination of Nonsignificance, Mitigated Determination of Nonsignificance or Determination of Significance is issued.

ARTICLE VI

EMISSIONS PROHIBITED

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

SECTION 6.01 OUTDOOR BURNING...

C. Definitions. Unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning:...

2. Authority means the ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency....

16. Permitting Authority means the ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency (Authority), or one or more of the following entities, whenever the Authority and an entity have signed an agreement regarding a permitting program or the Authority has delegated administration of the permitting program, pursuant to RCW 70.94.654, to one or more of the referenced entities, provided such delegation of authority has not been withdrawn: Spokane County, any fire protection agency within Spokane County, Department of Natural Resources, or the Spokane County Conservation District....

E. General Conditions. Considering population density and local conditions affecting air quality, the Authority or permitting authority shall establish conditions for all permits to minimize air pollution as much as practical. Such conditions may be general (applying to all permits) or specific (applying to individual permits). Conditions may address permissible hours of burning, maximum size or volume of material to be burned, requirements for good combustion practice, burning under specified weather conditions, pre-burn and post-burn reporting, and other criteria, determined by the permitting authority, as necessary to minimize air pollution. Unless exempt per Section 6.01.G, any person who practices or permits the practice of outdoor burning shall, in addition to any specific permit conditions established imposed, comply with the following general conditions:...

15. Structural fire training, provided for in Sections 6.01.G.1.g and 6.01.G.2.e, may be performed by a fire protection agency provided the following requirements are met:

a. The owner and fire protection agency must have met the requirements in ((SCAPCA)) SRCAA Regulation I, Article IX and Section 10.09 prior to training:...

H. Permit Requirements. Written permits, as required in Section 6.01.G.2, are subject to the following requirements:...

5. All applicants for outdoor burning permits shall pay a fee at the time of application, according to a schedule of fees, established by resolution or other official action of the permitting authority. When the permitting authority is the ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency, the fee shall be according to the schedule in Regulation I, Article X, Section 10.13....

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

SECTION 6.11 AGRICULTURAL BURNING

In addition to this Section of the Regulation, the Authority, implements and enforces Chapter 173-430 WAC. The more stringent requirement in Chapter 173-430 or Section 6.11 supersedes the lesser....

C. Statement of Authority. The ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency is empowered, pursuant to Chapter 70.94 RCW, to administer the agricultural burning program in Spokane County. Included is the authority to:...

D. Definitions. Unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning:...

2. Authority means the ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency.

7. Permitting Authority means the ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency (Authority)...

H. Administrative requirements....
4. All applicants for agricultural burning permits shall pay a fee at the time of application, according to a schedule of fees, established by resolution of the permitting authority. When the permitting authority is the ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency, the fee shall be according to the schedule in Regulation I, Article X....

AMENDATORY SECTION (Amending Order Res. 04-21, Filed 10/07/2004)

SECTION 6.14 STANDARDS FOR CONTROL OF PARTICULATE MATTER ON PAVED SURFACES...

B. Definitions....
3. The Authority is the ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency....

AMENDATORY SECTION (Amending Order Res. 99-01, Filed 01/07/1999)

SECTION 6.15 STANDARDS FOR CONTROL OF PARTICULATE MATTER ON UNPAVED ROADS...

B. Definitions.
1. Authority means the ((~~Spokane County Air Pollution Control Authority~~)) Spokane Regional Clean Air Agency....

WSR 07-07-085
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed March 16, 2007, 1:56 p.m.]

Continuance of WSR 07-03-123.
Preproposal statement of inquiry was filed as WSR [06-16-088].
Title of Rule and Other Identifying Information: Chapter 16-70 WAC, Animal diseases—Reporting.

Date of Intended Adoption: March 26, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is filing a continuance to extend the date of intended adoption.

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

March 16, 2007

Leonard E. Eldridge, DVM
State Veterinarian

WSR 07-07-086
PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 16, 2007, 1:58 p.m.]

Continuance of WSR 07-03-124.

Preproposal statement of inquiry was filed as WSR [06-16-090].

Title of Rule and Other Identifying Information: Chapter 16-610 WAC, Livestock inspection and identification.

Date of Intended Adoption: March 26, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is filing a continuance to extend the date of intended adoption.

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

March 16, 2007

Leonard E. Eldridge, DVM
State Veterinarian

WSR 07-07-088
PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed March 16, 2007, 2:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-063.

Title of Rule and Other Identifying Information: Amendment of chapter 504-26 WAC, Standards of conduct for students.

Hearing Location(s): Washington State University, Lighty Room 405, Pullman, Washington, on April 24, 2007, at 4:00 p.m. to 5:00 p.m.

Date of Intended Adoption: May 4, 2007.

Submit Written Comments to: Ralph T. Jenks, Director, Procedures, Records, and Forms and University Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by April 24, 2007.

Assistance for Persons with Disabilities: Contact Linda Nelson by April 17, 2007, (509) 335-3928.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update current academic integrity procedures regarding the roles and expectations for students, faculty, staff, and administration and address violations of academic integrity.

Reasons Supporting Proposal: To update academic integrity standards and address violations of those standards.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Lisa McIntyre, Associate Professor, Sociology, (509) 335-5705; Implementation and Enforcement: Elaine Voss, Director, Student Affairs, (509) 335-4532.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

March 16, 2007

Ralph T. Jenks, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-010 Definitions. (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appellate board" means any person or persons authorized by the vice-president for student affairs to consider an appeal from a student conduct board's determination as to whether a student has violated the standards of conduct for students or from the sanctions imposed by the student conduct officer.

(3) The term "cheating" includes, but is not limited to:

(a) Use of ~~((any))~~ unauthorized ~~((assistance))~~ materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition ~~((without permission,))~~ or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) ~~((Research))~~ Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of ~~((research))~~ scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of ~~((research))~~ scientific misconduct is subject to sanctions by the office of student conduct. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the vice-provost for research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any person who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, or any other person employed by the university. A person's status in a particular situation is determined by the vice-president for student affairs.

(9) The term "organization" means any number of persons who have complied with the formal requirements for university recognition.

~~(10) ((The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.~~

~~((11))~~ The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

~~((12))~~ (11) The term "shall" is used in the imperative sense.

~~((13))~~ (12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

~~((14))~~ (13) The term "student conduct officer" means a university official authorized by the vice-president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

~~((15))~~ (14) The term "university" means all locations of Washington State University.

~~((16))~~ (15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice-president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a rules violation has been committed.

(16) The term "academic integrity hearing board" means those teaching faculty who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(19) The vice-president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-201 Misconduct—Rules and regulations. Any individual or organization found to have committed, assisted, conspired, or ~~((to have))~~ attempted to commit the following misconduct (WAC 504-26-202 through 504-26-226) is subject to the disciplinary sanctions outlined in WAC 504-26-405.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-202 Acts of dishonesty. Acts of dishonesty, include but are not limited to the following:

(1) ~~((Cheating, plagiarism, or other forms of academic dishonesty such as:~~

~~(a) Unauthorized collaborations on assignments;~~

~~(b) Facilitation of dishonesty, including not challenging academic dishonesty;~~

~~(c) Obtaining unauthorized knowledge of exam materials;~~

~~(d) Unauthorized multiple submission of the same work; and~~

~~(e) Sabotage of others' work.)~~ Academic integrity violations including, but not limited to, cheating as defined in WAC 504-26-010.

(2) Knowingly furnishing false information to any university official, faculty member, or office.

(3) Forgery, alteration, or misuse of any university document~~(s)~~ or record, or instrument of identification whether issued by the university or other state or federal agency.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-203 Disruption or obstruction. Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of others or disrupt the university's activities. Prohibited behavior includes: Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other university activities, including its public service functions on or off campus, or of other authorized nonuniversity activities when the conduct occurs on university premises or is directed toward community members by any means including use of telephone, computer, or some other medium.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-210 Violation of law. Conduct which would constitute violation of any federal, state, or local law.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-404 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble(s) the evidence and ((assigns a grade, or takes other appropriate action, considering the academic nature of the violation)), upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student conduct in writing of the allegations, the student's admission, and the sanctions imposed.

~~((2) The instructor shall notify the office of student conduct of the violation.))~~ (b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student

conduct with a written determination, the evidence relied upon, and the sanctions imposed. The student has twenty-one days to request review of the instructor's determination and/or sanction(s) to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether or not the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review; and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is ((a)) the student's first offense ((for the student)), the office of student conduct ((sends a warning letter to the student informing him or her that a conduct file has been created. The office of student conduct takes no additional action unless the violation is serious enough to warrant further action or the student denies the allegation(s) and requests a hearing)) ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) ((If the student has a prior academic integrity violation, the case is handled according to the normal conduct procedures. Hearing officers for academic integrity matters are teaching faculty trained as university conduct board members. Serious or multiple violations which may result in suspension or expulsion are referred to a university conduct board.)) If the reported violation is the student's second offense, the student is ordinarily required to appear before a university conduct board with a recommendation that the student be dismissed from the university.

(5) ((A student wishing to appeal a grade assigned by the instructor must follow academic regulation 104 in the university catalog. To view the catalog, go to the registrar's office web site at: <http://www.registrar.wsu.edu>.) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board

may direct that the student's case be heard by the university conduct board with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-405 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student that suspension or expulsion may be imposed if the student is found to violate any institutional regulation(s) or fails to complete his or her conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor, and she or he is not eligible to serve on the university conduct board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the student to complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of an organization).

(g) Residence hall suspension. Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from the residence halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified. More than two violations of the standards of conduct for students involving alcohol or drugs may result in a suspension of one or more semesters.

(j) University expulsion. Permanent separation of the student from the university.

(k) Revocation of admission and/or degree. Admission to a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of

the process set forth in this student conduct code, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from university property based on his or her misconduct.

(n) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services or administrative approval from a student organization. Services and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(4) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in conduct officer hearings or cases in which the accused student takes responsibility for violations of the standards of conduct for students.

(5) Academic integrity violations.

(a) No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

(b) Instructors do not have authority to suspend or dismiss a student from the university.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-407 Review of decision. (1) A decision reached by the university conduct board or a sanction imposed by the student conduct officer may be appealed by the accused student(s) to an appellate board within twenty-one days of the date of the decision letter.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) The accused and the office of student conduct may explain their views of the matter to the appeals board in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original student conduct board hearing.

(3) The university appeals board shall review the record and any briefing filed by the parties and make one of the following determinations:

(a) Affirm, reverse or modify the conduct board's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board.

(4) The appeal board's decision is entered within twenty calendar days from the date of the appeal letter. By the close of the next business day following entry of the order, the decision is provided to the accused student(s) by personal delivery or deposited into the United States mail addressed to the last known address of the accused student(s). It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeal board's decision letter is the final order and shall advise the student or student organization that judicial review may be available.

(5) The appeals board decision is effective as soon as the order is signed. A petition to delay the date that the order becomes effective (a "petition for stay") may be directed to the chair of the appeals board within ten days of the date the order was delivered to the student or placed in the U.S. mail. The chair shall have authority to decide whether to grant or deny the request.

(6) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

WSR 07-07-097

WITHDRAWAL OF PROPOSED RULES HORSE RACING COMMISSION

[Filed March 19, 2007, 10:52 a.m.]

The Washington horse racing commission (WHRC) would like to withdraw our notice of proposed rule making regarding chapter 260-12 WAC, filed with your office under WSR 07-07-048 on March 13, 2007.

The agency intends to file an amended notice of proposed rule making before the cutoff of March 21, 2007.

Robert J. Lopez
Deputy Secretary

WSR 07-07-098

PROPOSED RULES

DEPARTMENT OF HEALTH (Occupational Therapy Practice Board)

[Filed March 19, 2007, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-15-126.

Title of Rule and Other Identifying Information: WAC 246-847-010 Definitions, new section WAC 246-847-135 Standards of supervision, and WAC 246-847-130 Definition for "commonly accepted standards for the profession."

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on April 27, 2007, at 9:30 a.m.

Date of Intended Adoption: April 27, 2007.

Submit Written Comments to: Vicki Brown, Program Manager, Occupational Therapy Practice Board, P.O. Box 47867, Olympia, WA 98504-7867, e-mail vicki.brown@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by April 20, 2007.

Assistance for Persons with Disabilities: Contact Vicki Brown, Program Manager, by April 20, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 246-847-010 Definitions, the proposed changes will eliminate unnecessary definitions and clarify existing definitions.

WAC 246-847-135 Standards of supervision, the proposed rule establishes standards for occupational therapy assistants and aides that are consistent with the American Occupational Therapy Association (AOTA) guidelines.

WAC 246-847-130 Definition for "commonly accepted standards for the profession," this rule is being repealed as it is being moved to the definitions section.

Reasons Supporting Proposal: The proposed changes will address concerns expressed by practitioners regarding unclear definitions and appropriate levels of supervision.

The board is proposing eliminating unnecessary definitions, clarifying existing definitions and ensuring protection of the public by updating the supervision standards for occupational therapy assistants and aides to be consistent with the AOTA guidelines. The board initiated this process under an earlier CR-101 which was withdrawn because it did not clearly cover the desired scope of the rule change.

Statutory Authority for Adoption: RCW 18.59.130.

Statute Being Implemented: RCW 18.59.130.

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

Name of Proponent: Department of health, occupational therapy practice board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicki Brown, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

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

Small Business Economic Impact Statement

1. Briefly Describe the Proposed Rule: The proposed rule seeks to increase the standards of occupational therapist (OT) supervision for occupational therapy assistants (OTA) and occupational therapy aides (aides) for the appropriateness of occupational therapy care in accordance with RCW 18.59.130(2) and 18.59.020.

The proposed rule amendments in WAC 246-847-010 seek to place all definitions in one location for ease in locating. These amendments consist of:

- Condensed, clarified wording, grammar, structure, and formatting.
- Modifying the definitions of:
 - o *Occupations* - means "activities having unique meaning and purpose in an individual's life."
 - o *Direct supervision* - means a person with a limited permit, "has daily, in person contact at the work site by an occupational therapist or occupational therapy assistant licensed in the state of Washington."
 - o *Professional supervision* is for an occupational therapy aide as described in RCW 18.59.020(5) means "in person contact at the work site at least weekly by an occupational therapist or occupational therapy assistant licensed in the state of Washington."

- o *Regular consultation* is for an occupational therapy assistant and means "in person contact at least monthly by an occupational therapist licensed in the state of Washington with supervision available as needed by other methods."
- o *In association* is for a person with a limited permit and means "practicing in a setting in which an occupational therapist licensed in the state of Washington is available on the premises for supervision, consultation, and assistance as needed to provide protection for the client's health, safely [safety] and welfare."
- Add the definition of "consultation" which means "practitioners are expected to function as consultants within the scope of practice appropriate to their level of competence."
- Delete the definition of the term, "contact hour."
- Moved the definition of "working days" from WAC 246-847-110 to 246-847-010(10).
- Moved the definition of "Commonly accepted standard for the profession" from WAC 246-847-130 to 246-847-010(11).

2. Is a Small Business Economic Impact Statement (SBEIS) Required for this Rule? Yes, portions of this rule require an SBEIS. Department of health (department) has reviewed this proposal and has determined that an SBEIS is required for the following portions of this rule:

- o *Direct supervision* - means a person with a limited permit, "has daily, in person contact at the work site by an occupational therapist or occupational therapy assistant licensed in the state of Washington."
- o *Professional supervision* is for an occupational therapy aide as described in RCW 18.59.020(5) means "in person contact at the work site at least weekly by an occupational therapist or occupational therapy assistant licensed in the state of Washington."
- o *Regular consultation* is for an occupational therapy assistant and means "in person contact at least monthly by an occupational therapist licensed in the state of Washington with supervision available as needed by other methods."

3. Which Industries Are Affected by this Rule? In preparing this SBEIS, the department of health used the following SIC codes:

SIC Industry Code and Title	# of Businesses	# of Employees	Average # of Employees for Smallest Businesses	Average # of Employees for 10% of Largest Businesses
8049 Offices of health practitioners, nec	913	5,450	3	27
8051 Skilled nursing care facilities	281	26,407	15	144
8052 Intermediate care facilities	29	1,651	22	147
8059 Nursing and personal care, nec	110	4,081	35	160
8062 General medical & surgical hospital	146	78,593	11	2,028
8069 Specialty hospitals exc. Psychiatrist	23	4,106	15	168
8082 Home health care services	169	7,408	14	163
8093 Specialty outpatient clinics, nec	245	7,530	9	114
8099 Health and allied services, nec	93	1,484	143	64

4. What Are the Costs of Complying with this Rule for Businesses? The list below identifies the potential costs to small and large businesses as they apply to person involved.

<u>Supervision or consultation</u>	<u>Frequency</u>	<u>Persons involved</u>
Direct supervision	Daily	OT or OTA & Graduate with limited permit
Professional supervision	Weekly	OT or OTA & Aides
Regular consultation	Monthly	OT & OTA

The proposed rule does not define the meeting length. If the meeting is one hour, the cost to all persons involved is the time to meet. The Washington Occupational Therapy Association calculates the average hourly wage is \$26.28 for an occupational therapist, \$18.48 for an occupational therapy assistant, \$11.13 for OT aides and \$18.48 for a new graduate with a limited permit.

OT - 1 hour daily	52 X 5 = 260 X \$26.28 = \$6,382.80
OT Assistant - 1 hour daily	52 X 5 = 260 X \$18.48 = \$4,804.80
OT Aide - 1 hour daily	52 X 5 = 260 X \$11.13 = \$2,893.80
OT new grad - 1 hour daily	52 X 5 = 260 X \$18.48 = \$4,804.80
OT - 1 hour weekly	52 X \$26.28 = \$1,366.56
OT Assistant - 1 hour weekly	52 X \$18.48 = \$960.96
OT Aide - 1 hour weekly	52 X \$11.13 = \$578.76
OT new grad - 1 hour weekly	52 X \$18.48 = \$960.96
OT - monthly	12 X \$26.28 = \$315.36
OT Assistant - monthly	12 X \$18.48 = \$221.76
OT Aide - monthly	12 X \$11.13 = \$133.56
OT new grad - monthly	12 X \$18.48 = \$221.76

If these meetings are considered a part of the schedule, there would not be an added cost. If persons involved are busy all the time and can only meet away from their working hours, the total cost for the therapist and assistant would be the total costs to persons involved. For example, the annual costs of direct supervision requiring daily meeting between OT and a graduate with limited permit is \$11,187.60, which is \$6,382.80 plus \$4,804.80, the total annual costs to OT and graduate with limited permit.

5. Does the Rule Impose a Disproportionate Impact on Small Businesses? If all involved parties (OT, OTA, Aide, new graduates) are hired by small and large business and the hiring businesses bear the costs of consultation or supervision, then there is a potential for a disproportionate impact [impact] on small businesses. As the employment table indicates, the average number of employees is much higher for large businesses compared to small ones. However, the existence of disproportionate impact also depends upon the number of involved parties (OT, OTA, Aide, new graduates) hired by small and large businesses.

6. How Are Small Businesses Involved in the Development of this Rule? The occupational therapy practice

board held open public rules workshops in coordination with state associations. All active state licensees were invited by mail.

A copy of the statement may be obtained by contacting Vicki Brown, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4865, fax (360) 664-9077, e-mail vicki.brown@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Brown, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4865, fax (360) 664-9077, e-mail vicki.brown@doh.wa.gov.

March 16, 2007
Vicki Brown
Program Manager

AMENDATORY SECTION (Amending Order 300B, filed 8/24/92, effective 9/24/92)

WAC 246-847-010 Definitions. (1) The following terms in ~~((RCW 18.59.020(2) shall mean))~~ this section apply throughout this chapter and have the following meanings:

(a) "Scientifically based use of purposeful activity" is the treatment of individuals using established methodology based upon the behavioral and biological sciences and includes the ~~((analysis, application and adaptation of activities for use with individuals having a variety of physical, emotional, cognitive and social disorders. Use of purposeful activity includes a process of continually modifying treatment to meet the changing needs of an individual. Purposeful activity is goal-oriented and cannot be routinely prescribed))~~ therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. "Occupations" are activities having unique meaning and purpose in an individual's life.

(b) "Teaching daily living skills" is the instruction in daily living skills based upon the evaluation of all the components of the individual's disability and the adaptation or treatment based on the evaluation. ~~((Components of a disability are physical, sensory, social, emotional and cognitive functions.))~~

(c) "Developing prevocational skills and play and avocational capabilities" ~~((is not only the development of prevocational skills and play and avocational capabilities but))~~ also involves the scientifically based use of purposeful activity.

(d) ~~((("Designing, fabricating, or applying selected orthotic and prosthetic devices or selected adaptive equipment" is not specific occupational therapy services if a person designs, fabricates, or applies selected orthotic and prosthetic devices or selected adaptive equipment for an individual if the device or equipment is prescribed or ordered by a health care professional authorized by the laws of the state of Washington to prescribe the device or equipment or direct the design, fabrication, or application of the device or equipment.~~

~~((e)))~~ "Adapting environments for ((the handicapped)) individuals with disabilities" ((is the evaluation of all the components of an individual's disability and the adaptation of the environment of the individual based on the evaluation. Components of a disability are physical, sensory, social,

emotional and cognitive functions)) includes assessing needs, identifying strategies, implementing and training in the use of strategies, and evaluating outcomes. Occupational therapy focuses on the interaction of an individual's skills and abilities, the features of the environment, and the demands and purposes of activities.

(2) ("Supervision" and "regular consultation" of an occupational therapy assistant by an occupational therapist in RCW 18.59.020(4) and "direct supervision" of a person holding a limited permit by an occupational therapist in RCW 18.59.040(7) shall mean face to face meetings between the occupational therapist and occupational therapy assistant and between the occupational therapist and holder of a limited permit occurring at intervals as determined necessary by the occupational therapist to establish, review, or revise the client's treatment objectives. The meetings shall be documented and the documentation shall be maintained in each client's treatment record. The failure to meet to establish, review, or revise the client's treatment objectives at sufficient intervals to meet the client's needs shall be grounds for disciplinary action against the occupational therapist's license and/or the occupational therapy assistant's license to practice in the state of Washington and/or the limited permit pursuant to WAC 246-847-160 (4) and (14), 246-847-170 (2) and (3) and RCW 18.59.100 for conduct occurring prior to June 11, 1986 and pursuant to RCW 18.130.180 for conduct occurring on or after June 11, 1986.

(3) "Professional supervision" of an occupational therapy aide in RCW 18.59.020(5) shall mean:

(a) Documented training by the occupational therapist of the occupational therapy aide in each specific occupational therapy technique for each specific client and the training shall be performed on the client;

(b) Face to face meetings between the occupational therapy aide and the supervising occupational therapist or an occupational therapy assistant under the direction of the supervising occupational therapist occurring at intervals as determined by the occupational therapist to meet the client's needs, but shall occur at least once every two weeks; and

(c) The occupational therapist shall observe the occupational therapy aide perform on the client the specific occupational therapy techniques for which the occupational therapy aide was trained at intervals as determined by the occupational therapist to meet the client's needs, but shall occur at least once a month.

The meetings and client contacts shall be documented and the documentation shall be maintained in the client's treatment records. The failure to meet at sufficient intervals to meet the client's needs shall be grounds for disciplinary action against the occupational therapist's license to practice in the state of Washington pursuant to WAC 246-847-160 (4) and (14), 246-847-170 (2) and (3) and RCW 18.59.100 for conduct occurring prior to June 11, 1986 and pursuant to RCW 18.130.180 for conduct occurring on or after June 11, 1986.

(4) Sections (2) and (3) of this rule shall not be effective until July 1, 1985.

(5)) "Regular consultation" as described in RCW 18.59.020(4) means in-person contact at least monthly by an occupational therapist licensed in the state of Washington

with supervision available as needed by other methods which include but are not limited to phone and e-mail.

(3) "In association" as described in RCW 18.59.040(7) means practicing in a setting in which an occupational therapist licensed in the state of Washington is available on the premises for supervision, consultation, and assistance as needed to provide protection for the client's health, safety and welfare.

(4) "Direct supervision" as described in RCW 18.59.040(7) means daily, in-person contact at the site where services are provided by an occupational therapist licensed in the state of Washington.

(5) "Professional supervision" of an occupational therapy aide as described in RCW 18.59.020(5) means in-person contact at the site where services are provided by an occupational therapist or occupational therapy assistant licensed in the state of Washington. If the client receives occupational services more than once a week, professional supervision must occur at least weekly. If the client receives occupational services once a week or less, professional supervision must occur at least once every two weeks.

(6) "Clients" include patients, students, and those to whom occupational therapy services are delivered.

((6)) (7) "Evaluation" is the process of obtaining and interpreting data necessary for treatment, which includes, but is not limited to, planning for and documenting the evaluation process and results. The evaluation data may be gathered through record review, specific observation, interview, and the administration of data collection procedures, which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities.

((7)) (8) "Work site" in RCW 18.59.080 means the primary work location.

((8) "In association" for RCW 18.59.040(7) shall mean practicing in a setting in which another occupational therapist licensed in the state of Washington is available for consultation and assistance as needed to provide protection for the clients' health, safety and welfare.

(9) One "contact hour" is considered to be fifty minutes.

(10) "Peer reviewer" shall mean a licensed occupational therapist chosen by the licensee to review the self study plan and verify that the self study activity meets the objectives for peer reviewed self study as defined in WAC 246-847-065-))

(9) "Consultation" means that practitioners are expected to function as consultants within the scope of practice appropriate to their level of competence.

(10) "Working days" in RCW 18.59.040(5) shall mean consecutive calendar days.

(11) "Commonly accepted standards for the profession" in RCW 18.59.040 (5)(b) and 18.59.070 shall mean having passed the National Board for Certification in Occupational Therapy or its successor/predecessor organization, not having engaged in unprofessional conduct or gross incompetency as established by the board in WAC 246-847-160 for conduct occurring prior to June 11, 1986, and as established in RCW 18.130.180 for conduct occurring on or after June 11, 1986.

(12) "Occupational therapy aide" means a person who is trained by an occupational therapist or occupational therapy

assistant to perform client and nonclient related tasks. Occupational therapy aides are not primary service providers of occupational therapy in any practice setting. Occupational therapy aides do not provide skilled occupational therapy services.

(13) "Client-related tasks" are routine tasks during which the aide may interact with the client but does not act as a primary service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:

(a) The outcome anticipated for the delegated task is predictable;

(b) The situation of the client and the environment is stable and will not require that judgment, interpretations, or adaptations be made by the aide;

(c) The client has demonstrated some previous performance ability in executing the task; and

(d) The task routine and process have been clearly established.

AMENDATORY SECTION (Amending Order 300B, filed 8/24/92, effective 9/24/92)

WAC 246-847-110 Persons exempt from licensure pursuant to RCW 18.59.040(5). (1) To qualify for the exemption from licensure pursuant to RCW 18.59.040(5), the individual claiming the exemption shall have been actively engaged in the practice of occupational therapy within the preceding four-year period and shall in writing notify the department, at least thirty days before any occupational therapy services are performed in this state, of the following:

(a) In which state(s) the individual is licensed to perform occupational therapy services and the license number(s); and

(b) The name, address, and telephone number of at least one facility or employer where the individual has been engaged in the practice of occupational therapy within the preceding four years; or

(c) If the exemption is claimed (~~(pursuant to)~~ under RCW 18.59.040 (5)(b), the individual (~~(shall)~~ must submit a signed notarized statement attesting to:

(i) Having passed the (~~(American Occupational Therapy Certification Board))~~ National Board for Certification in Occupational Therapy examination or its successor/predecessor organization; and

(ii) Having engaged in occupational therapy practice within the preceding four years, including the name, address, and telephone number of at least one facility or employer during this period;

(iii) Not having engaged in unprofessional conduct (~~(or gross incompetency as established in WAC 246-847-160 for conduct occurring prior to June 11, 1986 and as established in))~~ under RCW 18.130.180 ((for conduct occurring on or after June 11, 1986; and not having been convicted of a crime involving moral turpitude or a felony relating to the profession of occupational therapy)); and

(d) A signed notarized statement describing when the occupational therapy services will be performed, where the occupational therapy services will be performed, and how

long the individual will be performing occupational therapy services in this state.

(2) A ninety-day temporary permit must be received by the occupational therapist prior to rendering of occupational therapy services.

~~((3) "Working days" in RCW 18.59.040(5) shall mean consecutive calendar days.))~~

NEW SECTION

WAC 246-847-135 Standards of supervision. The following are the standards for supervision of occupational therapy assistants, limited permit holders, and occupational therapy aides:

(1) Licensed occupational therapy assistants must be supervised through regular consultation by an occupational therapist licensed in the state of Washington. Regular consultation must be documented and the documentation must be kept in a location determined by the supervising occupational therapist or occupational therapy assistant.

(2)(a) A limited permit holder must work in association with an occupational therapist licensed in the state of Washington with a minimum of one year of experience. "In association with" shall include consultation regarding evaluation, intervention, progress, reevaluation and discharge planning of each assigned patient at appropriate intervals and documented by cosignature of notes by the supervising occupational therapist.

(b) Limited permit holders who have failed the examination must be directly supervised by an occupational therapist licensed in the state of Washington with a minimum of one year of experience. Direct supervision must include consultation regarding evaluation, intervention, progress, reevaluation and discharge planning of each assigned patient at appropriate intervals and documented by cosignature of notes by the supervising occupational therapist.

(3) Occupational therapy aides must be professionally supervised and trained by an occupational therapist or an occupational therapy assistant licensed in the state of Washington. Professional supervision must include documented supervision and training.

(a) The occupational therapist or occupational therapy assistant shall train the occupational therapy aide on client and nonclient related tasks at least once a month.

(b) When performing client related tasks, the occupational therapist or occupational therapy assistant must ensure the occupational therapy aide is trained and competent in performing the task on the specific client.

(c) The documentation must be maintained in a location determined by the supervising occupational therapist or occupational therapy assistant.

(4) Definitions can be found in WAC 246-847-010.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-847-130

Definition of "commonly accepted standards for the profession."

WSR 07-07-099
PROPOSED RULES
DEPARTMENT OF HEALTH
(Occupational Therapy Practice Board)
[Filed March 19, 2007, 11:11 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-847-175 Delegation of authority to initiate investigations, this rule delegates the board's authority to initiate investigations to the department of health through a case management team that includes department staff and at least one clinical member of the board. This is a new section.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on April 27, 2007, at 9:30 a.m.

Date of Intended Adoption: April 27, 2007.

Submit Written Comments to: Vicki Brown, Program Manager, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by April 17, 2007.

Assistance for Persons with Disabilities: Contact Vicki Brown, by April 17, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A Washington court of appeals decision *Client A. v. Yoshinaka*, 128 Wn. App. 833, 116 P.3d 1081 (2005) reinforced not only the authority, but the responsibility of disciplinary boards and commissions to direct investigation activities in disciplinary cases. The decision also stated that boards and commissions may choose to delegate the authority to staff, but the authority must delegate that responsibility through the rule process. The occupational therapy practice board has decided to begin the rule process to delegate this activity to a case management team comprised of department of health staff and a clinical member of the board.

Reasons Supporting Proposal: The board had delegated the authority to department of health staff to initiate investigations in a policy. This delegation assisted in moving cases more quickly through the disciplinary process and eliminates significant workload for the board. The court of appeals decision that the disciplining authority must determine that a complaint merits investigation has had the negative effect of slowing cases down and increasing workload. The proposed rule will reinstate the ability for a case management team to make the initial investigation decision.

Statutory Authority for Adoption: RCW 18.59.130 and 18.130.050.

Statute Being Implemented: RCW 18.130.080.

Rule is necessary because of state court decision, *Client A. v. Yoshinaka*, 128 Wn. App. 833, 166 P.3d 1081 (2005).

Name of Proponent: Department of health, occupational therapy practice board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicki Brown, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has

determined that the proposed rule relates to internal governmental operations that are not subject to violation by [a] non-governmental party. Therefore, according to RCW 19.85.-025(3) and 34.05.310(4) no small business economic impact statement needs to be prepared.

A cost-benefit analysis is not required under RCW 34.05.328. The department has determined that the proposed rule relates to internal governmental operations that are not subject to violation by a nongovernment party. Therefore, according to RCW 34.05.328 (5)(b)(ii) a cost-benefit analysis is not required.

March 16, 2007

Vicki Brown

Program Manager

NEW SECTION

WAC 246-847-175 Delegation of authority to initiate investigations. The board delegates to a department of health case management team the authority to initiate an investigation when the board or the department receives information, by means of a complaint or otherwise, that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition. The case management team will consist of, at a minimum, a board member licensed under chapter 18.59 RCW, the executive director or his or her designee, an investigator and a staff attorney.

WSR 07-07-100
PROPOSED RULES
HORSE RACING COMMISSION

[Filed March 19, 2007, 11:14 a.m.]

Supplemental Notice to WSR 07-07-048.

Preproposal statement of inquiry was filed as WSR 07-02-036.

Title of Rule and Other Identifying Information: Chapter 260-12 WAC, General rules.

Hearing Location(s): Marcus Whitman Hotel and Conference Center, 6 West Rose Street, Walla Walla, WA 99362, on May 18, 2007, at 9:30 a.m.

Date of Intended Adoption: May 18, 2007.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by May 14, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by May 14, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 260-12 WAC, General rules, is being updated into clearer and more understandable language. In addition, the section on definitions is being updated and sections no longer applicable are being repealed.

Reasons Supporting Proposal: Part of the agency's regulatory reform effort.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 19, 2007
R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-001 ((Promulgation-)) Intent. ((Chapter 55, Laws of 1933, created and established the Washington horse racing commission, and vested said commission with full powers to prescribe rules, regulations and conditions under which all horse racing, upon the result of which there shall be wagering, shall be conducted within the state of Washington.

The rules of racing as adopted and herein set forth are published and declared the rules and regulations of racing for the state of Washington. They have been compiled with the hope that they will promote racing on a high plane and encourage the breeding and ownership of thoroughbred horses in this state.

Anyone who enters or causes a horse to run, or who owns a share of any horse which takes part in any race held at a meeting conducted under a license from the Washington horse racing commission, or any corporation, association, official or person participating in any such meeting in any capacity, is expected to be conversant with and to comply with the present rules governing racing.

Such persons, corporations and associations hereby agree to submit, without any reservation, to all the rules and consequences resulting therefrom.

WASHINGTON HORSE RACING COMMISSION

Will Bachofner, Chairman,
Robert Mead, Commissioner,
Warren Chinn, Commissioner,
Blaine Johnson, Secretary.))

The rules adopted by the Washington horse racing commission will be known as the "rules of racing." They have been compiled with the intent to promote integrity in racing and to encourage the breeding and ownership of thoroughbred horses in this state.

AMENDATORY SECTION (Amending Order 81-06, filed 7/10/81)

WAC 260-12-010 Definitions. ((In applying the rules herein set forth and all amendments thereof the following

definitions, constructions and interpretations shall apply, except where otherwise indicated in said rules:

(1) Age of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.

(2) "Arrears" shall mean all moneys due for entrance forfeits, fees (including jockey's, etc. fees), forfeitures, subscriptions, stake, purchase money in claiming races, and also any default in money incident to the rules.

~~(3))~~ The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Added money." Money added to the purse of a race by the association, or other fund, in the amount paid by owners for nominations, entry, and starting fees.

(2) "Allowance race." An overnight race for which there is no claiming price established.

(3) "Also eligible."

(a) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

(b) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(4) "Apprentice jockey." A jockey who has not won a certain number of races within a specific period of time who is granted an extra weight allowance as provided in WAC 260-32-370(9).

(5) "Apprentice allowance." A weight allowance given to an apprentice jockey ranging from five to ten pounds.

(6) "Authorized agent." ((shall mean)) A person appointed by a written ((instrument)) document signed ((and acknowledged before a notary public)) by the owner ((and filed in accordance with the rules)) with authority to act for the owner.

~~((4))~~ (7) "Association." ((shall mean)) Any person or persons, associations, or corporations licensed by the commission to conduct ((racing for any stake, purse or reward)) parimutuel wagering on a race meet.

~~((5))~~ "Breeder" of a horse shall mean the owner of its dam at the time of foaling.

(6) "Breeding place" shall mean the place of horse's birth.

(7) "Calendar day" shall mean twenty-four hours ending at midnight.

(8) "Declaration" shall mean the act of withdrawing an entered horse from a race before the closing of overnight entries.

(9) "Entry" shall mean according to the requirement of the text (a) a horse made eligible to run in a race, (b) two or more which are entered or run in a race owned by the same owner or trained by the same trainer.

(10) "Equipment," as applied to a horse, shall mean whips, blinkers, tongue straps, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

(11) "Forfeit" shall mean money due because of an error, fault, neglect of duty, breach of contract, or a penalty.

(12) "Grounds" shall mean all real property owned or leased by an association used in the conduct of a race meet.

(13) "Horse" includes filly, mare, colt, horse, gelding or ridgling.

(14) "Jockey" shall mean a race rider, whether a licensed jockey, apprentice or amateur.

(15) "Maiden" shall mean a horse which at the time of starting has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden which has been disqualified after finishing first is still to be considered a maiden.

(16) "Meeting" shall mean the entire consecutive period for which license to race has been granted to any one association by the commission.

(17) "Month" shall mean a calendar month.

(18) "Nominator" shall mean a person in whose name a horse is entered for a race.

(19) "Owner" includes sole owner, part owner or lessee of a horse. An interest only in the winnings of a horse does not constitute part ownership.

(20) "Place" in racing shall mean first, second or third and in that order is called "win," "place," and "show."

(21) "Post position" shall mean the position assigned to the horse at the starting line of the race.

(22) "Post time" shall mean the time set for the arrival at the starting point of the horses in a race and must be shown a reasonable time prior to the race on a clock device, provided for that purpose, prominently displayed and clearly readable from the grandstand.

(23) "Race" shall mean a contest between horses for purse, stakes, or reward on any licensed course and in the presence of judge or judges. A race which overfills may be contested in two or more divisions.

(a) "Claiming race" shall mean a race in which any horse entered therein may be claimed in conformity with the rules.

(b) "Free handicap" shall mean a handicap in which no liability for entrance money is incurred.

(c) "Handicap" shall mean a race in which the weights to be carried by the entered horses are adjusted by a handicapper or board of handicappers for the purpose of equalizing their respective chances of winning.

(d) "Highweight handicap" shall mean a handicap in which the weight assigned to the top horse in that handicap is not less than 140 pounds.

(e) "Match" shall mean a private sweepstakes between two horses which are the property of two different owners. If prior to the running of the race either of the horses entered in the match dies, or if either owner dies the match is void. It remains a match even if money or any other award is added to the stakes.

(f) "Optional claiming race" shall mean a race restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less. In the case of horses entered to be claimed in such a race, the race will be considered, for the purposes of these rules, a claiming race.

(g) "Overnight race" shall mean a race for which entries close seventy-two hours, or less, before the time set for the first race of the day on which such race is to be run.

(h) "Owner's handicap" shall mean a race wherein the owner fixes, at the time of entry, the weight his horse is to carry.

(i) "Post race" shall mean a race in which the subscribers announce at declaration time the horse, or horses, each intends to start, without limitations of choice other than prescribed by the rules and conditions of the race.

(j) "Private sweepstakes" shall mean a race to which no money or other prize is added, and which, previous to closing, has not been advertised, either by publication, or by circular or entry blank, or in any other way.

(k) "Produce race" shall mean a race to be run for by the produce of horses named or described at the time of entry.

(l) "Purse race" shall mean a race for money or any other prize to which the owners of the horses engaged do not contribute.

(24) "Race day" shall mean any period of twenty-four hours beginning at midnight and included in the period of a race meeting and in the matter of penalties the word "day" means a "calendar day."

(25) "Recognized meeting" shall mean any meeting wherever held under the sanction of a turf authority having reciprocal relations with the commission and other turf authorities (approved by said commission) for the mutual enforcement of rulings imposed on persons guilty of fraudulent turf practices of any kind.

(26) "Rules" shall mean the rules herein prescribed and any amendments or additions thereto.

(27) "Scratch" shall mean the act of withdrawing an entered horse from the race after the closing of overnight entries.

(28) "Scratch time" shall mean the time set by the association for the closing of applications for permission to withdraw from races of that day.

(29) "Stake race" or "sweepstakes" shall mean a race for which nominations close more than seventy-two hours in advance of its running and for which subscribers contributed money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of stakes.

(30) "Starter." A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses.

(31) "Stewards" shall mean the stewards of the meeting or their duly appointed deputies.

(32) "Subscription" shall mean the act of nominating to a stake race.

(33) "Untried horse" shall mean a horse whose produce are maidens.

(34) "Walk over" shall mean a situation in which two horses in entirely different interest do not run in a race.

(35) "Weight for age" shall mean standard weight according to the rules. A "weight for age" race is one in which all horses carry weight according to the scale without penalties or allowances.

(36) "Year" shall mean a calendar year.) (8) "Association grounds." All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, and

parking lots and any other areas under the jurisdiction of the commission.

(9) "Bar shoe." A special shoe with a solid bar that runs across the rear of the shoe for extra protection.

(10) "Bit." The metal mouthpiece on a bridle used to guide and control a horse.

(11) "Bleeder." A horse that demonstrates exercise induced pulmonary hemorrhaging.

(12) "Blinkers." A hood with different size cups to limit the peripheral vision of a horse.

(13) "Breakage." The remaining cents after parimutuel payoffs are rounded down to a dime or nickel.

(14) "Breeder." For thoroughbreds, the breeder is the owner of the horse's dam at the time of foaling. For quarter horses, appaloosas, arabians and paint horses, the breeder is the owner of the dam at the time of service.

(15) "Claiming." The act of buying a horse out of a race for a specific price.

(16) "Claim box." A box in a specified location where a claim must be deposited to be valid.

(17) "Claiming race." Races in which horses are entered subject to being claimed for a specified price.

(18) "Clerk of scales." An official who weighs the jockeys prior to and after each race.

(19) "Clocker." An official that times horses when horses are performing a workout.

(20) "Colors." Racing silks with owners' distinct designs and color worn by jockeys while racing.

(21) "Colt." Male horse under the age of five.

(22) "Commission."

(a) The five-member commission established by RCW 67.16.012; or

(b) The state agency known as the Washington horse racing commission.

(23) "Condition book." A book issued by the racing secretary with specific eligibility conditions for scheduled races.

(24) "Coupled entry." Two or more horses running as a single betting interest for parimutuel wagering purposes.

(25) "Daily double." Type of wager calling for the selection of the winner of two consecutive races.

(26) "Dead heat." Two or more horses in an exact tie at the finish line.

(27) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

(28) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

(29) "Entry."

(a) A horse eligible for and entered in a race.

(b) Two or more horses which are entered or run in a race with common ownership.

(30) "Equipment." Tack carried or used on a racehorse including whips, blinkers, tongue ties, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

(31) "Exacta." A wager involving selecting the first two finishers in a race in exact order.

(32) "Exercise rider." A person licensed by the commission to ride horses for the purpose of exercising.

(33) "Field." The total horses scheduled to run in a race.

(34) "Filly." A female horse age four or under.

(35) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.

(36) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.

(37) "Furosemide." Generic term for a medication used for the treatment of bleeders.

(38) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.

(39) "Gelding." A male horse that has been castrated.

(40) "Groom" A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.

(41) "Handicap."

(a) A race in which the racing secretary designates the weight to be carried for each horse.

(b) Making wagering selections on the basis of a horse's past performances.

(42) "Handle." Total amount of money wagered in the parimutuel pool for a race, race card, or a race meet.

(43) "Horse."

(a) A registered filly, mare, colt, horse, gelding or ridgling of a breed that is eligible to race in the state of Washington.

(b) Any male horse five years old or older.

(44) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.

(45) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.

(46) "Jockey fee." The money paid to a jockey for riding in a race.

(47) "Maiden." A horse, which at the time of starting in a race, has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden who has been disqualified after finishing first is still considered a maiden.

(48) "Mare." A female horse five years old or older, or a female horse of any age, which has been bred at anytime in its life.

(49) "Meet." The dates for live racing that have been approved by the commission. (Also refer to RCW 67.16.-010.)

(50) "Minus pool." A mutuel pool caused when one horse is heavily bet and after all mandatory deductions there is not enough money in the pool to pay the legally prescribed minimum on each winning wager.

(51) "Morning line." A handicapper's approximate odds quoted in the program.

(52) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.

(53) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).

(54) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.

(55) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

(56) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.

(57) "Official."

(a) When the board of stewards has determined that the order of finish of a race is correct for the mutuel payouts.

(b) An individual designated to perform functions to regulate a race meet.

(58) "Off-track betting." Parimutuel wagering on horse races conducted at a location other than the racing association's grounds, often referred to as a satellite location.

(59) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.

(60) "Overnight race." A contest for which entries close at a time set by the racing secretary.

(61) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.

(62) "Owner." Any person licensed by the commission with an ownership interest in a horse, including a lessee. An interest only in the winnings of a horse does not constitute part ownership.

(63) "Owners' bonus." A percentage of the gross mutuel pool the association is required by RCW 67.16.102 to withhold to be paid to owners of Washington bred horses at the conclusion of the meet based on the owner's horse finishing first, second, third or fourth.

(64) "Paddock." Enclosure or area where horses are saddled prior to the post parade.

(65) "Paddock judge." An official who monitors the saddling of the horses before a race to ensure consistent equipment on each horse and supervises the paddock.

(66) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.

(67) "Pick six." A type of wager requiring the patron to select the winners of six consecutive races.

(68) "Pick three" or "pick four." A type of wager requiring the patron to select the winners of three or four consecutive races.

(69) "Place." To finish second in a race.

(70) "Poles." Markers positioned around the track indicating the distance to the finish line.

(71) "Post." The starting position on the track.

(72) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.

(73) "Post position." Position assigned to the horse to break from the starting gate determined by lot at the time of the draw of the race.

(74) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

(75) "Purse." The amount of prize money offered by the racing association for each race.

(76) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

(77) "Racing plates." Shoes designed for racehorses, usually made of aluminum.

(78) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

(79) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

(80) "Recognized meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

(81) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

(82) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

(83) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

(84) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

(85) "Show." To finish third in a race.

(86) "Simulcast." Broadcasting a live race from another racing association for purposes of parimutuel wagering on that race, or sending a broadcast of a live race to another racing association for purposes of parimutuel wagering on that race.

(87) "Stake race." A race for which nominations close more than seventy-two hours in advance of its running and for which owners or nominators contribute money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of nomination, entry, or starting fees.

(88) "Stallion." A male horse which can be used for breeding purposes.

(89) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

(90) "Starter."

(a) A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses; or

(b) An official responsible for dispatching the horses from the starting gate.

(91) "Starter's list." A list, maintained by the official starter, of horses that have been unruly when loading in the starting gate. Horses on the starter's list are ineligible to enter.

(92) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

(93) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

(94) "Stewards' list." A list, maintained by the stewards, of horses which are ineligible to enter for various reasons, e.g., poor performance, ownership disputes, etc.

(95) "Test barn." The enclosure to which selected horses are taken for post race testing.

(96) "Tongue tie." Bandage or other apparatus used to tie a horse's tongue to prevent the horse from rolling it back and restricting its airway.

(97) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

(98) "Turf course." A racing surface comprised of grass.

(99) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

(100) "Washington bred." A horse that was foaled in the state of Washington.

(101) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

(102) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

(103) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

(104) "Workout." An official workout of a horse as required in WAC 260-40-100 to make a horse eligible to run in a race.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-020 To whom rules apply. (1) The rules of racing (~~herein prescribed, and any amendments or additions thereto,~~) apply to all persons, associations, partnerships, or corporations holding or conducting a (~~meeting~~) race meet within the state of Washington (~~licensed by the commission where racing shall be permitted for any stake, purse or reward~~) where the parimutuel wagering system is used.

(2) (~~The~~) These rules (~~shall~~) also apply to any participant in, or patron of, any (~~such licensed meetings~~) race meet.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-040 Licenses conditioned on observance. Every license to hold a (~~meeting~~) race meet is granted upon the condition that the licensee (~~shall~~) will accept, observe, and enforce (~~said~~) the rules of racing. (~~Furthermore, it shall be~~) It is the duty of each (~~and every~~) officer, director, and every official and employee of (~~said~~) the licensee to (~~observe and enforce~~) comply with the rules of racing and to report violations to the commission.

AMENDATORY SECTION (Amending Order 81-07, filed 8/25/81)

WAC 260-12-050 Execution, filing, of application for license. Application to the (~~Washington horse racing~~) commission for a license to conduct a race (~~meeting~~) meet during the next succeeding season of racing must be filed with the executive secretary of the commission, (~~over the signature of~~) by an executive officer of the association not later than February 1st. Once a license is granted, the commission may (~~at any time, upon a showing of good cause,~~) extend, reduce or otherwise modify the dates over which a racing association may conduct a race meet pursuant to that license.

NEW SECTION

WAC 260-12-065 When are race dates required to be submitted for approval? Racing associations must submit

their proposed live racing dates to the commission at least ninety days before the date the racing association proposes to begin live racing. The commission will consider and determine whether to approve the dates at the next regularly scheduled commission meeting.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-070 The commission may refuse to issue license—Criteria. The commission may refuse to issue a license to conduct a race (~~meeting when in its judgment such refusal shall appear to be for the best interest of legitimate racing and of the public~~) meet. The commission will consider (~~especially~~) the following (~~matters~~) factors in making its decision:

- (1) Opportunity for the sport to properly develop;
- (2) Avoidance of competition with established tracks;
- (3) Extent of community support for the promotion and continuance of the tracks;
- (4) The character and reputation of the (~~men~~) individuals identified (~~with~~) in the (~~undertaking~~) license application; and
- (5) Any other relevant factors.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-080 Assignment of license—Racing days. No license or any part (~~thereof shall be~~) of a license is transferable or assignable in any manner (~~or in any particular~~) without the (~~consent of the racing~~) prior approval of the commission (~~and it shall not be permissible of any racing days other than those stipulated~~).

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-100 Laws and rules (~~paramount—Misconduct, punishment~~) supersede race conditions. The laws of Washington and the rules promulgated by the commission supersede the conditions of a race (~~or the regulations of a race meeting~~). The racing commission may punish independently any misconduct of any persons connected with racing).

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-110 Commission's right of entry. Members of the commission and its (~~designated representatives shall~~) officials have the right of full and complete entry to any and all parts of the association grounds (~~and mutuel plants of the association licensed to conduct horse racing~~).

AMENDATORY SECTION (Amending Order 77.1, filed 4/22/77)

WAC 260-12-115 Parimutuel equipment (~~and apparatus~~) subject to approval. All equipment, (~~devices or apparatus used to officially record, time, photograph, film or~~

~~videotape the racing program, or~~) used within the parimutuel department for the sale, calculation, display of odds, or ~~(encashment)~~ cashing of tickets, is subject to the approval of the commission.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-120 Commission offices and personnel.

Each association ~~((shall))~~ must provide within its grounds an office for the use ~~(, and to be at the disposal)~~ of the commission ~~((and all))~~, its officials and employees. ~~((The commission shall have such employees or inspectors, who shall perform such duties as may be assigned to them by the commission.))~~

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-150 Denial of admission to grounds—

Suspended persons and horses. ~~((No person or horse ruled off, by or under suspension, by any recognized turf authority, trotting association, quarter horse association included, shall be admitted to the grounds of any association. For exception, see WAC 260-12-170.))~~ A person who is suspended or revoked by another recognized racing jurisdiction will not be admitted to the grounds of any racing association in Washington. A horse owned or trained by a person who is suspended or revoked will not be allowed on the grounds.

AMENDATORY SECTION (Amending WSR 06-07-067, filed 3/10/06, effective 4/10/06)

WAC 260-12-180 Safety equipment required. (1)

When on association grounds, all persons on horseback ~~((shall))~~ must wear a securely fastened safety helmet that meets current standards for equipment designed and manufactured for use while riding horses as established by the American Society for Testing and Materials/Safety Equipment Institute (ASTM/SEI), the British Standards Institute (BSI) or similar organization.

(2) All persons on horseback ~~((shall))~~ must wear a securely fastened safety vest that is designed to provide shock-absorbing protection of ~~((at least a rating of 5,))~~:

(a) Level 1, as defined by the 2000 British Equestrian Trade Association (BETA) Horse Rider's Body and Shoulder Protectors; or

(b) American Society for Testing and Materials/Safety Equipment Institute (ASTM/SEI) standard F1937-04 (Specification for Body Protectors Used in Horse Sports and Horseback Riding).

(3) ~~((In addition,))~~ All persons on horseback ((shall)) must wear equestrian footwear that covers the rider's ankle with a minimum of a 1/2 ((to 3/4)) inch heel ((and that covers the rider's ankle)), except jockeys while riding in a race(, or while on their mount immediately prior to riding in a race, shall)) who must wear jockey boots as required by WAC 260-32-100.

This rule does not apply to nonracing related events conducted for entertainment purposes. Safety equipment for such

entertainment events shall be at the discretion of the racing association.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-210 Post time of first race. Post time of the first race each day at each ~~((meeting))~~ race meet must be approved by the commission.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-220 Race conditions ((and rewards)) to be ((filed)) provided. Each association conducting racing ~~((on))~~ in Washington ~~((tracks shall file with the commission,))~~ must provide the stewards a copy of the conditions of races ((#)) the association proposes to hold, together with the stakes(, purse or rewards)) schedule.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-12-230 Information to be filed before opening ((of meeting)) a race meet. ~~((In not))~~ No less than ten days before opening of a race ~~((meeting,))~~ meet each association licensed to conduct a race ~~((meeting or meetings on))~~ in Washington tracks ~~((shall))~~ must file with the commission:

(1) ~~((A complete schedule of the rates of admission fees the association proposes to make at the meeting or meetings for which dates have been awarded.~~

~~((2))~~ A financial statement of the association.

~~((3))~~ (2) A list of stockholders as of the date of ~~((application))~~ submission of the list and the amount of stock held by each. Any change in the ~~((personnel of))~~ officers or stockholders, or in the holdings of any individual stockholder of an association ~~((shall))~~ must be reported to the commission immediately. This rule ~~((shall))~~ will apply during the ~~((life))~~ entire term of any ~~((permit))~~ license granted by the commission.

The commission may ~~((call for further data and))~~ require additional information in writing from the association, or it may ask the officers of any association to appear in person ~~((before it. There shall thereafter be no change made in any said admission fees except upon the desire changes being submitted to the commission in writing five days prior to the effective date of such changes))~~ to provide additional information.

AMENDATORY SECTION (Amending Order 75-1, filed 2/18/75)

WAC 260-12-235 Accepted conditions of race meeting. ~~((1))~~ The commission, recognizing the necessity of an association to comply with the requirements of its license and to fulfill its obligation to the public and the state of Washington with the best possible uninterrupted services, in the comparatively short licensed period, herein provides that all associations, officials, horsemen, owners, trainers, jockeys, grooms, horseshoers, employees, and all licensees, who have

~~accepted directly or indirectly, with reasonable advance notice, the conditions under which said association engages and plans to conduct such race meeting, shall be bound thereby.~~

~~(2) Any association, officials, horsemen, owners, trainers, employees, and all licensees who so accept such conditions shall, before they terminate or discontinue their employment engagements or activities, give the commission and the association with whom they are engaged, at least fifteen days notice in writing of their intentions to terminate or discontinue their employment, engagements or activities under such conditions. The commission may upon notice to all parties of interest, conduct a hearing or hearings with respect to any termination or discontinuance of employment. Provided, however, That no group of licensees shall be required to comply with the notice requirements of this rule when track conditions are deemed to be unsafe or hazardous.)~~ The association is obligated to conduct parimutuel racing, except in the case of emergencies, on each race date allocated. The commission must approve any change in race dates. In the case of emergencies the stewards may authorize cancellation of all or a portion of any race day.

AMENDATORY SECTION (Amending WSR 05-17-084, filed 8/12/05, effective 9/12/05)

WAC 260-12-250 Problem gambling information sign must be posted. ~~((The legislature recognizes that some individuals in Washington state are problem or compulsive gamblers. Because the state promotes and regulates gambling through the activities of the lottery commission, gambling commission and horse racing commission, the state has the responsibility to continue to provide resources for the support of services for problem and compulsive gamblers. RCW 9.46.071 requires that the lottery commission, gambling commission and horse racing commission shall jointly develop informational signs concerning problem and compulsive gambling, and that signs shall be placed in establishments of horse racing licensees, gambling licensees and lottery retailers:))~~

All Class A, B and C licensees ((shall)), including satellite locations, must post problem and compulsive gambling informational signs ((in locations of their establishments, including satellite locations, which are clearly visible in patron traffic areas)), which contain a toll-free help line number in locations of their establishments. The informational signs must be clearly visible to patrons, and must remain posted whenever parimutuel wagering is authorized. The informational signs will be provided to the licensee by the horse racing commission ((and will contain a toll-free hot line number for problem and compulsive gamblers)).

NEW SECTION

WAC 260-12-260 Disposition of Class C purse funds due to the cancellation of races. (1) In the event a Class C race meet cancels races (due to weather or the inability to fill races) the unused purse funds provided under RCW 67.16.105 may, with approval, be used by the racing association to adjust purses for other races at the licensed race meet for which the purse funds were provided. If only one race is can-

celed per day, the stewards may approve an adjustment of purses. If more than one race is canceled, approval to adjust purses must come from the executive secretary.

(2) The racing association must return the unused purse funds if adjustment of purses is not appropriate (for example - only one race is held during the race meet).

(3) If the entire Class C race meet is canceled or if an adjustment to purses is not appropriate, all undistributed purse funds provided under RCW 67.16.105 must be returned to the commission within thirty days of cancellation of the race meet.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-12-030	Rules limited to Washington.
WAC 260-12-060	Application does not commit commission.
WAC 260-12-090	Amendment, etc., of rules.
WAC 260-12-170	Eligibility of horses of suspended person.
WAC 260-12-190	Racing hours.
WAC 260-12-200	Number of races per day.
WAC 260-12-240	Commission to approve distribution of passes, etc.

WSR 07-07-102

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 19, 2007, 2:05 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under WSR 06-22-093.

Title of Rule and Other Identifying Information: WAC 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-520, 388-532-530, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-745, 388-532-750, 388-532-760, 388-532-780 and 388-532-790, reproductive health/family planning only/TAKE CHARGE.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on May 8, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 9, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail schilse@

dsht.wa.gov, fax (360) 664-6185, by 5:00 p.m. on May 8, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by May 4, 2007, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These revisions:

- Allow an annual comprehensive family planning preventive medicine visit for any Medicaid client who is seeking and needing family planning;
- Clarify who is eligible for 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;
- Clarify documentation requirements for TAKE CHARGE; and
- Clarify when TAKE CHARGE providers are *exempt* from billing third party.

Reasons Supporting Proposal: Revisions to this rule are necessary in order to bring the program into compliance with special terms and conditions of the new family planning/TAKE CHARGE waiver set forth by the Centers for Medicare and Medicaid Services (CMS) for the state of Washington. Adoption of the revisions is critical to prevent loss of 90% federal match funds for the family planning/TAKE CHARGE program.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.800.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Maureen Considine, P.O. Box 5530 [45530], Olympia, WA 98504-5530, (360) 725-1652.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department is proposing to amend chapter 388-532 WAC to reflect the changes imposed upon the TAKE CHARGE family planning program under the special terms and conditions of the federal waiver renewal. Implementation of these changes also minimally affects the reproductive health and family planning only programs as well.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses and outlines the information that must be included in an SBEIS.

Preparation of an SBEIS is required when a proposed rule has the potential of placing "a more than minor economic impact" on small businesses.

While this rule change does impose increased costs or administrative burdens on providers, the department has

taken this into consideration and increased reimbursement to compensate for the increased eligibility requirements imposed upon this program from the federal Centers for Medicare and Medicaid Services (CMS).

A copy of the statement may be obtained by contacting Maureen Considine, FP/TAKE CHARGE Program Manager, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1652, e-mail consicm@dsht.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Maureen Considine, FP/TAKE CHARGE Program Manager, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1652, e-mail consicm@dsht.wa.gov.

March 12, 2007

Jim Schnellman, Chief

Office of Administrative Resources

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 07-08 issue of the Register.

WSR 07-07-104

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 19, 2007, 3:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-112.

Title of Rule and Other Identifying Information: Chapter 16-324 WAC, Rules for the certification of seed potatoes, the department is proposing to revise the current seed potato certification rule to require compliance with the state national harmonization program for seed potatoes (SNHP). Specifically, this includes:

(1) Requiring generation 1 lots to be sampled and tested under the department's supervision for PVY;

(2) Requiring a post-harvest test for seed lots that will be recertified;

(3) Adding Potato Mop Top Virus (PMTV) to the list of diseases that certified seed potatoes must be found free of; and

(4) Modifying rule language to increase its clarity and readability.

Hearing Location(s): Washington State University Extension Office, Whatcom County Courthouse Annex, 1000 North Forest Street, Suite 201, Bellingham, WA 98225, on April 24, 2007, at noon; and at the Washington State Potato Commission, 108 Interlake Road, Moses Lake, WA 98837, on April 26, 2007, at noon.

Date of Intended Adoption: Not before May 3, 2007.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by April 26, 2007.

Assistance for Persons with Disabilities: Contact Henri Gonzales by April 17, 2007, TTY (360) 902-1996 or (360) 902-2061.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revising the seed

potato certification rule will allow seed potato growers to continue selling their seed potatoes to growers in other states. The state national harmonization program for seed potatoes (SNHP) is the new national standard for seed potato certification. When it is implemented, the United States Department of Agriculture—Animal and Plant Health Inspection Service (USDA-APHIS) will require seed potatoes moving interstate to comply with SNHP. Because much of the Washington seed potato crop is sold to other states, it is important for Washington to be in compliance with the SNHP once it is implemented. To comply with the SNHP, the seed potato certification rules must be revised to require post-harvest testing on lots sold for recertification. This is necessary to preserve market access for Washington growers.

Reasons Supporting Proposal: Revising the current rule is necessary to preserve market access for Washington seed potato growers.

Statutory Authority for Adoption: Chapters 15.14 and 34.05 RCW.

Statute Being Implemented: Chapter 15.14 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on business in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose a more than minor cost on small businesses in the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 16, 2007

Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 02-12-010, filed 5/23/02, effective 6/23/02)

WAC 16-324-361 Definitions. ((+)) "Certification" means that the lot of seed potatoes was inspected and meets the requirements of this chapter.

((2)) "Cull" means any lot of potatoes rejected for certification for any reason.

((3)) "Department" means the department of agriculture of the state of Washington.

((4)) "Director" means the director of the department of agriculture or his/her duly appointed representative.

((5)) "Disease tested" means tested for and found free of all of the following diseases: Potato virus A (PVA), potato virus M (PVM), potato virus S (PVS), potato virus X (PVX), potato virus Y (PVY), potato leafroll virus (PLRV), potato

mop top virus (PMTV), potato spindle tuber viroid (spindle tuber), *Erwinia carotovora* ssp. *carotovora* (soft rot), *Erwinia carotovora* ssp. *atroseptica* (black leg) and *Clavibacter michiganense* spp. *sependonicum* (ring rot).

((6)) "Micropropagated" means potato stock propagated using aseptic laboratory techniques and culture media to promote plant tissue growth.

((7)) "Microtubers" means tubers produced in vitro by a micropropagated plant or plantlet.

((8)) "Minitubers" means tubers produced under controlled greenhouse conditions.

((9)) "Nematode" means plant parasitic nematodes capable of infesting potatoes, including but not limited to the genus *Meloidogyne*.

((10)) "Nuclear stock" means plantlets, microtubers, minitubers, or seed potatoes produced from pre-nuclear stock, and grown in the field for the first time.

((11)) "Plot" means a seed potato planting that is 0.25 acre or less in size.

((12)) "Powdery scab" means the disease caused by the fungus *Spongospora subterranea*.

((13)) "Prenuclear" means micropropagated plants or tubers and plants or minitubers produced in a greenhouse.

((14)) "Quarantine pest" means a pest of potential economic importance and not yet present in the state, or present but not widely distributed and being officially controlled.

((15)) "Recertification" means the process of certifying a seed lot that was certified the previous year.

((16)) "Rogue" means removing diseased or undesirable plants, including all associated plant parts from a seed potato field.

((17)) "Seed lot" means a field, in whole or in part, or a group of fields producing seed potatoes, or the potato tubers harvested from a seed potato field.

((18)) "Seed potatoes" means vegetatively propagated tubers used for potato production.

((19)) "Seed source" means seed potatoes produced by an individual grower within a particular seed production area.

((20)) "Trace" means a barely perceivable indication of plant disease that amounts to less than 0.001 percent of sample.

((21)) "Tolerance" means the maximum acceptable percentage of potato plants or tubers that is diseased, infected by plant pests, defective or off-type based on visual inspection or laboratory testing by the director or other authorized person.

((22)) "Unit method" means a method of planting in which cut seed pieces from one tuber are dropped consecutively in a row, or in which all tubers from one plant are dropped consecutively in a row.

AMENDATORY SECTION (Amending WSR 00-20-070, filed 10/3/00, effective 11/3/00)

WAC 16-324-385 Production requirements. (1) A grower is not eligible to produce nuclear, generation 1, or generation 2 seed potatoes, if ring rot has been detected on his or her farm during the previous two years.

(2) Prenuclear class.

(a) Prenuclear seed lots must be derived from disease tested micropropagated plants. All testing methods and laboratories must be approved by the department.

(b) A minimum of one percent (and not less than twenty samples) of prenuclear seed produced in a greenhouse must be tested and found free of potato virus X (PVX), potato virus Y (PVY), potato virus S (PVS), potato leafroll virus (PLRV), *Erwinia carotovora* ssp. *carotovora* (soft rot), *Erwinia carotovora* ssp. *atroseptica* (black leg), and *Clavibacter michiganense* ssp. *sependonicum* (ring rot).

(c) The department will inspect all facilities used in the production of prenuclear class seed potatoes on a periodic basis. Department approval is necessary in order to utilize these facilities.

(3) Nuclear class.

(a) Nuclear class seed potatoes must be propagated entirely from prenuclear plants.

(b) Each nuclear class seed lot must be distinctly separated in storage and in the field.

(c) If a ground rig is used for spraying, wide enough spacing between rows must be left, so that tires will not touch plants during the growing season.

(d) Growers must plant cut seed and single drop seed separately, with single drop seed identified.

(4) Generations 1, 2, 3, 4 and 5.

(a) Growers must leave a distinct separation of at least six feet unplanted or planted to some other crop between lots of seed potatoes from different classes. A similar separation must be left between different varieties, unless the varieties are readily distinguishable by visual observation.

(b) When more than one lot of seed potatoes is planted in the same field, growers must stake or mark the identity of each lot.

(c) All generation 1 lots must be sampled and tested under the department's supervision for PVY at a rate of four hundred plants for every ten lots. For farms with fewer than ten generation 1 lots, a minimum of four hundred plants must be sampled and tested.

AMENDATORY SECTION (Amending WSR 00-20-070, filed 10/3/00, effective 11/3/00)

WAC 16-324-391 Eligibility requirements. (1) Only seed potatoes derived from plants that have been disease tested and certified by an official certification agency are eligible for certification.

(2) Only seed lots that meet or exceed the minimum requirements as established in this chapter are eligible for certification. A seed lot that has more than a trace amount of virus disease noted during any field inspection is not eligible for recertification, unless it has been post-harvest tested and meets the minimum standards established in WAC 16-324-420.

(3) A post-harvest test is required for seed lots that will be recertified, except when planted back on the same farm.

(4) In order to be eligible for certification in Washington state, seed lots from other states or countries must be eligible for recertification in the state or country of origin and must meet the requirements of this chapter.

~~((4))~~ (5) A seed lot blended from two or more different sources of seed is not eligible for recertification.

~~((5))~~ (6) A seed lot infected with powdery scab is not eligible for recertification.

~~((6))~~ (7) Generation 5 (G5) seed lots are not eligible for recertification.

AMENDATORY SECTION (Amending WSR 00-20-070, filed 10/3/00, effective 11/3/00)

WAC 16-324-392 Isolation requirements. (1) The department must approve all nuclear and generation 1 field locations.

(2) Generation 2 through generation 5 must be isolated by at least three hundred fifty feet from all noncertified potatoes.

(3) When ring rot is found in a field planted with more than one lot of seed potatoes, the department will reject the entire field unless at least six feet between lots has been left unplanted or planted to some other crop.

AMENDATORY SECTION (Amending WSR 00-20-070, filed 10/3/00, effective 11/3/00)

WAC 16-324-396 Sanitation requirements. (1) Chemicals used in the sanitation of equipment should be those recommended by the *Pacific Northwest Plant Disease Control Handbook*. Vector control must be maintained throughout the growing season as recommended by the *Pacific Northwest Plant Disease Control Handbook*.

(2) Seed stocks entered for certification must be planted and harvested prior to handling any other seed stock. The earliest generation must be handled prior to ~~((lower classes))~~ later generations within the program.

(3) Only department-approved containers shall be used during the digging, storage, and packing process.

AMENDATORY SECTION (Amending WSR 02-12-010, filed 5/23/02, effective 6/23/02)

WAC 16-324-401 Latent virus testing requirements. (1) PVX testing is required for nuclear and generation 1 class seed potatoes. PVX testing is optional for all other classes.

(2) Growers must submit petiole samples for latent virus testing to a laboratory approved by the department. The applicant is responsible for laboratory testing fees.

(3) The minimum number of plants per seed lot to be sampled for PVX testing is one hundred. For nuclear class, a minimum of one percent of the total number of plants per lot must be sampled. For generation 1, a minimum of two hundred ~~((leaves))~~ plants per acre must be sampled. For generation 2, a minimum of fifty ~~((leaves))~~ plants per acre must be sampled. Generation 3, 4 and 5 seed lots should be sampled at a rate of twenty ~~((leaves))~~ plants per acre. The department may require additional testing.

AMENDATORY SECTION (Amending WSR 00-20-070, filed 10/3/00, effective 11/3/00)

WAC 16-324-409 Post-harvest test requirements. (1) Post-harvest testing of all seed classes is optional, except as

required in WAC 16-324-391 and 16-324-399. Seed lots which fail the minimum requirements of the field inspection standards are not eligible for post-harvest testing.

(2) A minimum of four hundred tubers must be submitted for each seed lot entered for post-harvest testing. Seed lots less than one acre in size must submit a minimum of four tubers per total hundred weight with a minimum of fifty tubers.

(3) The applicant is responsible for the cost of post-harvest testing.

(4) Seed lots in the post-harvest test which fail to comply with the disease tolerance requirements set forth in WAC 16-324-420 are not eligible for recertification.

(a) The applicant must notify in writing all receivers of any seed lot that failed to comply with post-harvest tolerances set forth in WAC 16-324-420.

(b) Acceptance of a seed lot that fails to comply with the tolerances set forth in WAC 16-324-420 must be based on a written buyer/seller agreement. The grower must provide the department with a copy of the written agreement within thirty days of receiving the post-harvest results.

WSR 07-07-105

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 19, 2007, 3:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-137.

Title of Rule and Other Identifying Information: Chapter 16-401 WAC, Nursery inspection fees, the department is proposing to increase the nursery inspection fees and the permit fee for businesses exempted from a nursery dealer's license by no more than the OFM fiscal growth factor for fiscal year 2008 (5.53%).

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, 2nd Floor, Conference Room 205, Olympia, WA 98504-2560, on April 25, 2007, at 10:30 a.m.

Date of Intended Adoption: Not before May 3, 2007.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by April 25, 2007.

Assistance for Persons with Disabilities: Contact Henri Gonzales by April 18, 2007, TTY (360) 902-1996 or (360) 902-2061.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule establishes the fees charged by the plant services program for activities authorized in chapters 15.13 and 15.14 RCW. This proposal increases the nursery inspection fees and permit fee for businesses exempted from a nursery dealer's license within 5.53%, which is the OFM fiscal growth factor for fiscal year 2008. Current fees are not adequate to cover the costs of providing nursery inspection services; therefore, the proposed increases are necessary to ensure that the program will remain financially solvent. RCW 15.13.260(4) and 15.14.015(1) authorize the director of the Washington state

department of agriculture to establish fees to cover the cost of providing inspection services.

Reasons Supporting Proposal: Current fee levels are not adequate to cover the costs of providing nursery inspection services. The nursery advisory committee, which is appointed by the director of the department of agriculture to represent the interests of the nursery industry, supports the proposal.

Statutory Authority for Adoption: Chapters 15.13, 15.14 and 34.05 RCW.

Statute Being Implemented: Chapters 15.13 and 15.14 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on business in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose a more than minor cost on small businesses in the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 16, 2007

Mary A. Martin Toohey

Assistant Director

AMENDATORY SECTION (Amending WSR 06-15-043, filed 7/11/06, effective 8/11/06)

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges. The following rates apply for requested inspection services:

(1) Fee or Charge:	
Hourly rate—business hours	\$((33.00)) <u>34.80</u>
Hourly rate—nonbusiness hours	\$((42.15)) <u>44.45</u>
Certificate issued at time of inspection	No charge
Certificate issued more than twenty-four hours after the inspection	\$((15.70)) <u>16.55</u>
Additional certificates	\$((4.95)) <u>5.20</u>
Fumigation lot or container fee	\$((13.10)) <u>13.80</u>
Certificate of plant health for noncommercial movement	\$((6.45)) <u>6.80</u>

Compliance agreement	\$(33.00) 34.80
Inspection tags or stickers (lots of 250)	\$(6.45) 6.80 per lot
Inspection tags or stickers (minimum 10)	\$(0.28) 0.29 each

(2) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

(5) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.

(6) The department may issue a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge.

AMENDATORY SECTION (Amending WSR 06-15-043, filed 7/11/06, effective 8/11/06)

WAC 16-401-041 Nursery dealer license fees. Annual license fees as established below, must accompany the application for nursery dealer license:

- (1) Retail nursery dealer license fee:
 - (a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars \$38.73
 - (b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is \$82.99
 - (c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$166.00

- (2) Wholesale nursery dealer license fee:
 - (a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars \$82.99
 - (b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$166.00
- (3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.
- (4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270 ~~\$(6.35)~~ 6.70

**WSR 07-07-106
PROPOSED RULES
DEPARTMENT OF AGRICULTURE**

[Filed March 19, 2007, 3:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-138.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests, the department is proposing to increase the laboratory diagnostic hourly fees, nematode laboratory diagnostic fees, and post-entry inspection services fee within the OFM fiscal growth factor for fiscal year 2008 (5.53%).

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, 2nd Floor, Conference Room 205, Olympia, WA 98504-2560, on April 25, 2007, at 10:30 a.m.

Date of Intended Adoption: Not before May 3, 2007.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by April 25, 2007.

Assistance for Persons with Disabilities: Contact Henri Gonzales by April 18, 2007, TTY (360) 902-1996 or (360) 902-2061.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal increase the plant pathology laboratory diagnostic hourly fees, nematode laboratory diagnostic fees, and post-entry inspection fee by no more than the fiscal growth factor of 5.53% for fiscal year 2008. This fee increase is necessary because current fee levels do not cover the costs of providing these laboratory and post-entry inspection services. RCW 17.24.131 mandates that the department support these activities through fees for services. With these modest increases, the department anticipates that the program will be able to remain financially solvent.

Reasons Supporting Proposal: Current fee levels are not adequate to cover the costs of providing plant pathology laboratory, nematode laboratory and post-entry inspection services. The nursery advisory committee, which is appointed by the director of the department of agriculture to represent the interests of the nursery industry, supports the proposal.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on business in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose a more than minor cost on small businesses in the regulated industry and, therefore, a formal SBEIS is not required.

Identity					
Determination	1 sample	5 samples	10 samples	50 samples	100+ samples
nematode	((34.30)) <u>36.15</u> ea	((31.60)) <u>33.30</u> ea	((28.95)) <u>30.55</u> ea	((28.25)) <u>29.80</u> ea	((26.30)) <u>27.75</u> ea

Note: To receive volume rates, samples must be submitted as a unit and identification requests must be for one specific nematode, unless more than one nematode can be detected in a single test without additional inputs.

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

- (a) Projects greater than one hundred samples;
- (b) Projects requiring materials not readily available; or
- (c) Projects requiring special handling or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 06-15-044, filed 7/11/06, effective 8/11/06)

WAC 16-470-917 Schedule of fees and charges— Fees for post entry inspection services. (1) Post entry site inspection and/or permit review and approval ~~\$(66.20))~~ 69.85

(2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 16, 2007
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 06-15-044, filed 7/11/06, effective 8/11/06)

WAC 16-470-912 Schedule of fees and charges— Applicable fees and charges. (1) Hourly rate.

Hourly rate - business hours	\$(33.00)) <u>34.80</u>
Hourly rate - nonbusiness hours	\$(42.15)) <u>44.45</u>

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) Nematology laboratory diagnostic fees are as follows:

	100+				
	samples				

**WSR 07-07-107
PROPOSED RULES
DEPARTMENT OF AGRICULTURE**

[Filed March 19, 2007, 3:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-110.

Title of Rule and Other Identifying Information: Chapter 16-482 WAC, Seed potato quarantine, the department is proposing to revise the current seed potato quarantine to require all seed potatoes planted in Washington comply with the state national harmonization program for seed potatoes (SNHP). Specifically, this includes:

- (1) Changing the regulated area to the entire state;
- (2) Increasing the certification document retention period to a minimum of three years;
- (3) Requiring growers to furnish certification documentation to the department within thirty days of a written request; and
- (4) Modifying rule language to increase its clarity and readability.

Hearing Location(s): Washington State University Extension Office, Whatcom County Courthouse Annex, 1000 North Forest Street, Suite 201, Bellingham, WA 98225, on April 24, 2007, at noon; and at the Washington State Potato Commission, 108 Interlake Road, Moses Lake, WA 98837, on April 26, 2007, at noon.

Date of Intended Adoption: Not before May 3, 2007.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by April 26, 2007.

Assistance for Persons with Disabilities: Contact Henri Gonzales by April 17, 2007, TTY (360) 902-1996 or (360) 902-2061.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change will bring Washington rules into compliance with the recent state national harmonization program for seed potatoes (SNHP). SNHP is the new national standard for seed potato certification. SNHP will enable the United States Department of Agriculture—Animal and Plant Health Inspection Service (USDA-APHIS) to establish nationwide official regulatory control for pests managed through seed potato certification, so that the United States crop can be protected from pests from countries other than Canada and so that it will be in compliance with trade agreements under the World Trade Organization. When implemented, it will allow USDA-APHIS to obtain better access to international markets for United States potatoes.

Reasons Supporting Proposal: Revising the current rule is necessary to preserve market access for Washington seed potato growers.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on business in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose a more than minor cost on small businesses in the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 16, 2007

Mary A. Martin Toohey
Assistant Director

NEW SECTION

WAC 16-482-003 Definitions. "Department" means the Washington state department of agriculture.

"State National Harmonization Program for seed potatoes" means the United States Department of Agriculture program regarding phytosanitary certification standards for seed potatoes and pest management.

AMENDATORY SECTION (Amending Order 2075, filed 3/13/91, effective 4/13/91)

WAC 16-482-005 Regulated articles. All seed potatoes used throughout the state for commercial plantings in

excess of one acre or for any acreage of seed potato production.

AMENDATORY SECTION (Amending Order 2075, filed 3/13/91, effective 4/13/91)

WAC 16-482-010 Regulations—Certified seed requirement. (1) Except as provided in WAC 16-482-015, all seed potatoes (~~(propagated)~~) planted within the state for commercial or for seed production (~~((within the regulated area))~~) shall be (~~(from)~~) certified seed, produced as a part of a certified seed potato program in the state or country of origin (~~((and accepted and certified by that program))~~) that meets the requirements of Article 4 of the State National Harmonization Program for seed potatoes.

(2) The department may sample and test any lot of seed potatoes or conduct field inspections for the purpose of testing and verification of compliance with this chapter.

AMENDATORY SECTION (Amending Order 2075, filed 3/13/91, effective 4/13/91)

WAC 16-482-015 Regulations—Certified seed—Exceptions. The certified seed requirement shall not be applicable to:

- (1) Potatoes planted for personal use or other noncommercial purposes;
- (2) Commercial production, other than for production of seed potatoes, of not more than one acre; or
- (3) Experimental or seed trial plots as provided in WAC 16-482-016.

AMENDATORY SECTION (Amending Order 2075, filed 3/13/91, effective 4/13/91)

WAC 16-482-017 Recordkeeping requirement. All commercial potato growers (~~((within the regulated area shall be responsible for obtaining))~~) are required to obtain certification documents or tags to verify that all seed potatoes (~~((used for propagation purposes))~~) planted in this state comply with the terms of this chapter. (~~((Such documents shall be retained by the grower for a period of one calendar year and a copy provided to the department of agriculture, plant services division, upon written request to the grower.))~~) Growers must retain certification documents for at least three years and provide them to the department within thirty days of a written request. Such documents shall include the total weight of certified seed potatoes and shall be issued by an official certifying agency in the state or country of origin. Falsification of seed potato documents shall subject the grower to penalties provided in law.

AMENDATORY SECTION (Amending Order 2075, filed 3/13/91, effective 4/13/91)

WAC 16-482-020 Disposition of material shipped in violation of this quarantine. (1) Seed potatoes shipped in violation of this quarantine may be returned to the point of origin, diverted to nonseed use, or destroyed at the option and expense of the owner or owners or their responsible agents.

(2) Seed potatoes planted and growing in violation of the terms of this quarantine may be destroyed or placed under quarantine, with terms and conditions for that quarantine specified by the director, at the option and expense of the grower or owners or their responsible agents. Potatoes, placed under quarantine for violation of the terms of this chapter and found to be infested or infected with a viral, fungal, bacterial or nematode disease by subsequent inspection or testing shall be destroyed at the expense of the grower, without compensation.

(3) In addition to the actions specified in subsections (1) and (2) of this section, any grower violating the terms of this quarantine shall be subject to civil and/or criminal penalties provided ~~((by))~~ in law~~((s))~~.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-482-007 Regulated area.

WSR 07-07-108

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 19, 2007, 3:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-111.

Title of Rule and Other Identifying Information: Chapter 16-484 WAC, Seed potato Y-N quarantine, the department is proposing to repeal the current seed potato Y-N quarantine.

Hearing Location(s): Washington State University Extension Office, Whatcom County Courthouse Annex, 1000 North Forest Street, Suite 201, Bellingham, WA 98225, on April 24, 2007, at noon; and at the Washington State Potato Commission, 108 Interlake Road, Moses Lake, WA 98837, on April 26, 2007, at noon.

Date of Intended Adoption: Not before May 3, 2007.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by April 26, 2007.

Assistance for Persons with Disabilities: Contact Henri Gonzales by April 17, 2007, TTY (360) 902-1996 or (360) 902-2061.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing state quarantine rule has become obsolete, due to recent changes in federal regulatory structures. The recent state national harmonization program for seed potatoes (SNHP) is the new national standard for seed potato certification. When it is implemented, the United States Department of Agriculture—Animal and Plant Health Inspection Service (USDA-APHIS) will require seed potatoes moving interstate to comply with SNHP. Included in the SNHP is a requirement for participating states to comply with the United States-Canada necrotic virus management plan. Under this plan both the United

States and Canada will manage four necrotic viruses, including PVY-n, through seed potato certification. This will change PVY-n from a quarantine pest to a regulated nonquarantine pest, and it makes the existing state quarantine unnecessary.

Reasons Supporting Proposal: The existing state PVY-n quarantine is obsolete.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on business in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose a more than minor cost on small businesses in the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 16, 2007

Mary A. Martin Toohey
Assistant Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 16-484-200 Definitions.
- WAC 16-484-205 Penalties.
- WAC 16-484-210 Quarantine—PVYⁿ.
- WAC 16-484-220 Area under quarantine.
- WAC 16-484-230 Regulated articles.
- WAC 16-484-240 Conditions governing the movement of regulated articles into Washington state.
- WAC 16-484-250 Special permits and compliance agreements.
- WAC 16-484-260 Disposition of regulated articles entering in violation or found infected with PVYⁿ.

WSR 07-07-118
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed March 20, 2007, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-12-137.

Title of Rule and Other Identifying Information: WAC 458-20-229 Refunds, this rule explains the procedures relating to refunds or credits for overpayment of taxes, and penalties or interest. It indicates the statutory period for refunds and the interest rate which applies to those refunds.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on April 25, 2007, at 10:00 a.m.

Date of Intended Adoption: May 1, 2007.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-5543, by April 25, 2007.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing an amendment of this rule to: (1) Clarify the time limits for substantiating a refund claim; (2) explain the effects of *Paccar, Inc. v. Dept. of Revenue*, 135 Wash. 2d 301, 957 P.2d 669 (Wash. 1998); (3) incorporate legislation affecting how interest for refunds is computed (e.g., chapter 73, Laws of 2003); (4) add specific factual examples to demonstrate the rule's operation; and (5) rewrite and reorganize the rule to make it more complete and easier to use.

Reasons Supporting Proposal: The proposed rule will more accurately reflect current law, provide more information to taxpayers and department staff, and make the rule easier for persons to use.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: RCW 82.32.060.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose more than minor costs on any small business.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

March 20, 2007

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 93-04-077, filed 2/1/93, effective 3/4/93)

WAC 458-20-229 Refunds. (1) **Introduction.** (~~This section explains the procedures relating to refunds or credits for overpayment of taxes, and penalties or interest. It indicates the statutory period for refunds and the interest rate which applies to those refunds.~~

~~(2) **Statute of limitations for refunds or credits.**~~

~~(a) With the exception of (b) of this subsection, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which a refund or credit application is made or examination of records by the department is completed.~~

~~(b) Where a taxpayer has executed a written waiver of the limitations governing assessment under RCW 82.32.050 or 82.32.100, a refund or credit may be granted for taxes, penalties, or interest paid during, or attributable to, the years covered by such waiver if, prior to expiration of the waiver period, an application for a refund or credit of such taxes, penalties, or interest is made by the taxpayer or the department discovers a refund or credit is due. (Refer to WAC 458-20-230 for the circumstances under which the department may request a taxpayer to execute a statute of limitations waiver.)~~

~~(3) **Refund/credit procedures.** Refunds are initiated in the following ways:~~

~~(a) Departmental review. When the department audits or examines the taxpayer's records and determines the taxpayer has overpaid its taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. When overpayments are discovered by the department within the statute of limitations, the taxpayer does not need to file a petition or request for a refund or credit.~~

~~(b) Taxpayer request. When a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may file an amended return or a petition for refund or credit with the department. The petition or amended tax return must be submitted within the statute of limitations. Refund or credit requests should generally be made to the division of the department to which payment of the tax, penalty, or interest was originally made. The amended tax returns or petitions are subject to future verification or examination of the taxpayer's records. If it is later determined that the refund or credit exceeded the amount properly due the taxpayer, an assessment may be issued to recover the excess amount, provided the assessment is made within four years of the close of the tax year in which the taxes were due or prior to the expiration of a statute of limitations waiver. The following are examples of refund or credit requests:~~

~~(i) A taxpayer discovers in January 1992 that the June 1991 combined excise tax return was prepared using incorrect figures which overstated its sales resulting in an overpayment of tax. The taxpayer files an amended June 1991 tax return with the department's taxpayer account administration division. The department treats the taxpayer's amended June 1991 tax return as a petition for refund or credit of the amounts overpaid during that tax period and may take whatever action it considers appropriate under the circumstances to verify the overpayment.~~

(ii) A customer of a seller pays retail sales tax on a transaction which the customer later believes was not taxable. The customer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the customer, the seller may request a refund or credit from the department. It is generally to the advantage of a consumer to seek a refund directly from the seller for retail sales tax believed to have been paid in error. This is because the seller has the source records to know if retail sales tax was collected on the original sale, knows the customer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the customer concerning the product, may already be aware of the circumstances as to why a refund of sales tax is appropriate such as the return of the merchandise. When in doubt as to whether sales tax should be refunded, a seller may contact the department and request advice. However, in certain situations, upon presentation of acceptable proof of payment of retail sales tax, the department will consider making refunds of retail sales tax directly to consumers. These situations are as follows:

(A) The seller is no longer engaged in business.

(B) The seller has moved and the consumer can not locate the seller.

(C) The seller is insolvent and is financially unable to make the refund.

(D) The consumer has attempted to obtain a refund from the seller and can document that the seller refuses to refund the retail sales tax. However, the department will not consider making refunds directly to consumers when the law leaves it at the discretion of the seller to collect the tax. See, for example, RCW 82.08.0273.

(iii) The department completes an audit of the taxpayer's records relating to taxes reported on combined excise tax returns and an assessment is issued. After the assessment is paid, but within the statute of limitations for refund or credit, the taxpayer locates additional records which would have reduced the tax, penalties, or interest liability if these records had been available in the audit. The taxpayer contacts the department's audit division, requests that a reexamination of the appropriate records be performed, and files a petition for a refund or credit of overpaid amounts. The statute of limitations will be determined based on the date the assessment was paid for an adjustment of taxes, penalties, or interest assessed in the audit. For taxes, penalties, or interest paid through the filing of combined excise tax returns by the taxpayer, the statute of limitations will be based on the date the amounts were paid without regard to when the audit was completed or the assessment was issued.

(c) Taxpayer appeal. If the taxpayer believes that the tax, penalties, or interest overpayment is the result of a difference of legal opinion with the department as to the taxability of a transaction, the application of penalties or the inclusion of interest, the taxpayer may appeal to the department as provided in WAC 458-20-100 or directly to Thurston County superior court.

(d) Court decision. Refunds or credits will be made by the department as required by decisions of any court of competent jurisdiction when the decision of the court is not being appealed.

(i) In the case of court actions regarding refund or credit of retail sales taxes, the department will not require that consumers obtain a refund of retail sales tax directly from the seller if it would be unreasonable and an undue burden on the person seeking the refund to obtain the refund from the seller. In this case the department may make the refunds directly to the claimant and may use the public media to attempt to notify all persons who may be entitled to refunds or credits.

(ii) Forms for applications for refunds for these situations will be available either by mail or at the department's offices and the claimant will need to file an application for refund. The application will request the appropriate information needed to identify the claimant, item purchased, amount of sales tax to be refunded, and the seller. The department may at its discretion request additional documentation which the claimant could reasonably be expected to retain, based on the particular circumstances and value of the transaction. Such refund requests shall be approved or denied within thirty days after all documentation has been submitted by the claimant and legal questions have been resolved. If approved for refund, such refunds shall be made within sixty days after all documentation has been submitted.

(4) **Prompt refunds.** Taxpayers may expect refund requests to be processed promptly by the department. Refunds can generally be processed faster if the taxpayer provides the following information at the time a refund application is made:

(a) The taxpayer should include its registration number on all documents.

(b) The taxpayer should include the telephone number and name of the person the department should contact in case the department needs additional information or has questions.

(c) The taxpayer should include a detailed description or explanation of the claimed overpayment.

(d) Amended tax returns or worksheets should be attached to the refund or credit application and clearly identify the tax reporting periods involved.

(e) If the refund or credit request involves a situation where a seller has refunded retail sales tax to a customer and the seller is now seeking a refund or credit of the tax from the department, proof of refund to the customer should be attached.

(f) Generally, refund or credit requests require verification by the department through a review of specific taxpayer records which have a bearing on the refund or credit request. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver.

(5) **Interest on refunds or credits.** Interest will be allowed on credits or refunds:

(a) Interest is paid at the rate of three percent per annum for refunds and credits of taxes or penalties which were paid by the taxpayer prior to January 1, 1992.

(b) For amounts overpaid by a taxpayer after December 31, 1991, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus one percentage point. The rate will be

adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States Secretary of Treasury.

(e) The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return.

(d) If a taxpayer requests that a credit notice be converted to a refund, interest will be recomputed to the date the refund (warrant) is issued, but not to exceed the interest which would have been granted through the credit notice.

(6) **Offsetting overpayments against deficiencies.** The department may apply overpayments against existing deficiencies/assessments for the same legal entity. However, a potential deficiency which is yet to be determined will not be reason to delay the processing of an overpayment where an overpayment has been conclusively determined. The following examples illustrate the use of offsets:

(a) The taxpayer's records are audited for the period 1988 through 1991. The audit disclosed underpayments in 1989 and overpayments in 1991. The department will apply the overpayments in 1991 to the deficiencies in 1989. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional amounts.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax in 1991. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the processing of the refund of the real estate excise tax

while it proceeds with scheduling and performing of an audit for the B&O taxes.

(e) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The department determined that the taxpayer underpaid its B&O tax and overpaid its timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may offset the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.)) This section explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes the statutory time limits for refunds and the interest rates that apply to those refunds.

References to a "refund application" in this section include a request for a credit against future tax liability as well as a refund to the taxpayer.

Examples provided in this section should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) What are the time limits for a tax refund or credit?

(a) **Time limits.** No refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made or examination of records by the department is completed. See RCW 82.32.060. This is a nonclaim statute rather than a statute of limitations. This means a valid application must be filed within the statutory period, which may not be extended or tolled.

For example, a refund or credit may be granted for any overpayment made in a shaded year in the following chart:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>
					<u>Refund application is filed no later than December 31st</u>

(b) **Relation back to date paid.** Because the time limits relate to the date the taxes, penalties, or interest is paid, a refund application can be timely even though the payment concerned liabilities for a tax year normally outside the time limits. For example, Taxpayer P owes \$1,000 in B&O tax for activity undertaken in December 2000. In January 2001, Taxpayer P makes an arithmetic error and submits a payment of \$1,500 with its December 2000 tax return. In December 2005, Taxpayer P requests a refund of \$500 for the overpayment of taxes for the December 2000 period. This request is timely, even though it relates to a period (December 2000) more than four years before the beginning of the calendar year in which the refund application is made. It is timely because the overpayment occurred within the time limits,

even though the payment concerned tax liabilities incurred outside the time limits.

Fact situations can be complicated. For example, Taxpayer P pays B&O taxes in Years 1 through 4. The department subsequently conducts an audit of Taxpayer P that includes Years 1-4. The audit is completed in Year 5. As a result of the audit, the department issues an assessment in Year 5 for \$50,000 in additional retail sales taxes that were due from Years 1-4. Taxpayer P pays the assessment in full in Year 6. In Year 10, Taxpayer P files an application requesting a refund of B&O taxes. Taxpayer P's application is timely because it relates to a payment (payment of the assessment in Year 6) made no more than four years before the year in which the application is filed. It does not matter

that the taxes relate to years outside the time limits; the actual payment occurred within four years before the refund application. Nor does it matter that the refund is based on an overpayment of B&O taxes while the assessment involved retail sales taxes, because both taxes relate to the same tax years. However, the amount of any refund is limited to \$50,000 - the amount of the payment that occurred within the time limits.

Assume the same facts as described above. When the department reviews Taxpayer P's refund application, it determines that the refund is valid. After reviewing the new information, however, the department also determines that Taxpayer P should have paid \$20,000 in additional B&O taxes during Years 1-4. Because Taxpayer P paid \$30,000 more than the amount properly due (\$50,000 overpayment less \$20,000 underpayment), the amount of the refund will be \$30,000.

(c) **Waiver.** Under RCW 82.32.050 or 82.32.100, a taxpayer may agree to waive the time limits and extend the time for the assessment of taxes, penalties and interest. If the taxpayer executes such a waiver, the time limits for a refund or credit are extended for the same period. Refer to WAC 458-20-230 (Statutory limitations on assessments).

(3) **How do I get a refund or credit?**

(a) **Departmental examination of returns.** If the department performs an examination of the taxpayer's records and determines that the taxpayer has overpaid taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. In this situation, the taxpayer does not need to apply for a refund.

(b) **Taxpayer application.**

(i) If a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may apply for a refund or credit. Refund application forms are available from the following sources:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)
- By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(ii) A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this section. An application must contain:

- (A) Taxpayer's name and UBI/TRA number;
- (B) Claim amount;
- (C) Tax type and period;
- (D) The specific basis for the claim; and
- (E) Signed by the taxpayer, or if the taxpayer is represented, the application includes a confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim.

Where the exact amount of the claim cannot be specifically ascertained at time of filing because the taxpayer has not yet obtained the department's approval to use a sampling method under subsection (5) of this section, the taxpayer may submit an estimated claim amount. Taxpayers are encouraged to provide complete substantiation at the time of filing the application. Taxpayers are also encouraged to use the

department's refund application form to ensure that all necessary information is provided in a timely manner.

(ii) Substantiation shall consist of suitable records as may be necessary to determine the amount of any refund a taxpayer may be owed. Adequate substantiation shall include copies of all of taxpayer's books, records, invoices or electronic equivalents and where appropriate federal and state tax returns, which shall be open for examination by the department to determine whether to accept or deny the claimed refund and to assess an existing deficiency.

(iv) If the nonclaim statute has run prior to the filing of the application, the department will deny the application and notify the taxpayer.

(v) If the department determines that the taxpayer is not entitled to a refund as a matter of law, the application may be denied without requiring substantiation. The taxpayer shall be responsible for maintaining substantiation as may eventually be needed should taxpayer prevail on appeal.

(vi) Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this section expire. Applications for a refund based on a future contingency will be denied.

(vii) Once an application is filed, the taxpayer must submit sufficient substantiation to support the claim for refund or credit before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within sixty days after such notice is sent, unless the documentation is under the control of a third party, not affiliated with or under the control of the taxpayer, in which case the taxpayer will have one hundred eighty days to provide the documentation.

(viii) In its discretion and upon sound cause shown, the department may extend the sixty-day period for providing substantiation upon its own or the taxpayer's request.

(ix) If the department does not receive the necessary substantiation within the applicable time period, the department shall deny the claim for lack of adequate substantiation and shall so notify the taxpayer. Any application denied for lack of adequate substantiation may be filed again with additional substantiation at any time before the time limits in subsection (2) of this section expire. Once the department determines that substantiation is sufficient, the department shall process the refund claim promptly.

(x) The following examples illustrate the refund application process:

(A) A taxpayer discovers in January 2005 that its June 2004 excise tax return was prepared using incorrect figures that overstated its sales, resulting in an overpayment of tax. The taxpayer files an amended June 2004 tax return with the department's taxpayer account administration division. The department will treat the taxpayer's amended June 2004 tax return as an application for a refund or credit of the amounts overpaid during that tax period, except that the taxpayer must also specifically identify the basis for the refund or credit and provide sufficient substantiation to support the claim for refund or credit. The taxpayer will satisfy this obligation by submitting a completed refund application form with its

amended return or providing the additional required substantiation by other means.

(B) On December 31, 2005, a taxpayer files an amended return for the 2001 calendar year. The return includes changed figures indicating that an overpayment occurred, but does not provide any supporting substantiation. No written waiver of the time limits for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within sixty days or the application will be automatically denied. If the taxpayer does not provide the necessary substantiation by the stated date, the claim will be denied and, if refiled, will not be granted because it is then past the non-claim limit of the statute.

(C) Taxpayer submits a refund application on December 31, 2004, claiming that taxpayer overpaid use tax in 2000 on certain machinery and equipment obtained by the taxpayer at that time. No substantiation is provided with the application and no written waiver of the time limit for this taxable period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within sixty days or the application will be automatically denied. The taxpayer does not respond by the stated date. The claim will be denied and, if refiled, will not be granted since it is now past the nonclaim limit of the statute.

(D) Assume the same facts as in (b)(x)(B) and (C) of this subsection, except that the taxpayer submits sufficient substantiation within sixty days after the department sends the letter. The taxpayer's claim is valid, notwithstanding that the substantiation was provided after the nonclaim limit expired.

(E) Assume the same facts as in (b)(x)(B) and (C) of this subsection, except that before the sixty-day period expires, the taxpayer requests an additional fifteen days in which to respond, explaining why the substantiation will require the additional time to assemble. The department agrees to the extended deadline. If the taxpayer submits the requested substantiation within the resulting seventy-five-day period, the department will not dismiss the claim for not being timely.

(F) Assume the same facts as in (b)(x)(B) and (C) of this subsection, except that the taxpayer submits substantiation within sixty days. The department reviews the substantiation and finds that it is still insufficient. The department, in its discretion, may extend the deadline and request additional substantiation from the taxpayer or may deny the refund claim as not substantiated.

(4) May I get a refund of retail sales tax paid in error?

(a) Refund from seller. If a customer pays retail sales tax on a transaction that the customer later believes was not taxable, the customer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the customer, the seller may seek its own refund from the department. It is better for a customer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the customer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the customer concerning the product, and may already be aware of the circum-

stances as to why a refund of sales tax is or is not appropriate. If a seller questions whether he or she should refund sales tax to a customer, the seller may request advice from the department's telephone information center at 1-800-647-7706.

(b) Refund from department. In certain situations detailed below where the customer has not received a refund from the seller, the department will refund retail sales tax directly to a customer. The customer must file a complete refund application as described in subsection (3)(b) of this section and either a seller's declaration or a claimant/consumer's declaration, under penalty of perjury.

(i) If the customer is able to obtain a waiver from the seller of the seller's right to claim the refund, the customer should file a seller's declaration, under penalty of perjury, with the refund application. A seller's declaration substantiates that:

(A) Retail sales tax was collected and paid to the department on the purchase for which a refund is sought;

(B) The seller has not refunded the retail sales tax to the buyer or claimed a refund from the department; and

(C) The seller will not seek a refund of the sales tax from the department.

(ii) If the seller no longer exists, the seller refuses to sign the declaration, under penalty of perjury, or the buyer is unable to locate the seller, the customer should file a claimant/consumer's declaration, under penalty of perjury, with the refund application. The claimant/consumer's declaration explains why the claimant is unable to obtain a seller's declaration and provides substantiation about the seller and declares that the claimant has not obtained and will not in the future seek a refund from the seller for that claim.

(iii) Seller's declaration, under penalty of perjury, and claimant/consumer's declaration, under penalty of perjury, forms are available from the following sources:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(iv) The department will not make refunds directly to customers for sales where the seller had discretion to collect the tax. For example, RCW 82.08.0273 permits, but does not require, a retailer to make sales to certain nonresidents without collecting retail sales tax. If a retailer opts to charge sales tax on a purchase made by a qualifying nonresident, the non-resident purchaser may not seek a refund from the department.

(5) May I use statistical sampling to file for a refund?
Sampling will only be used when a detailed audit is not possible. However, if your applications for refund or credit involve voluminous documents, the preferred method for substantiating your application is the use of statistical sampling. If statistical sampling is not a viable method, a taxpayer may, upon department approval, use block sampling.

When using statistical or block sampling techniques to substantiate an application for refund or credit, the applicant

must contact the department prior to preparing the sampling to obtain the department's approval of the sampling plan. The sampling plan will describe the following:

- Population and sampling frame;
- Sampling unit;
- Source of the random numbers;
- Who will physically locate the sample units and how and where they will be presented for review;
- Any special instructions to those who were involved in reviewing the sample units;
- Special valuation guidelines to any of the sample units selected in the sample; and
- How the sample will be evaluated, including the precision and confidence levels.

Failure to contact the department before preparing the sampling may result in the department rejecting the application on the grounds that the results are not statistically valid.

Contact the department prior to performing a statistical sampling at these locations:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)
- By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(6) **Is my refund final?** The department may review a refund or credit provided on the basis of a taxpayer application without an examination by audit. If the refund or credit is granted and the department subsequently determines that the refund or credit exceeded the amount properly due the taxpayer, the department may issue an assessment to recover the excess amount. This assessment must be made within the time limits of RCW 82.32.050. See WAC 458-20-230, Statutory limitations on assessments, for more information on the time limits for imposing assessments.

(7) **Refunds made as a result of a court decision.** The department will grant refunds or credits required by a court decision, if the decision is not under appeal.

If the court action requires the refund or credit of retail sales taxes, the department will not require that consumers attempt to obtain a refund directly from the seller if it would be unreasonable and an undue burden on the consumer. In such a case, the department may refund the retail sales tax directly to the claimant and may use the public media to notify persons that they may be entitled to refunds or credits. The department will make available special refund application forms that claimants must use for these situations. The application will request the appropriate information needed to identify the claimant, item purchased, amount of sales tax to be refunded, and the seller. The department may, at its discretion, request additional documentation that the claimant could reasonably be expected to retain, based on the particular circumstances and value of the transaction. The department will approve or deny such refund requests within thirty days after the claimant has submitted all documentation and legal questions have been resolved. If approved for refund,

the department will provide the refund within sixty days after all documentation has been submitted.

(8) **What interest is due on my refund?** Interest is due on a refund or credit granted to a taxpayer as provided in this subsection.

(a) **Rate for overpayments made between 1992 through 1998.** For amounts overpaid by a taxpayer between January 31, 1991 and December 31, 1998, the rate of interest on refunds and credits is:

(i) Computed the same way as the rate provided under subsection (7)(b) of this section minus one percent, for interest allowed through December 31, 1998; and

(ii) Computed the same way as the rate provided under subsection (7)(b) of this section, for interest allowed after December 31, 1998.

(b) **Rate for overpayments after 1998.** For amounts overpaid by a taxpayer after December 31, 1998, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate is adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April and July of the immediately preceding calendar year and October of the previous preceding year, as published by the United States Secretary of Treasury.

(c) **Start date for the calculation of interest.** If the taxpayer made all overpayments for each calendar year and all reporting periods ending with the final month included in a credit notice or refund on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund, interest is computed from either:

(i) January 31st following each calendar year included in a notice or refund; or

(ii) The last day of the month following the final month included in a notice or refund.

If the taxpayer did not make all overpayments for each calendar year and all reporting periods ending with the final month included in the notice or refund, interest is computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(d) **Calculation of interest on credits.** The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return. If a taxpayer requests that a credit notice be converted to a refund, interest is recomputed to the date the refund (warrant) is issued, but not to exceed the interest that would have been granted through the credit notice.

(9) **May the department apply my refund against other taxes I owe?** The department may apply overpayments against existing deficiencies and/or future assessments for the same legal entity. However, if preliminary schedules have not been issued regarding existing deficiencies or future assessments and the taxpayer is not presently under audit, the

refund of an overpayment may not be delayed when the department determines a refund is due. The following examples illustrate the application of overpayments against existing deficiencies:

(a) The taxpayer's records are audited for the period Year 1 through Year 4. The audit disclosed underpayments in Year 2 and overpayments in Year 4. The department will apply the overpayments in Year 4 to the deficiencies in Year 2. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional tax.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the refund of the real estate excise tax while it schedules and performs an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The audit disclosed underpayments of B&O tax and overpayments of timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may apply the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

(10) How do I appeal the department's decision? The taxpayer may appeal the denial of a refund claim, or any part thereof, including tax, penalties, or interest overpayments:

(a) To the department as provided in WAC 458-20-100, Appeals, small claims and settlements; or

(b) Directly to Thurston County superior court.

(11) When is a mailed document "received" for purposes of this section? The postmark date of a mailed application or other document is conclusive evidence of the date that the material was received by the department.

(12) Application. This section applies to refund applications received by the department on or after the effective date of this section.

WSR 07-07-119
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 20, 2007, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-154.

Title of Rule and Other Identifying Information: The department is proposing a fee increase for the following rules: Contractor registration, chapter 296-200A WAC; Elevators, chapter 296-96 WAC; Factory assembled structures, chapters 296-150C, 296-150F, 296-150M, 296-150P, 296-150T, and 296-150V WAC; and Plumber certification, chapter 296-400A WAC.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA, on May 7, 2007, at 9:30 a.m.

Date of Intended Adoption: May 22, 2007.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by May 7, 2007.

Assistance for Persons with Disabilities: Contact Sally Elliott by April 15, 2007, at (360) 902-6411 or yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to increase fees 3.38% (rounded down to the nearest tenth of a dollar), which is the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2007. The fee increase is necessary to help cover the costs of ongoing services for the contractor registration, elevator, factory assembled structures, and plumber certification programs.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapters 18.27, 18.106, 43.22, and 70.87 RCW.

Statute Being Implemented: Chapters 18.27, 18.106, 43.22, and 70.87 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Sally Elliott, Tumwater, Washington, (360) 902-6411; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is exempt from preparing a small business economic impact statement under RCW 34.05.328 (5)(b)(vi), since the purpose of this rule making is to set and adjust fees based upon the office of financial management's (OFM's) maximum allowable fiscal growth rate factor for fiscal year 2007.

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) because the rule making is setting and adjusting fees based upon the OFM's maximum allowable fiscal growth rate factor for fiscal year 2007.

March 20, 2007

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-00922 What are the fees associated with licensing? The following are the department's elevator license fees:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator contractor/mechanic application fee (not required for renewal of valid license)	Per application	\$((52.90)) <u>54.60</u>
Elevator contractor/mechanic examination fee	Per application	\$((158.80)) <u>164.10</u>
Reciprocity application fee*	Per application	\$((52.90)) <u>54.60</u>
Elevator mechanic license	2 years	\$((105.90)) <u>109.40</u>
Elevator contractor license	2 years	\$((105.90)) <u>109.40</u>
Temporary elevator mechanic license	30 days	\$((26.40)) <u>27.20</u>
Elevator mechanic/contractor timely renewal fee**	2 years	\$((105.90)) <u>109.40</u>
Elevator mechanic/contractor late renewal fee***	2 years	\$((211.80)) <u>218.90</u>
Training provider application/renewal fee	2 years	\$((105.90)) <u>109.40</u>
Continuing education course fee by approved training provider****	1 year	Not applicable
Replacement of any licenses		\$((15.80)) <u>16.30</u>
Refund processing fee		\$((31.70)) <u>32.70</u>

- * Reciprocity application is only allowed for applicants who are applying for licensing based upon possession of a valid license that was obtained in state(s) with which the department has a reciprocity agreement.
- ** Renewals will be considered "timely" when the renewal application is received on or prior to the expiration date of the license.
- *** Late renewal is for renewal applications received no later than ninety days after the expiration of the licenses. If the application is not received within ninety days from license expiration, the licensee must reapply and pass the competency examination.
- **** This fee is paid directly to the continuing education training course provider approved by the department.

AMENDATORY SECTION (Amending WSR 04-12-047, filed 5/28/04, effective 6/30/04)

WAC 296-96-01005 When do I need a permit? (1) You must obtain a permit from the department before you begin constructing, altering or relocating any conveyance. To obtain your permit, you need to complete the permit application and pay the appropriate fee. Once your application is approved, a permit will be issued and you may begin work on your project.

(2) Construction and alteration permits are valid for one year from the date of issue. However, permits may be renewed if you:

- (a) Apply for a renewal permit before your current permit expires;
 - (b) The department approves your request for a renewal permit; and
 - (c) You pay a (~~fifty dollar~~) \$51.60 renewal fee to the department for each permit you renew;
- (3) If your permit has expired you must reapply for a new permit.
- (4) You are not required to obtain permits and pay fees for repairs and replacement associated with normal functions and necessary maintenance done with parts of equivalent materials, strength and design; or for any conveyance exempted by RCW 70.87.200.

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01010 What are the installation permit fees for conveyances, material lifts, and hoists and how are they calculated? Installation permit fees are based on the total cost of the conveyance and the labor to install the conveyance. The following permit fees apply to the construction or relocation of all conveyances and material lifts:

TOTAL COST OF CONVEYANCE	FEE
\$0 to and including \$1,000	\$((52.90)) <u>54.60</u>
\$1,001 to and including \$5,000	((79.30)) <u>81.90</u>
\$5,001 to and including \$7,000	((132.30)) <u>136.70</u>
\$7,001 to and including \$10,000	((158.80)) <u>164.10</u>
\$10,001 to and including \$15,000	((211.80)) <u>218.90</u>
OVER \$15,000	((296.50)) <u>306.50</u> plus
Each additional \$1,000 or fraction thereof.	((7.40)) <u>7.60</u>

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01012 What are the permit fees for alterations to conveyances, material lifts, and hoists and how are they calculated? Permit fees are based on the total cost of the equipment, materials and labor to perform the alteration. The following permit fees apply to the alteration of all conveyances and material lifts:

TOTAL COST OF ALTERATION	FEE
\$0 to and including \$1,000	\$((52.90)) <u>54.60</u>
\$1,001 to and including \$5,000	((79.30)) <u>81.90</u>
\$5,001 to and including \$7,000	((132.30)) <u>136.70</u>
\$7,001 to and including \$10,000	((158.80)) <u>164.10</u>

TOTAL COST OF ALTERATION	FEE
\$10,001 to and including \$15,000	((211.80)) 218.90
OVER \$15,000	((211.80)) 218.90
Each additional \$1,000 or fraction thereof	\$((7.40)) 7.60

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01027 Are initial installation permit fees refundable? Your initial installation permit fees are refundable if the installation work has not been performed minus a processing fee unless your permits have expired. No refunds will be issued for expired permits. All requests for refunds must be submitted in writing to the elevator section and must identify the specific permits and the reasons for which the refunds are requested.

The processing fee for each refund is \$((31.70)) 32.70

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01030 What is the process for installation and alteration plan approval? Prior to the start of construction, you must submit to the department for approval two copies of plans for new installations or major alterations. To be approved, the plan must comply with the latest adopted edition of the American Society of Mechanical Engineers (ASME), the National Electrical Code (NEC) and applicable Washington Administrative Codes (WAC). In addition, the plans must include all information necessary in determining whether each installation/alteration complies with all applicable codes. You must keep a copy of the approved plan on the job site until the department has witnessed all acceptance tests. Any alterations to the approved plan must be submitted to the department for approval before a final inspection will be conducted. The nonrefundable fees for reviewing your plans are:

For each installation/major alteration. \$((26.40)) 27.20
If more than two sets of plans are submitted, the fee for each additional set \$((10.50)) 10.80

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01035 Are there inspection fees? Yes. The initial inspection of a conveyance or for the initial inspection of construction, alteration or relocation of a conveyance is included with your permit fee. Once the department has approved the initial installation of the conveyance you will be issued a temporary operating permit that is valid for 30 days. Prior to the expiration of the 30-day permit the application for an annual operating permit and the appropriate fees must be paid to the department. Once the department has received the appropriate fees and application you will be issued your first annual operating permit. You are required to renew your annual operating permit yearly.

The following inspections require an additional inspection fee:

(1) **Reinspection.** If a conveyance does not pass an initial inspection and an additional inspection is required, the fee for each reinspection of a conveyance is \$((105.90)) 109.40 per conveyance plus \$((51.40)) 53.10 per hour for each hour in addition to the first hour.

The department may waive reinspection fees.

(2) **Inspecting increases in the height (jumping) of personnel and material hoists.**

The fee for inspecting an increase in the height (jumping) of each personnel hoist or material hoist is \$((105.90)) 109.40 plus \$((52.90)) 54.60 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(3) **Variance inspections.**

(a) The fee for an on-site variance inspection is \$((158.80)) 164.10 per conveyance plus \$((52.90)) 54.60 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(b) The fee for a variance that does not require an on-site inspection is \$((52.90)) 54.60 per conveyance. The individual requesting the variance must provide the department with pictures, documentation, or other information necessary for the department to review the variance. The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary. If an on-site variance inspection is performed, the fees in (a) of this subsection will apply.

(4) **"Red tag" status fee.** The annual fee for a conveyance in "Red tag" status is \$((26.40)) 27.20.

Note: You must provide the department with written approval from the building official, indicating that the conveyance is not required for building occupancy, when you apply to have the conveyance placed in voluntary red tag status.

(5) **Decommission inspection.** The fee for performing a decommission inspection is \$((52.90)) 54.60. Once the decommission inspection has been performed and approved, the conveyance will no longer require annual inspections until such time that the conveyance is brought back into service. Prior to operating the conveyance, a new inspection and annual operating permit must be obtained.

(6) **Voluntary inspections by request.** The owner or potential purchaser of a building within the department's jurisdiction may request a voluntary inspection of a conveyance. The fee for this inspection will be \$((105.90)) 109.40 per conveyance and \$((52.90)) 54.60 per hour for each hour in addition to 2 hours plus the standard per diem and mileage allowance granted to department inspectors. The owner/potential purchaser requesting the voluntary inspection will not be subject to any penalties based on the inspector's findings.

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01040 What is the fee for testing and inspecting regular elevators used as temporary elevators to provide transportation for construction personnel, tools, and materials only? (1) The fee for the inspecting and testing of regular elevators used as temporary elevators is \$((84.70)) 87.50, in addition to any other fees required in this

chapter. This fee purchases a 30-day temporary use permit that may be renewed at the department's discretion.

(2) When this temporary use permit is purchased, a notice declaring that the equipment has not received final approval from the department must be conspicuously posted in the elevator.

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01045 What are the inspection requirements and fees for conveyances in private residences? (1) Chapter 70.87 RCW requires the department to inspect all new, altered or relocated conveyances operated exclusively for single-family use in private residences. Prior to inspection, you must complete a permit application as described in WAC 296-96-01005 and pay the appropriate fee listed in WAC 296-96-01010.

(2) Chapter 70.87 RCW allows the department to inspect conveyances operated exclusively for single-family use in private residences when the department is investigating an accident or an alleged or apparent violation of the statute or these rules.

(3) No annual inspection and operating permit is required for a private residence conveyance operated exclusively for single-family use unless the owner requests it. When an owner requests an inspection and an annual operating permit, the following fee must be paid prior to an inspection:

TYPE OF CONVEYANCE	FEE
Each inclined stairway chair lift in private residence	\$((24.70)) <u>25.50</u>
Each inclined wheel chair lift in a private residence	((24.70)) <u>25.50</u>
Each vertical wheel chair lift in a private residence	((31.20)) <u>32.20</u>
Each dumbwaiter in a private residence.	((24.70)) <u>25.50</u>
Each inclined elevator at a private residence.	((88.10)) <u>91.00</u>
Each private residence elevator	((56.70)) <u>58.60</u>
Duplication of a lost, damaged or stolen operating permit	((10.50)) <u>10.80</u>

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01050 How do I get a supplemental inspection? Any person, firm, corporation or governmental agency can request a supplemental inspection from the department by paying a fee of \$((63.50)) 65.60 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. This fee is for inspections occurring during regular working hours.

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01055 Are technical services available and what is the fee? You may request elevator field technical services from the department by paying a fee of \$((63.50)) 65.60 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These field technical services may include code evaluation, code consultation, plan examination, code interpretation and clarification of technical data relating to the application of the department's conveyance rules. Field technical services do not include inspections.

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01060 Can I request an after hours inspection and what is the fee? You may request an inspection outside of normal business hours, which are 7:00 a.m. to 5:00 p.m., if an inspector is available and the inspection is authorized by the department. The minimum fee for an after-hours inspection is \$((79.30)) 81.90 and \$((79.30)) 81.90 per hour for each hour in addition to the first hour plus the standard per diem and mileage allowance granted to department inspectors. This fee is in addition to any other fees required for your project.

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01065 What are the annual operating permits fees? An annual operating permit will be issued to you upon payment of the appropriate fee:

TYPE OF CONVEYANCE	FEE
Each hydraulic elevator	\$((405.90)) <u>109.40</u>
Each roped-hydraulic elevator	((132.30)) <u>136.70</u>
plus for each hoistway opening in excess of two	((40.50)) <u>10.80</u>
Each cable elevator.	((132.30)) <u>136.70</u>
plus for each hoistway opening in excess of two	((40.50)) <u>10.80</u>
Each cable elevator traveling more than 25 feet without an opening—for each 25 foot traveled	((40.50)) <u>10.80</u>
Each limited-use/limited-application (—LULA) elevator.	((405.90)) <u>109.40</u>
Each escalator.	((88.00)) <u>90.90</u>
Each dumbwaiter in other than a private residence.	((56.70)) <u>58.60</u>
Each material lift	((405.90)) <u>109.40</u>
Each incline elevator in other than a private residence	((113.80)) <u>117.60</u>

Each belt manlift	((105.90)) <u>109.40</u>
Each stair lift in other than a private residence	((56.70)) <u>58.60</u>
Each wheel chair lift in other than a private residence	((56.70)) <u>58.60</u>
Each personnel hoist	((105.90)) <u>109.40</u>
Each grain elevator personnel lift	((88.00)) <u>90.90</u>
Each material hoist	((105.90)) <u>109.40</u>
Each special purpose elevator	((105.90)) <u>109.40</u>
Each private residence elevator installed in other than a private residence	((105.90)) <u>109.40</u>
Each casket lift	((88.00)) <u>90.90</u>
Each sidewalk freight elevator	((88.00)) <u>90.90</u>
Each hand-powered manlift or freight elevator	((59.60)) <u>61.60</u>
Each boat launching elevator	((88.00)) <u>90.90</u>
Each auto parking elevator	((88.00)) <u>90.90</u>
Each moving walk	((88.00)) <u>90.90</u>
Duplication of a damaged, lost or stolen operating permit	((10.50)) <u>10.80</u>

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-96-01070 What are the civil (monetary) penalties for violating the conveyance permit and operation requirements of chapter 70.87 RCW and this chapter? (1) Any licensee, installer, owner or operator of a conveyance who violates a provision of chapter 70.87 RCW or this chapter shall be subject to the following civil penalties:

(a) Operation of a conveyance without a permit:	
First violation	\$((158.80)) <u>164.10</u>
Second violation	((317.70)) <u>328.40</u>
Each additional violation	500.00
(b) Installation of a conveyance without a permit:	
First violation	\$((158.80)) <u>164.10</u>
Second violation	((317.70)) <u>328.40</u>
Each additional violation	500.00

(c) Relocation of a conveyance without a permit:	
First violation	\$((158.80)) <u>164.10</u>
Second violation	((317.70)) <u>328.40</u>
Each additional violation	500.00
(d) Alteration of a conveyance without a permit:	
First violation	\$((158.80)) <u>164.10</u>
Second violation	((317.70)) <u>328.40</u>
Each additional violation	500.00
(e) (i) Operation of a conveyance for which the department has issued a red tag or has revoked or suspended an operating permit or operation of a decommissioned elevator	\$500.00
(ii) Removal of a red tag from a conveyance	\$500.00
(f) Failure to comply with a correction notice:	
Within 90 days	\$((105.90)) <u>109.40</u>
Between 91 and 180 days	((264.70)) <u>273.60</u>
Between 181 and 270 days	((423.70)) <u>438.00</u>
Between 271 and 360 days	500.00
Each 30 days after 360 days	500.00
Note: Penalties are cumulative	
(g) Failure to submit official written notification that all corrections have been completed:	
Within 90 days	\$((105.90)) <u>109.40</u>
Between 91 and 180 days	((264.70)) <u>273.60</u>
Between 181 and 270 days	((423.70)) <u>438.00</u>
Between 271 and 360 days	500.00
Each 30 days after 360 days	500.00
Note: Penalties are cumulative	

(h) Failure to notify the department of each accident to a person requiring the services of a physician or resulting in a disability exceeding one day may result in a \$500.00 penalty per day. The conveyance must be removed from service until the department authorizes the operation of the conveyance. This may require an inspection and the applicable fees will be applied. Failure to remove the conveyance from service may result in an additional \$500.00 penalty per day.

(2) A violation as described in subsection (1)(a), (b), (c), and (d) of this section will be a "second" or "additional" violation only if it occurs within one year of the first violation.

(3) The department must serve notice by certified mail to an installer, licensee, owner, or operator for a violation of chapter 70.87 RCW, or this chapter.

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-150C-3000 Commercial coach fees.

INITIAL FILING FEE	\$(33.20) <u>34.30</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$(229.00) <u>236.70</u>
INITIAL FEE - ONE YEAR DESIGN	\$(93.70) <u>96.80</u>
RENEWAL FEE	\$(39.60) <u>40.90</u>
RESUBMIT FEE	\$(66.90) <u>69.10</u>
ADDENDUM (Approval expires on same date as original plan)	\$(66.90) <u>69.10</u>
ELECTRONIC PLAN SUBMITTAL FEE \$(4.90) <u>5.00</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW (Plan review for educational, institutional or health care facilities and other buildings)	
Electrical Plan submission fee	\$(66.90) <u>69.10</u>
Service/feeder Ampacity:	
0 - 100	\$(29.60) <u>27.20</u>
101 - 200	\$(36.90) <u>38.10</u>
201 - 400	\$(69.30) <u>71.60</u>
401 - 600	\$(81.70) <u>84.40</u>
601 - 800	\$(105.30) <u>108.80</u>
801 - 1000	\$(128.90) <u>133.20</u>
Over 1000	\$(139.90) <u>144.60</u>
Over 600 volts surcharge	\$(22.40) <u>22.80</u>
Thermostats:	
First	\$(13.00) <u>13.40</u>
Each additional	\$(3.00) <u>3.10</u>
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$(11.90) <u>12.30</u>
Each additional circuit or zone	<u>2.00</u>
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$(79.20) <u>81.80</u>
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders (Ampacity) <u>200 Amperage plus</u>	((212.80 plus))
Service/feeder	\$(195.10) <u>201.60</u>
Additional Feeder	\$(37.00) <u>38.20</u>
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders <u>200 Amperage plus</u>	((212.80 plus))
Service/feeder	\$(103.50) <u>106.90</u>
Additional Feeder	\$(26.40) <u>27.20</u>

MEDICAL GAS PLAN REVIEW:	
SUBMISSION FEE	\$((64.10)) <u>66.20</u>
FIRST STATION	\$((64.10)) <u>66.20</u>
EACH ADDITIONAL STATION	\$((23.40)) <u>24.10</u>
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	\$((102.10)) <u>105.50</u>
INITIAL FEE - ONE YEAR DESIGN	\$((61.70)) <u>63.70</u>
RENEWAL FEE	\$((61.70)) <u>63.70</u>
ADDENDUM	\$((61.70)) <u>63.70</u>
PLANS APPROVED BY PROFESSIONALS	
	\$((46.50)) <u>48.00</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	
	\$((12.50)) <u>12.90</u>
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((66.90)) <u>69.10</u>
TRAVEL (Per hour)	\$((66.90)) <u>69.10</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((66.90)) <u>69.10</u>
TRAVEL (Per hour*)	\$((66.90)) <u>69.10</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((100.10)) <u>103.40</u>
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	\$((20.20)) <u>20.80</u>
EACH ADDITIONAL SECTION	\$((12.50)) <u>12.90</u>
REISSUED-LOST/DAMAGED	\$((12.50)) <u>12.90</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((66.90)) <u>69.10</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$((12.50)) <u>12.90</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

AMENDATORY SECTION (Amending WSR 07-05-063, filed 2/20/07, effective 4/1/07)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

INITIAL FILING FEE	\$((58.90)) <u>60.80</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (CODE CYCLE)	\$((290.70)) <u>300.50</u>
INITIAL FEE - ONE YEAR DESIGN	\$((170.30)) <u>176.00</u>
RENEWAL FEE	\$((58.90)) <u>60.80</u>

RESUBMIT FEE					\$(85.10) <u>87.90</u>
ADDENDUM (Approval expires on same date as original plan.)					\$(85.10) <u>87.90</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((4.80)) 4.90 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.					
ELECTRICAL PLAN REVIEW (Plan review for educational, institutional or health care facilities and other buildings):					
Electrical Plan submission fee					\$(64.80) <u>66.90</u>
Service/feeder Ampacity:					
0	-	100			\$(28.70) <u>29.60</u>
101	-	200			\$(35.80) <u>37.00</u>
201	-	400			\$(67.10) <u>69.30</u>
401	-	600			\$(79.20) <u>81.80</u>
601	-	800			\$(102.10) <u>105.50</u>
801	-	1000			\$(124.90) <u>129.10</u>
Over		1000			\$(135.50) <u>140.00</u>
Over 600 volts surcharge					
					\$(21.40) <u>22.10</u>
Thermostats:					
First					\$(12.70) <u>13.10</u>
Each additional					\$(3.00) <u>3.10</u>
Low voltage fire alarm and burglar alarm:					
Each control panel and up to four circuits or zones					\$(11.60) <u>11.90</u>
Each additional circuit or zone					\$2.00
Generators, refer to appropriate service/feeder ampacity fees					
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>					
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) will be charged per hour or fraction of an hour*					
					\$(76.70) <u>79.20</u>
ELECTRICAL COMMERCIAL/INDUSTRIAL					
Electrical Service /feeders 200 Ampacity plus					
Service/feeder					\$(195.10) <u>201.60</u>
Additional Feeder					\$(37.00) <u>38.20</u>
ELECTRICAL MULTIFAMILY RESIDENTIAL					
Electrical Service/feeders 200 Ampacity plus					
Service/feeder					\$(103.50) <u>106.90</u>
Additional Feeder					\$(26.40) <u>27.20</u>
MEDICAL GAS PLAN REVIEW:					
SUBMISSION FEE					
					\$(80.80) <u>83.50</u>
FIRST STATION					
					\$(80.80) <u>83.50</u>
EACH ADDITIONAL STATION					
					\$(29.40) <u>30.30</u>
RECIPROCAL PLAN REVIEW:					
INITIAL FEE-MASTER DESIGN					
					\$(130.00) <u>134.30</u>
INITIAL FEE-ONE YEAR DESIGN					
					\$(78.60) <u>81.20</u>
RENEWAL FEE					
					\$(78.60) <u>81.20</u>
ADDENDUM					
					\$(78.60) <u>81.20</u>
PLANS APPROVED BY DESIGN PROFESSIONALS					
					\$(58.90) <u>60.80</u>

APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS	\$((15.20)) <u>15.70</u>
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((75.30)) <u>77.80</u>
TRAVEL (Per hour*)	\$((75.30)) <u>77.80</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((75.30)) <u>77.80</u>
TRAVEL (Per hour*)	\$((75.30)) <u>77.80</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	\$((240.30)) <u>248.40</u>
EACH ADDITIONAL SECTION	\$((21.70)) <u>22.40</u>
REISSUED-LOST/DAMAGED	\$((58.90)) <u>60.80</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((75.30)) <u>77.80</u>
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	\$((32.60)) <u>33.70</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$((12.20)) <u>12.60</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 07-05-063, filed 2/20/07, effective 4/1/07)

WAC 296-150M-3000 Manufactured/mobile home fees.

INITIAL FILING FEE	\$((32.20)) <u>33.20</u>
DESIGN PLAN FEES:	
STRUCTURAL ALTERATION - MASTER DESIGN (CODE CYCLE)	\$((130.10)) <u>134.40</u>
STRUCTURAL ALTERATION - ONE YEAR DESIGN	\$((87.20)) <u>90.10</u>
RENEWAL FEE	\$((38.80)) <u>40.10</u>
RESUBMITTAL FEE	\$((64.80)) <u>66.90</u>
ADDENDUM (Approval expires on the same date as original plan.)	\$((64.80)) <u>66.90</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((4.90)) <u>5.00</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
INSPECTION	
MECHANICAL	
Heat Pump	\$((31.80)) <u>32.80</u>
Combination Heat Pump (new) and Furnace (replacement)	\$((42.40)) <u>43.80</u>
Air Conditioning	\$((31.80)) <u>32.80</u>

Combination Air Conditioning (new) and Furnace (replacement)	\$((42.40)) <u>43.80</u>
Furnace Installation (gas*** or electric)	\$((31.80)) <u>32.80</u>
Gas*** Piping	\$((31.80)) <u>32.80</u>
Wood Stove	\$((31.80)) <u>32.80</u>
Pellet Stove	\$((31.80)) <u>32.80</u>
Gas*** Room Heater	\$((31.80)) <u>32.80</u>
Gas*** Decorative Appliance	\$((31.80)) <u>32.80</u>
Range: Changing from electric to gas***	\$((31.80)) <u>32.80</u>
Gas*** Water Heater Replacement	\$((21.20)) <u>21.90</u>
Water Heater: Changing from electric to gas***	\$((21.20)) <u>21.90</u>
Any combination of Furnace, Range, and Water Heater changing from electric to gas*** and includes Gas Piping charge	\$((63.70)) <u>65.80</u>
ELECTRICAL	
Heat Pump	\$((42.40)) <u>43.80</u>
Heat Pump (when home is prewired for a heat pump)	\$((10.60)) <u>10.90</u>
Combination Heat Pump (new) and Furnace (replacement)	\$((53.10)) <u>54.80</u>
Air Conditioner	\$((42.40)) <u>43.80</u>
Air Conditioner (when home is prewired for an air conditioner)	\$((10.60)) <u>10.90</u>
Combination Air Conditioner (new) and Furnace (replacement)	\$((53.10)) <u>54.80</u>
Furnace Installation (gas or electric)	\$((42.40)) <u>43.80</u>
Wood Stove (if applicable)	\$((42.40)) <u>43.80</u>
Pellet Stove (if applicable)	\$((42.40)) <u>43.80</u>
Gas*** Room Heater (if applicable)	\$((42.40)) <u>43.80</u>
Gas*** Decorative Appliance (if applicable)	\$((42.40)) <u>43.80</u>
Range: Changing from gas*** to electric	\$((42.40)) <u>43.80</u>
Electric Water Heater Replacement	\$((42.40)) <u>43.80</u>
Electric Water Heater replacing Gas*** Water Heater	\$((42.40)) <u>43.80</u>
Each added or modified 120 volt circuit (maximum charge is two circuits)	\$((42.40)) <u>43.80</u>
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	\$((42.40)) <u>43.80</u>
Hot Tub or Spa (power from home electrical panel)	\$((42.40)) <u>43.80</u>
Replace main electrical panel	\$((42.40)) <u>43.80</u>
Low voltage fire/intrusion alarm	\$((42.40)) <u>43.80</u>
Fire Safety	\$((42.40)) <u>43.80</u>
Any combination of Furnace, Range and Water Heater changing from electric to gas***	\$((42.40)) <u>43.80</u>
PLUMBING	
Fire sprinkler system (also requires a plan review)	\$((21.20)) <u>21.90</u>
Each added fixture	\$((21.20)) <u>21.90</u>
Replacement of water piping system (this includes two inspections)	\$((95.60)) <u>98.80</u>
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	\$((42.40)) <u>43.80</u>
Reroofs (may require a plan review)	\$((74.30)) <u>76.80</u>
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	\$((74.30)) <u>76.80</u>
Other structural changes (may require a plan review)	\$((74.30)) <u>76.80</u>
Fire Safety (may also require an electrical fire safety inspection)	\$((42.40)) <u>43.80</u>
MISCELLANEOUS	
Other structural changes (may require a plan review)	\$((74.30)) <u>76.80</u>
Plan Review	\$((84.90)) <u>87.70</u>
OTHER REQUIRED INSPECTIONS (Per hour*)	\$((58.40)) <u>60.30</u>
ALL REINSPECTIONS (Per hour*)	\$((58.40)) <u>60.30</u>
Refund	\$((10.60)) <u>10.90</u>
INSIGNIA FEES:	
ALTERATION	\$((10.60)) <u>10.90</u>

FIRE SAFETY CERTIFICATE	\$(10.60) 10.90
REISSUED - LOST/DAMAGED	\$(10.60) 10.90
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	\$(29.50) 30.40
Second and succeeding inspections of unlabeled sections (Per hour*)	\$(64.80) 66.90
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)	\$(64.80) 66.90
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$(64.80) 66.90
Increased frequency surveillance (Per hour* plus travel time* and mileage**)	\$(64.80) 66.90
Attendance at manufacturers training classes (Per hour* only)	\$(64.80) 66.90
Subpart "I" investigations (Per hour* plus travel time* and mileage**)	\$(64.80) 66.90
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)	\$(64.80) 66.90
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)	\$(64.80) 66.90
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)	\$(64.80) 66.90
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$(64.80) 66.90
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)	\$(64.80) 66.90
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)	\$(64.80) 66.90
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)	\$(64.80) 66.90
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)	\$(64.80) 66.90
Replacement of HUD labels (Per hour* plus travel time* and mileage**)	\$(64.80) 66.90
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)	\$(64.80) 66.90
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)	\$(60.00) 62.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$(11.90) 12.30
VARIANCE INSPECTION FEE	\$(84.90) 87.70
HOMEOWNER REQUESTED INSPECTION	\$(84.90) 87.70
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	\$(84.90) 87.70
DEMOLITION OF A MOBILE/MANUFACTURED HOME	\$(84.90) 87.70
ENERGY CONSERVATION PERMIT	\$15.00
NOTE: Local jurisdictions may have other fees that apply.	
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Gas means all gases; natural, propane, etc.	

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	\$(32.30) 33.30
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	\$(91.20) 94.20
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	\$(120.50) 124.50
RESUBMITTAL FEE	\$(65.10) 67.30
ADDENDUM (Approval expires on same date as original plan.)	\$(65.10) 67.30
ELECTRONIC PLAN SUBMITTAL FEE \$(4.90) 5.00 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
QUALITY CONTROL/MANUAL FEES:	
INITIAL APPROVAL	\$(12.20) 12.40

RESUBMITTAL FEE	\$((65.10)) 67.30
ADDENDUM	\$((65.10)) 67.30
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$((65.10)) 67.30
TRAVEL (per hour)*	\$((65.10)) 67.30
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$((65.10)) 67.30
TRAVEL (per hour)*	\$((65.10)) 67.30
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((97.40)) 100.60
INSIGNIA FEES:	
STATE CERTIFIED	\$((12.00)) 12.40
ALTERATION	\$((32.30)) 33.30
REISSUED-LOST/DAMAGED	\$((12.00)) 12.40
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$((65.10)) 67.30
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((12.20)) 12.60
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	\$((46.50)) 48.00
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	\$((134.30)) 138.80
RENEWAL FEE	\$((46.50)) 48.00
RESUBMIT FEE	\$((66.90)) 69.10
ADDENDUM (Approval expires on same date as original plan)	\$((66.90)) 69.10
ELECTRONIC PLAN SUBMITTAL FEE \$((4.80)) 4.90 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$((79.30)) 81.90
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$((12.50)) 12.90
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((66.90)) 69.10
TRAVEL (Per hour)*	\$((66.90)) 69.10

PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((66.90)) 69.10
TRAVEL (Per hour*)	\$((66.90)) 69.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	\$((188.30)) 194.60
EACH ADDITIONAL SECTION	\$((18.30)) 18.90
REISSUED-LOST/DAMAGED	\$((46.50)) 48.00
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders ((Ampercity) <u>200 Amperage plus</u>)	((212.80 plus))
Service/feeder	\$((195.10)) 201.60
Additional Feeder	\$((37.00)) 38.20
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders <u>200 Amperage plus</u>	((212.80 plus))
Service/feeder	\$((103.50)) 106.90
Additional Feeder	\$((26.40)) 27.20
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((66.90)) 69.10
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free per year)	\$((12.50)) 12.90
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-150V-3000 Conversion vendor units and medical units—Fees.

INITIAL FILING FEE	\$((33.20)) 34.30
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$((229.00)) 236.70
INITIAL FEE - ONE YEAR DESIGN	\$((93.70)) 96.80
RENEWAL FEE	\$((39.90)) 41.20
RESUBMIT FEE	\$((66.90)) 69.10
ADDENDUM (Approval expires on same date as original plan)	\$((66.90)) 69.10
ELECTRONIC PLAN SUBMITTAL FEE \$((4.80)) 4.90 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW (Plan review for educational, institutional or health care facilities and other buildings)	
Electrical plan submission fee	\$((66.90)) 69.10

Service/feeder ampacity:	
0 - 100	\$(29.60) <u>30.60</u>
101 - 200	\$(36.90) <u>38.10</u>
201 - 400	\$(69.30) <u>71.60</u>
401 - 600	\$(81.70) <u>84.40</u>
601 - 800	\$(105.30) <u>108.80</u>
801 - 1000	\$(128.90) <u>133.20</u>
Over 1000	\$(139.90) <u>144.60</u>
Over 600 volts surcharge	\$(22.10) <u>22.80</u>
Thermostats:	
First	\$(13.00) <u>13.40</u>
Each additional	\$(3.00) <u>3.10</u>
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$(11.90) <u>12.30</u>
Each additional circuit or zone	<u>2.00</u>
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$(79.20) <u>81.80</u>
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	\$(102.10) <u>105.50</u>
INITIAL FEE - ONE YEAR DESIGN	\$(61.70) <u>63.70</u>
RENEWAL FEE	\$(61.70) <u>63.70</u>
ADDENDUM	\$(61.70) <u>63.70</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$(12.50) <u>12.90</u>
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$(66.90) <u>69.10</u>
TRAVEL (Per hour)*	\$(66.90) <u>69.10</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$(100.10) <u>103.40</u>
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$(66.90) <u>69.10</u>
TRAVEL (Per hour*)	\$(66.90) <u>69.10</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	

FIRST SECTION/ALTERATION	\$((19.30)) <u>19.90</u>
REISSUED-LOST/DAMAGED	\$((12.50)) <u>12.90</u>
EXEMPT	\$((33.20)) <u>34.30</u>
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders ((Capacity)) <u>200 Amperage plus</u>	((212.80 plus))
Service/feeder	\$((195.10)) <u>201.60</u>
Additional Feeder	\$((37.00)) <u>38.20</u>
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders <u>200 Amperage plus</u>	((212.80 plus))
Service/feeder	\$((103.50)) <u>106.90</u>
Additional Feeder	\$((26.40)) <u>27.20</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((66.90)) <u>69.10</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$((12.50)) <u>12.90</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration? The department charges the following fees:

- (1) \$((409.70)) 113.40 for each issuance, renewal or reregistration of a certificate of registration for contractors. This registration is valid for two years from date of issuance, renewal or reregistration or until it is suspended or revoked.
- (2) \$((51.90)) 53.60 for the reinstatement of a certificate of registration.
- (3) \$((42.20)) 12.60 for providing a duplicate certificate of registration.
- (4) \$((24.80)) 25.60 for each requested certified letter prepared by the department.
- (5) \$162.00 for the construction and electrical contractor listing publication on CD ROM per year, prorated according to the number of issues left in the subscription year, which

runs from November 1 through October 31. Each issue costs \$13.50.

(6) \$2.00 per copy for documents copied from a contractor's file. The maximum copy charge for copies from one contractor's file will be \$((27.20)) 28.10.

(7) \$20.00 is required to cover the costs for the service of process in an action against a contractor, the contractor's bond, or the deposit under RCW 18.27.040.

(8) \$25.00 is required to cover the costs for the service of processing refunds.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-045 What fees will I have to pay? The following are the department's plumbers fees:

(1) Fees related to journeyman and specialty plumber certification:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Examination application	Per examination	\$((122.00)) <u>126.10</u>
Domestic pump specialty application fee*****	Per application	\$((122.00)) <u>126.10</u>
Reciprocity application*	Per application	\$((122.00)) <u>126.10</u>
Trainee certificate**	One year	\$((36.50)) <u>37.70</u>
Domestic pump specialty trainee certificate**	Two years	\$((73.00)) <u>75.40</u>
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	90 days	\$((60.70)) <u>62.70</u>
Journeyman or residential specialty certificate***	Two years (fee may be prorated based on months)	\$((97.70)) <u>101.00</u>
Domestic pump specialty plumber certificate***	Three years (fee may be prorated based on months)	\$((146.55)) <u>151.50</u>
Backflow assembly maintenance and repair specialty certificate	Two years (fee may be prorated based on months)	\$((67.50)) <u>69.70</u>
Medical gas endorsement application	Per application	\$((45.00)) <u>46.50</u>

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Medical gas endorsement***	One year	\$((33.60)) <u>34.70</u>
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Domestic pump specialty examination fee****		See note below.
Reinstatement fee for residential and journeyman certificates		\$((195.80)) <u>202.40</u>
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		\$((412.70)) <u>116.50</u>
Reinstatement fee for domestic pump		\$((293.10)) <u>303.00</u>
Replacement fee for all certificates		\$((16.60)) <u>17.10</u>
Refund processing fee		\$((26.40)) <u>27.20</u>
Unsupervised trainee endorsement		\$((26.40)) <u>27.20</u>
Inactive status fee		\$((26.40)) <u>27.20</u>
Honorary plumbing certification		\$((97.70)) <u>101.00</u>
Certified letter fee		\$((26.40)) <u>27.20</u>
Continuing education new course fee*****		\$((158.80)) <u>164.10</u>
Continuing education renewal course fee*****		\$((79.30)) <u>81.90</u>
Continuing education classes provided by the department		\$12 per continuing education training hour \$8 per continuing education training hour for correspondence and internet courses

- * Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.
- ** The trainee certificate shall expire one year from the date of issuance and must be renewed on or before the date of expiration. The domestic pump specialty trainee certificate shall expire two years from the date of issuance and must be renewed on or before the date of expiration.
- *** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.
The annual renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed biannually.
- **** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement. **This fee is not paid to the department.**
- ***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**
- ***** This fee is for a three-year period or code cycle.
- ***** The domestic pump specialty application is valid for one year.

- (2) If your birth year is:
 - (a) In an even-numbered year, your certificate will expire on your birth date in the next even-numbered year.
 - (b) In an odd-numbered year, your certificate will expire on your birth date in the next odd-numbered year.

WSR 07-07-120
PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed March 20, 2007, 3:14 p.m.]

Continuance of WSR 07-03-020.
 Preproposal statement of inquiry was filed as WSR 06-09-044.
 Title of Rule and Other Identifying Information: Chapter 196-30 WAC, Fees for on-site wastewater treatment designers and inspectors.
 Hearing Location(s): Department of Licensing, Business and Professions Division, Conference Room #2209, 405 Black Lake Boulevard, Olympia, WA 98502, on April 27, 2007, at 9:00 a.m.
 Date of Intended Adoption: May 1, 2007.
 Submit Written Comments to: George Twiss, Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by April 26, 2007.
 Assistance for Persons with Disabilities: Contact Kim King by April 26, 2007, TTY (360) 664-8885 or (360) 664-1564.
 Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal language that concerns on-site practice permits, which ended on June 30, 2003; repeal late penalty fees for certificate of competency holders; repeal suspended fees, and; amend current fees for on-site designers and certificate of competency holders.

Chapter 196-30 WAC

FEES FOR ON-SITE WASTEWATER TREATMENT DESIGNERS AND INSPECTORS

Reasons Supporting Proposal: On-site practice permits no longer exist. There is no existing language that a late penalty fee can be assessed to certificate of competency holders. The current fees assessed to on-site designers and certificate of competency holders need to be raised to meet the strategic goals to remain self-supporting.

Statutory Authority for Adoption: RCW 43.24.086.

Statute Being Implemented: Chapter 18.210 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George A. Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no negative economic impact to small business.

A cost-benefit analysis is not required under RCW 34.05.328. See statement regarding small business economic impact statement.

March 20, 2007

R. Osgood

Assistant Director

AMENDATORY SECTION (Amending WSR 99-24-022, filed 11/23/99)

WAC 196-30-020 On-site wastewater treatment designer and inspector fees. The business and professions division of the department of licensing shall assess the following fees:

Title of Fee	Amount (\$)
((Practice permit application	400.00))
((Practice permit renewal	250.00))
Designer license application	((175.00)) 200.00
Designer license application (comity)	((50.00)) 75.00
Designer license renewal	((250.00)) 325.00
Designer license re-examination	((100.00)) 140.00
Late Renewal Penalty	100.00
Certificate of competency (inspector) Application	175.00
Certificate of competency renewal	((250.00)) 150.00
Certificate of competency re-examination	((100.00)) 140.00
((Late Renewal Penalty	100.00))

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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 196-30-100 Suspended fees.

WAC 196-30-110 Suspended fees.

AMENDATORY SECTION (Amending WSR 99-24-022, filed 11/23/99)

WAC 196-30-030 License renewals. ~~((1) Practice permits are valid for one year. They must be renewed each year by paying the required fee no later than the anniversary date of when the permit was originally issued. A valid practice permit will remain in force until the permit holder is issued a designer license, or July 1, 2003, whichever comes first. The permit holder must renew for a full year. No refunds will be made, or payments accepted, for a partial year.))~~

~~((2))~~ (1) The initial designer license and certificate of competency will expire on the licensee's or certificate holder's next birth date. However, if the licensee's or certificate holder's next birth date is within three months of the initial date of issuing the license or certificate, the original license or certificate will expire on his or her second birthday following issuance of the original license or certificate. All subsequent renewals shall be for a one-year period due on the individuals birth date. No refunds will be made, or payments accepted for a partial year.

~~((3))~~ (2) It shall be the licensee's or certificate holder's responsibility to pay the prescribed renewal fee to the department of licensing on or before the date of expiration.

~~((4))~~ (3) Licensees ~~((and certificate holders))~~ who fail to pay the prescribed renewal fee within ninety days of the license expiration date will be subject to a late penalty fee of \$100.00. However, the license or certificate is invalid the date of expiration (if not renewed) even though an additional 90 days is granted to pay the renewal fee without penalty. After ninety days, the base renewal fee plus the penalty fee must be paid before the license or certificate can be renewed to a valid status.

~~((5))~~ (4) Any designer license ~~((or certificate of competency))~~ that remains expired for more that two years would be canceled. After cancellation, a new application must be made in accordance with chapter 18.210 RCW to obtain another license ~~((or certificate)).~~

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

WSR 07-07-122
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed March 20, 2007, 3:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-021.

Title of Rule and Other Identifying Information: Chapter 196-33 WAC, Rules of professional practice for licensees designing on-site wastewater treatment systems.

Hearing Location(s): Department of Licensing, Business and Professions Division, Conference Room #2209, 405 Black Lake Boulevard, Olympia, WA 98502, on April 27, 2007, at 9:00 a.m.

Date of Intended Adoption: May 1, 2007.

Submit Written Comments to: George Twiss, Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by April 26, 2007.

Assistance for Persons with Disabilities: Contact Kim King by April 26, 2007, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To address explicit acts of misconduct that pertain to the professional practice of on-site designers and inspectors (certificate of competency holders).

Reasons Supporting Proposal: The board felt that this is needed to address the act of retaliation that may occur.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.210 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George A. Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no negative economic impact to small business.

A cost-benefit analysis is not required under RCW 34.05.328. See statement regarding small business economic impact statement.

March 20, 2007
 George A. Twiss
 Executive Director

[AMENDATORY SECTION (Amending WSR 01-11-102, filed 5/21/01)]

WAC 196-33-200 Fundamentals canons and guidelines for professional practice and conduct. The specialized and complex knowledge required for on-site wastewater treatment system design makes it imperative that licensees exercise a standard of care that holds paramount the protec-

tion of the health, safety, environment, property, and welfare of the public.

(1) Licensees are expected to apply the skill, diligence and judgment required by the professional standard of care, to achieve the goals and objectives agreed with the client or employer, and are expected to promptly inform the client or employer of progress and changes in conditions that may affect the appropriateness or achievability of some or all of the goals and objectives of the client or employer. Licensees are obliged to:

(a) Be honest and fair in their dealings, and to conform to the relevant laws and codes of the jurisdiction in which they practice.

(b) Be able to demonstrate that their final products and work plans adequately consider the primary importance of protecting the safety, health, property, and welfare of the general public.

(c) Approve or seal only documents prepared by them or under their direct supervision.

(d) Inform their clients or employers of the possible consequences, when an overruling or disregarding of the licensee's professional judgment may threaten the safety or health of the public. If in the judgment of the licensee an imminently dangerous situation persists, they shall promptly inform appropriate authorities.

(e) Inform the board in writing, citing specific facts to which the licensee has direct knowledge, if they have knowledge or reason to believe that another person or firm may be in violation of any of the provisions of chapter 18.210 RCW or these rules of professional conduct, and cooperate with the board in furnishing such further information or assistance as may be required.

(2) Licensees shall be competent in the technology, and knowledgeable of the codes, regulations, and guidelines applicable to the services they perform.

(3) Licensees shall be qualified by education and/or experience in the technical area of on-site wastewater treatment system design applicable to services performed and the technologies utilized.

(4) Licensees may accept primary contractual responsibility requiring education and/or experience outside their own area of competence, provided their services are restricted to those phases of the project in which they are qualified.

(5) Licensees shall not affix their signatures or seals to any plan or document dealing with subject matter in which they lack competence by virtue of education and/or experience.

(6) Licensees shall act in professional matters for each employer or client as faithful agents or trustees.

(7) Licensees shall be objective and truthful in professional documents, reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony. They shall not knowingly falsify, misrepresent or conceal a material fact in offering or providing services to a client or employer.

(8) Licensees shall avoid all known or potential conflicts of interest with their employers or clients and shall promptly inform their employers or clients of any business association,

interest, or circumstances, which could influence their judgment, or the quality of their services.

(9) Licensees shall only accept compensation from one party for services on a project, unless the circumstances are fully disclosed to and agreed to, by all interested parties.

(10) Licensees shall not solicit or, accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

(11) Licensees shall advise their employers or clients when, as a result of their studies, they believe a project will not achieve the goals established with the client.

(12) Licensees shall not use confidential information coming to them in the course of their assignments as a means of making personal profit if such action is adverse to the interests of their clients, employers or the public.

(13) Licensees employed full-time shall not accept professional employment outside of their regular work or interest without the knowledge and consent of their employers.

(14) Licensees shall offer their professional services in a truthful, objective, and professional manner that results in public trust in the integrity of the on-site design profession.

(15) Licensees shall not request, propose or accept professional commissions on a contingent basis under circumstances in which their professional judgments may be compromised.

(16) Licensees shall not offer or accept money, goods or other favors as inducement to receive favorable consideration for a professional assignment or as an inducement to approve, authorize or influence the granting of a professional assignment. This shall not preclude the securing of salaried positions through employment agencies.

(17) Licensees shall negotiate contracts for professional services fairly and on the basis of demonstrated competence and qualifications for the type of professional service required.

(18) Licensees shall not falsify or permit misrepresentation of their academic or professional qualifications or experience.

(19) Licensees shall not advertise professional services in a way that is false or misleading as to the qualification, experience, or capability of the licensee.

(20) Public statements by licensees regarding the practice of on-site wastewater treatment systems design shall be objective and truthful.

(21) Licensees should endeavor to extend the public knowledge of on-site wastewater treatment system design and shall not participate in the dissemination of untrue, unfair, or exaggerated statements regarding the profession.

(22) Professional reports, statements, or testimony made to the public or public entities shall include all relevant and pertinent information to support conclusions or opinions expressed.

(23) Licensees when serving as an expert witness shall express an on-site design opinion only when it is founded upon adequate knowledge of the facts, upon a background of technical competence, and upon honest conviction.

(24) Licensees shall issue no statements, criticisms, or arguments regarding on-site design matters, which are

inspired or paid for by interested parties, unless they indicate on whose behalf the statements, are made.

(25) Licensees shall continue their professional development throughout their careers, and shall provide opportunities for the professional development of those individuals under their supervision.

(26) Licensees shall respond to any legal request for information by the board and/or appear before the board in the time frame established by the board or their staff designee.

(27) In addition to the requirements of RCW 18.210.020 and this chapter, the following acts are contrary to the standard of practice for individuals authorized to practice under this chapter and constitute unprofessional conduct in the practice of on-site wastewater treatment system designing:

(a) Duplicating, copying, removing or attempting to remove materials from the custody and control of the Board that are exempt from inspection or copying under chapter 42.17 RCW when such duplication, copying or removal was not expressly authorized by the board.

(b) Failure to notify a client or employer that a project could not be completed or was not completed.

(c) Failure to respond to client inquiries under conditions which endanger the health, safety, or welfare of the public or the client or the client's property.

(d) Failure to respond to inquiries from other on-site practitioners or governmental agencies regarding differences in your respective work products, under conditions which endanger the public health, safety, or welfare or the health, safety, or welfare of the client or the client's property.

(e) Any act, statement or behavior that harasses, intimidates or retaliates against anyone who has provided information, assistance or testimony in connection with any Board inquiry, investigation, hearing or other proceeding.

(f) Disorderly, discriminatory or abusive behavior or statements which are significantly disruptive to the normal activities of a place of business or public view, where such behavior would give anyone witnessing the act a reasonable belief to be concerned for their safety or well-being.

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.

WSR 07-07-125

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2005-07—Filed March 21, 2007, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-01-098.

Title of Rule and Other Identifying Information: Standards for coordination of benefits (COB).

Hearing Location(s): Insurance Building, 302 Sid Snyder Avenue, 4th Floor Conference Room, Olympia, WA 98504, on May 2, 2007, at 10:00 a.m.

Date of Intended Adoption: May 21, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by May 1, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by May 1, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rules is to amend chapter 284-51 WAC to update the rules following the general format of the NAIC Coordination of Benefits Model Regulation. The proposed rules clarify carrier obligations and expectations for implementing the requirements of this chapter.

Reasons Supporting Proposal: These proposed rules will allow for greater consistency in the implementation of COB standards.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.200, 48.44.050, and 48.46.200.

Statute Being Implemented: RCW 48.21.200.

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Janis LaFlash, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0244, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0244, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules will have negligible or minor impact on small businesses regulated by the office of insurance commissioner.

A cost-benefit analysis is not required under RCW 34.05.328. These proposed rules are not significant legislative rules as defined in RCW 34.05.328.

March 21, 2007
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-51-190 Purpose. (1) The purpose of this chapter is to:

(a) Establish a uniform order of benefit determination under which plans pay claims;

(b) Reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, under rules established by this chapter, do not have to pay their benefits first; and

(c) Provide greater efficiency in the processing of claims when a person is covered under more than one plan.

(2) This chapter does not require the use of coordination of benefits provisions in a plan. However, if a plan contains any provision for the reduction of benefits payable because of other insurance, it must be consistent with the requirements

of this chapter. A plan of coverage designed to be supplementary over the underlying basic plan of coverage may provide coverage that is excess to the basic plan of coverage.

NEW SECTION

WAC 284-51-195 Definitions. As used in this chapter, these words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Allowable expense," except as outlined below means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person. When coordinating benefits, any secondary plans must pay an amount which, together with the payment made by the primary plan, totals the higher of the allowable expenses. The exception to this is when Medicare is primary. In this case, Medicare's allowable amount is considered the highest allowable expense.

(a) If an issuer is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established according to Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223 (c)(2)(C) of the Internal Revenue Code of 1986.

(b) An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

(c) The following are examples of expenses that are not allowable expenses:

(i) If a person is confined in a private hospital room, the difference between the cost of a semiprivate room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

(ii) If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement method, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

(iii) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

(d) The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of allowable expense in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of allowable expense must include similar expenses to which COB applies.

(e) When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

(2) "Birthday" refers only to the month and day in a calendar year and does not include the year in which the individual is born.

(3) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

- (a) Services (including supplies);
 - (b) Payment for all or a portion of the expenses incurred;
 - (c) A combination of (a) and (b) of this subsection; or
 - (d) An indemnification.
- (4) "Claim determination period" means calendar year.

(5) "Closed panel plan" means a plan that provides health benefits to covered persons in the form of services primarily through a panel of providers that are employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.

(6) "Consolidated Omnibus Budget Reconciliation Act of 1985" or "COBRA" means coverage provided under a right of continuation according to federal law.

(7) "Coordination of benefits" or "COB" means a provision establishing the order that plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(8) "Custodial parent" means:

(a) The parent awarded custody of a child by a court decree; or

(b) In the absence of a court decree, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation; or

(c) In cases where a court decree awards more than half of the calendar year's residential time to one parent without the use of "custodial" terminology, the parent to whom the greater residential time is awarded.

(9) "High-deductible health plan" has the meaning given the term under Section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(10)(a) "Hospital indemnity benefits" or "hospital fixed payment plan" means benefits not related to expenses incurred.

(b) "Hospital indemnity benefits" or "hospital fixed payment plan" does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(11) "Issuer" means a disability carrier, health care service contractor, health maintenance organization, and any other entity issuing a plan as defined in this chapter.

(12) "Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.

(a) If a plan coordinates benefits, its contract must state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the

contractual definition may be no broader than the definition of "plan" in this subsection.

(b) "Plan" includes:

(i) Group, individual or blanket disability insurance contracts, and group or individual contracts marketed by issuers as defined in this chapter;

(ii) Closed panel plans or other forms of group or individual coverage;

(iii) The medical care components of long-term care contracts, such as skilled nursing care; and

(iv) Medicare or other governmental benefits, as permitted by law, except as provided in (c)(vii) of this subsection. That part of the definition of plan may be limited to the hospital, medical and surgical benefits of the governmental program.

(c) "Plan" does not include:

(i) Hospital indemnity or fixed payment coverage benefits or other fixed indemnity or payment coverage;

(ii) Accident only coverage;

(iii) Specified disease or specified accident coverage;

(iv) Limited benefit health coverage, as defined in WAC 284-50-370;

(v) School accident and similar coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis;

(vi) Benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(vii) Medicare supplement policies;

(viii) A state plan under Medicaid;

(ix) A governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan;

(x) Automobile insurance policies required by statute to provide medical benefits.

(13) "Policyholder" means the primary insured named in a nongroup insurance policy.

(14) "Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan subject to this chapter is a primary plan if:

(a) The plan either has no order of benefit determination rules, or its rules differ from those permitted by this chapter; or

(b) All plans that cover the person use the order of benefit determination rules required by this chapter, and under those rules the plan determines its benefits first.

(15) "Secondary plan" means a plan that is not a primary plan.

NEW SECTION

WAC 284-51-200 Use of model COB contract provision. (1) WAC 284-51-255, Appendix A contains a model COB provision for use in contracts. The use of this model COB provision is subject to the provisions of subsections (2),

(3), and (4) of this section and to the provisions of this chapter.

(2) WAC 284-51-260, Appendix B is a plain language description of the COB process that explains to the covered person how health plans will implement coordination of benefits. It is not intended to replace or change the provisions that are in the contract. Its purpose is to explain the process to be used by two or more plans to pay for or provide benefits as allowed by the provisions of this chapter.

(3) Issuers need not use the specific words and format provided in WAC 284-51-255 and the plain language explanation in WAC 284-51-260. Editing changes may be made by the issuer to fit the language and style of the rest of its contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred and that indemnify. No substantive changes are permitted.

(4) A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

(a) Another plan exists and the covered person did not enroll in that plan;

(b) A person could have been covered under another plan; or

(c) A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

(5) No plan may contain a provision that its benefits are "always excess" or "always secondary" except under the rules permitted in this chapter.

(6) No plan may use a COB provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of plan as defined in this chapter.

(7) If a person has met the requirements for coverage under the primary plan, a closed panel plan in secondary position must pay benefits as if the covered person had met the requirements of the closed panel plan. Further, coordination of benefits may occur during the plan year even where there are no savings in the closed panel plan.

NEW SECTION

WAC 284-51-205 Rules for coordination of benefits.

(1) When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

(a) The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist.

(b) If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan must pay or provide benefits as if it were the primary plan when a covered person uses a nonpanel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.

(c) When multiple contracts providing coordinated coverage are treated as a single plan under this chapter, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one issuer pays or provides benefits under the plan, the issuer designated as primary within the plan is responsible for the plan's compliance with this chapter.

(d) If a person is covered by more than one secondary plan, the order of benefit determination rules of this chapter decide the order in which secondary plans benefits are determined in relation to each other. Each secondary plan must take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the rules of this chapter, has its benefits determined before those of that secondary plan.

(2)(a) Except as provided in (b) of this subsection, a plan that does not contain order of benefit determination provisions that are consistent with this chapter is always the primary plan unless the provisions of both plans, regardless of the provisions of this section, state that the complying plan is primary.

(b) Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage is excess to any other parts of the plan provided by the contract holder. Examples include major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(3) A plan may take into consideration the benefits paid or provided by another plan only when, under the rules of this chapter, it is secondary to that other plan.

(4) Order of benefit determination. Each plan determines its order of benefits using the first of the following rules that applies:

(a) Nondependent or dependent.

(i) Subject to (a)(ii) of this subsection, the plan that covers the person other than as a dependent, for example as an employee, member, subscriber, policyholder or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

(ii)(A) If the person is a Medicare beneficiary, and, as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is:

(I) Secondary to the plan covering the person as a dependent; and

(II) Primary to the plan covering the person as other than a dependent (e.g., a retired employee);

(B) Then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

(b) Dependent child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child must determine the order of benefits as follows:

(i) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

(A) The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(B) If both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

(ii) For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:

(A) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does, that parent's spouse's plan is the primary plan. This does not apply to any plan year during which benefits are paid or provided before the plan has actual knowledge of the court decree provision;

(B) If a court decree states one parent is to assume primary financial responsibility for the dependent child but does not mention responsibility for health care expenses, the plan of the parent assuming financial responsibility is primary;

(C) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of (b)(i) of this subsection determine the order of benefits;

(D) If a court decree states that the parents have joint custody without specifying that one parent has financial responsibility or responsibility for the health care expenses or health care coverage of the dependent child, the provisions of (b)(i) of this subsection determine the order of benefits; or

(E) If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child is as follows:

(I) The plan covering the custodial parent, first;

(II) The plan covering the custodial parent's spouse, second;

(III) The plan covering the noncustodial parent, third; and then

(IV) The plan covering the noncustodial parent's spouse, last.

(iii) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits are determined, as applicable, under (b)(i) or (ii) of this subsection as if those individuals were parents of the child.

(c) Active employee or retired or laid-off employee.

(i) The plan that covers a person as an active employee that is, an employee who is neither laid off nor retired or as a dependent of an active employee is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(ii) If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule does not apply.

(iii) This provision does not apply if the provision in (a) of this subsection can determine the order of benefits.

(d) COBRA or state continuation coverage.

(i) If a person whose coverage is provided under COBRA or under a right of continuation according to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan and the plan covering that same person under COBRA or under a right of continuation according to state or other federal law is the secondary plan.

(ii) If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule does not apply.

(iii) This provision does not apply if the provision in (a) of this subsection can determine the order of benefits.

(e) Longer or shorter length of coverage.

(i) If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

(ii) To determine the length of time a person has been covered under a plan, two successive plans are treated as one if the covered person was eligible under the second plan within twenty-four hours after coverage under the first plan ended.

(iii) The start of a new plan does not include:

(A) A change in the amount or scope of a plan's benefits;

(B) A change in the entity that pays, provides or administers the plan's benefits; or

(C) A change from one type of plan to another, such as, from a single employer plan to a multiple employer plan.

(iv) The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group must be used as the date to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding rules determines the order of benefits, the allowable expenses must be shared equally between the plans.

NEW SECTION

WAC 284-51-210 Coordination procedures. Insurers must use the following claims administration practices to expedite claim payments where coordination of benefits is involved:

(1) Claim personnel must participate in continuing education programs.

(2) All requests for information must be handled in an accurate and prompt manner by the inquiring issuer and the responding issuer, including the disclosure of the amounts allowed and paid or to be paid by the primary plan for each claim.

(3) Claim personnel of all issuers, whether primary or secondary, must make every reasonable effort, including use of the telephone or e-mail, to speed up exchange of coordination of benefits information. Delay of payment for lack of complete coordination of benefits information does not constitute a reasonable effort and compliance with WAC 284-51-215 is required.

NEW SECTION

WAC 284-51-215 Time limit. Each issuer must establish time limits for payment of a claim and may not unreasonably delay payment through the application of a coordination of benefits provision. Time limits established by a primary plan must be no less favorable than those contained in WAC 284-43-321. Any time limit established by a secondary plan that is in excess of ninety days from receipt of a claim will be

considered unreasonable. When payment is necessarily delayed for reasons other than the application of a coordination of benefits provision, investigation of other plan coverage must be conducted concurrently to avoid delay in the ultimate payment of benefits. Any issuer that is required by the time limit to make payment as the primary plan because it has insufficient information to make it a secondary plan may exercise its rights under its "right of recovery" provision for recovery of any excess payments. Any issuer that is knowingly responsible for payment as the secondary plan must make a reasonable estimate of the primary plan payment and base its secondary payment on that amount. After payment information is received from the primary plan, the secondary plan may recover any excess amount paid under its "right of recovery" provision.

NEW SECTION

WAC 284-51-220 Facility of payment. A plan providing for coordination of benefits must contain a "facility of payment" provision substantially as follows: "If payments that should have been made under this plan are made by another plan, the issuer has the right, at its discretion, to remit to the other plan the amount it determines appropriate to satisfy the intent of this provision. To the extent of such payments, the issuer is fully discharged from liability under this plan."

NEW SECTION

WAC 284-51-225 Right of recovery. A plan providing for coordination of benefits must contain a "right of recovery" provision substantially as follows: "The issuer has the right to recover excess payment whenever it has paid allowable expenses in excess of the maximum amount of payment necessary to satisfy the intent of this provision. The issuer may recover excess payment from any person, other issuer or plan that has received payment."

NEW SECTION

WAC 284-51-230 Procedure to be followed by secondary plan to calculate benefits and pay a claim. (1) In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal one hundred percent of the total allowable expense for that claim. However, in no event shall the secondary carrier be required to pay an amount in excess of its maximum benefit plus accrued savings. The secondary plan must credit to its plan deductible any amounts credited by the primary plan to its deductible in the absence of other health care coverage. In no event should the enrollee be responsible for a deductible amount greater than the highest of the two deductibles.

(2) If a plan by its terms contains gatekeeper requirements as defined in subsection (3) of this section, and a person fails to comply with such requirements, these provisions will have the following effect in the absence of an alternative

procedure agreed upon between both plans and the covered person:

(a) If the plan is secondary, all secondary gatekeeper requirements will be waived if the gatekeeper requirements of the primary plan have been met.

(b) If the primary plan becomes secondary during a course of treatment, the new primary plan must make reasonable provision for continuity of care if one or more treating providers are not in the new primary plan's network.

(3) For the purpose of this section, "gatekeeper requirements" means any requirement that an otherwise eligible person must fulfill prior to receiving the benefits of a plan. These requirements include but are not limited to use of network providers, prior authorization primary care physician referrals, or other similar case management requirements.

(4) When a plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period do not exceed one hundred percent of the total allowable expenses. The secondary plan must calculate its savings by subtracting the amount that it paid as a secondary plan from the amount it would have paid had it been primary. These savings are recorded as a benefit reserve for the covered person and must be used by the secondary plan to pay any allowable expenses not otherwise paid, that are incurred by the covered person during the claim determination period. As each claim is submitted, the issuer of the secondary plan must:

(a) Determine its obligation under its plan;

(b) Determine whether a benefit reserve has been recorded for the covered person; and

(c) Determine whether there are any unpaid allowable expenses during that claims determination period.

(d) Use any amount that has accrued in the covered person's recorded benefit reserve to make payment so that one hundred percent of the total allowable expenses incurred are paid during the claim determination period.

NEW SECTION

WAC 284-51-235 Notice to covered persons. A plan must, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one health benefit plan, you or your provider should file all your claims with each plan at the same time." However, if Medicare is your primary plan, they will submit your claims to your secondary carrier for you.

NEW SECTION

WAC 284-51-240 Small claim waivers. In appropriate cases, insurers are encouraged to waive the investigation of possible other plan coverage on claims less than fifty dollars. However, if additional liability is incurred which raises the claim above fifty dollars, the entire liability may be included in the coordination of benefits computation.

NEW SECTION

WAC 284-51-245 Miscellaneous provisions. (1) A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from

the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision requires a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

(2)(a) A plan with order of benefit determination rules that comply with this chapter (complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules that are inconsistent with those contained in this chapter (non-complying plan) on the following basis:

(i) If the complying plan is the primary plan, it must pay or provide its benefits first;

(ii) If the complying plan is the secondary plan under the order of benefit determination in this chapter, it must pay or provide its benefits first, but the amount of the benefits payable must be determined as if the complying plan were the secondary plan. In this situation, the payment is the limit of the complying plan's liability; and

(iii) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within forty-five days after the date on the letter making the request, the complying plan may assume the benefits of the noncomplying plan are identical to its own, and pay its benefits accordingly. If, within twenty-four months after payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it must adjust payments accordingly between the plans.

(b) If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation outlined below, then the complying plan may advance to the covered person or on behalf of the covered person an amount equal to the difference.

(c) In no event may the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of the advance, the complying plan is subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan must be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

(3) COB differs from subrogation. Provisions for one may be included in plans without compelling the inclusion or exclusion of the other.

(4) If the plans cannot agree on the order of benefits within thirty calendar days after the plans have received the information needed to pay the claim, the plans must immediately pay the claim in equal shares and determine their relative liabilities following payment. No plan is required to pay more than it would have paid had it been the primary plan.

NEW SECTION

WAC 284-51-250 Applicability and scope—Effective date for existing contracts. This chapter applies to all plans,

as defined in WAC 284-51-195 that are issued, amended or renewed after December 31, 2007. All plans issued prior to January 1, 2008 must be compliant with this chapter on that date.

NEW SECTION

WAC 284-51-255 Appendix A—Model COB contract provisions.

COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS

The Coordination of Benefits (COB) provision applies when a person has health care coverage under more than one **Plan**. **Plan** is defined below.

The order of benefit determination rules govern the order in which each **Plan** will pay a claim for benefits. The **Plan** that pays first is called the **Primary plan**. The **Primary plan** must pay benefits according to its policy terms without regard to the possibility that another **Plan** may cover some expenses. The **Plan** that pays after the **Primary plan** is the **Secondary plan**. The **Secondary plan** may reduce the benefits it pays so that payments from all **Plans** do not exceed 100% of the total **Allowable expense**.

DEFINITIONS

A. A **Plan** is any of the following that provides benefits or services for medical or dental care or treatment. If separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts. However, if COB rules do not apply to all contracts, or to all benefits in the same contract, the contract or benefit to which COB does not apply is treated as a separate plan.

(1) **Plan** includes: Group, individual or blanket disability insurance contracts, and group or individual contracts issued by health care service contractors or health maintenance organizations (HMO), closed panel plans or other forms of group coverage; medical care components of long-term care contracts, such as skilled nursing care; and Medicare or any other federal governmental plan, as permitted by law.

(2) **Plan** does not include: Hospital indemnity or fixed payment coverage or other fixed indemnity or fixed payment coverage; accident only coverage; specified disease or specified accident coverage; limited benefit health coverage, as defined by state law; school accident type coverage; benefits for non-medical components of long-term care policies; automobile insurance policies required by statute to provide medical benefits; Medicare supplement policies; Medicaid coverage; or coverage under other federal governmental plans, unless permitted by law.

Each contract for coverage under (1) or (2) is a separate **Plan**. If a **Plan** has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate **Plan**.

B. **This plan** means, in a **COB** provision, the part of the contract providing the health care benefits to which the **COB** provision applies and which may be reduced because of the benefits of other plans. Any other part of the contract providing health care benefits is separate from this plan. A contract may apply one **COB** provision to certain benefits, such as

dental benefits, coordinating only with similar benefits, and may apply another **COB** provision to coordinate other benefits.

C. The order of benefit determination rules determine whether **This plan** is a **Primary plan** or **Secondary plan** when the person has health care coverage under more than one **Plan**.

When **This plan** is primary, it determines payment for its benefits first before those of any other **Plan** without considering any other **Plan's** benefits. When **This plan** is secondary, it determines its benefits after those of another **Plan** and must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal 100% of the **Total Allowable expense** for that claim. This means that when this **Plan** is **Secondary**, it must pay the amount which, when combined with what the **Primary plan** paid, totals 100% of the highest **Allowable expense**. In addition, if this **Plan** is **Secondary**, it must calculate its savings (its amount paid subtracted from the amount it would have paid had it been the **Primary plan**) and record these savings as a benefit reserve for the covered person. This reserve must be used to pay any expenses during that calendar year, whether or not they are an **Allowable expense** under this **Plan**.

D. **Allowable expense** is a health care expense, including deductibles, coinsurance and copayments, that is covered at least in part by any **Plan** covering the person. When a **Plan** provides benefits in the form of services, the reasonable cash value of each service will be considered an **Allowable expense** and a benefit paid. An expense that is not covered by any **Plan** covering the person is not an **Allowable expense**.

The following are examples of expenses that are not **Allowable expenses**:

(1) The difference between the cost of a semi-private hospital room and a private hospital room is not an **Allowable expense**, unless one of the **Plans** provides coverage for private hospital room expenses.

(2) If a person is covered by two or more **Plans** that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement method or other similar reimbursement method, any amount in excess of the highest reimbursement amount for a specific benefit is not an **Allowable expense**.

(3) If a person is covered by two or more **Plans** that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an **Allowable expense**.

(4) The amount of any benefit reduction by the **Primary plan** because a covered person has failed to comply with the **Plan** provisions is not an **Allowable expense**. Examples of these types of plan provisions include second surgical opinions, precertification of admissions, and preferred provider arrangements.

E. **Closed panel plan** is a **Plan** that provides health care benefits to covered persons in the form of services through a panel of providers who are primarily employed by the **Plan**, and that excludes coverage for services provided by other providers, except in cases of emergency or referral by a panel member.

F. **Custodial parent** is the parent awarded custody by a court decree or, in the absence of a court decree, is the parent with whom the child resides more than one half of the calendar year excluding any temporary visitation.

ORDER OF BENEFIT DETERMINATION RULES

When a person is covered by two or more **Plans**, the rules for determining the order of benefit payments are as follows:

A. The **Primary plan** pays or provides its benefits according to its terms of coverage and without regard to the benefits under any other **Plan**.

B. (1) Except as provided in subsection (2), a **Plan** that does not contain a coordination of benefits provision that is consistent with this chapter is always primary unless the provisions of both **Plans** state that the complying plan is primary.

(2) Coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits and provides that this supplementary coverage is excess to any other parts of the **Plan** provided by the contract holder. Examples include major medical coverages that are superimposed over hospital and surgical benefits, and insurance type coverages that are written in connection with a **Closed panel plan** to provide out-of-network benefits.

C. A **Plan** may consider the benefits paid or provided by another **Plan** in calculating payment of its benefits only when it is secondary to that other **Plan**.

D. Each **Plan** determines its order of benefits using the first of the following rules that apply:

(1) Non-Dependent or Dependent. The **Plan** that covers the person other than as a dependent, for example as an employee, member, policyholder, subscriber or retiree is the **Primary plan** and the **Plan** that covers the person as a dependent is the **Secondary plan**. However, if the person is a Medicare beneficiary and, as a result of federal law, Medicare is secondary to the **Plan** covering the person as a dependent, and primary to the **Plan** covering the person as other than a dependent (e.g., a retired employee), then the order of benefits between the two **Plans** is reversed so that the **Plan** covering the person as an employee, member, policyholder, subscriber or retiree is the **Secondary plan** and the other **Plan** is the **Primary plan**.

(2) Dependent Child Covered Under More Than One Plan. Unless there is a court decree stating otherwise, when a dependent child is covered by more than one **Plan** the order of benefits is determined as follows:

(a) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

- The **Plan** of the parent whose birthday falls earlier in the calendar year is the **Primary plan**; or
- If both parents have the same birthday, the **Plan** that has covered the parent the longest is the **Primary plan**.

(b) For a dependent child whose parents are divorced or separated or not living together, whether or not they have ever been married:

(i) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the **Plan** of that parent has actual

knowledge of those terms, that **Plan** is primary. This rule applies to claim determination periods commencing after the **Plan** is given notice of the court decree;

(ii) If a court decree states one parent is to assume primary financial responsibility for the dependent child but does not mention responsibility for health care expenses, the plan of the parent assuming financial responsibility is primary;

(iii) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of subparagraph (a) above determine the order of benefits;

(iv) If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of subsection (a) above determine the order of benefits; or

(v) If there is no court decree allocating responsibility for the dependent child's health care expenses or health care coverage, the order of benefits for the child are as follows:

- The **Plan** covering the **Custodial parent**, first;
- The **Plan** covering the spouse of the **Custodial parent**, second;
- The **Plan** covering the **non-custodial parent**, third; and then
- The **Plan** covering the spouse of the **non-custodial parent**, last

(c) For a dependent child covered under more than one **Plan** of individuals who are not the parents of the child, the provisions of subsection (a) or (b) above determine the order of benefits as if those individuals were the parents of the child.

(3) Active Employee or Retired or Laid-off Employee. The **Plan** that covers a person as an active employee, that is, an employee who is neither laid off nor retired, is the **Primary plan**. The **Plan** covering that same person as a retired or laid-off employee is the **Secondary plan**. The same would hold true if a person is a dependent of an active employee and that same person is a dependent of a retired or laid-off employee. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule under section D(1) can determine the order of benefits.

(4) COBRA or State Continuation Coverage. If a person whose coverage is provided under COBRA or under a right of continuation provided by state or other federal law is covered under another **Plan**, the **Plan** covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the **Primary plan** and the COBRA or state or other federal continuation coverage is the **Secondary plan**. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule under section D(1) can determine the order of benefits.

(5) Longer or Shorter Length of Coverage. The **Plan** that covered the person as an employee, member, policyholder, subscriber or retiree longer is the **Primary plan** and the **Plan** that covered the person the shorter period of time is the **Secondary plan**.

(6) If the preceding rules do not determine the order of benefits, the **Allowable expenses** must be shared equally between the **Plans** meeting the definition of **Plan**. In addition, **This plan** will not pay more than it would have paid had it been the **Primary plan**.

EFFECT ON THE BENEFITS OF THIS PLAN

When **This plan** is secondary, it may reduce its benefits so that the total benefits paid or provided by all **Plans** during a claim determination period are not more than the total **Allowable expenses**. In determining the amount to be paid for any claim, the **Secondary plan** must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal one hundred percent of the total **Allowable expense** for that claim. **Total Allowable expense** is the highest **Allowable expense** of the **Primary plan** or the **Secondary plan**. In addition, the **Secondary plan** must credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION

Certain facts about health care coverage and services are needed to apply these **COB** rules and to determine benefits payable under **This plan** and other **Plans**. [Organization responsibility for **COB** administration] may get the facts it needs from or give them to other organizations or persons for the purpose of applying these rules and determining benefits payable under **This plan** and other **Plans** covering the person claiming benefits. [Organization responsibility for **COB** administration] need not tell, or get the consent of, any person to do this. Each person claiming benefits under **This plan** must give [Organization responsibility for **COB** administration] any facts it needs to apply those rules and determine benefits payable.

FACILITY OF PAYMENT

If payments that should have been made under **This plan** are made by another **Plan**, the issuer has the right, at its discretion, to remit to the other **Plan** the amount it determines appropriate to satisfy the intent of this provision. The amounts paid to the other **Plan** are considered benefits paid under **This plan**. To the extent of such payments, the issuer is fully discharged from liability under **This plan**.

RIGHT OF RECOVERY

The issuer has the right to recover excess payment whenever it has paid allowable expenses in excess of the maximum amount of payment necessary to satisfy the intent of this provision. The issuer may recover excess payment from any person to whom or for whom payment was made or any other issuers or plans.

Questions about Coordination of Benefits? Contact Your State Insurance Department

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

NEW SECTION**WAC 284-51-260 Appendix B—Consumer explanatory booklet.****COORDINATION OF BENEFITS****IMPORTANT NOTICE**

This is a summary of only a few of the provisions of your health plan to help you understand coordination of benefits, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

Double Coverage

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits issuers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than you covered health care expenses.

Coordination of benefits (COB) is complicated, and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact your state insurance department.

Primary or Secondary?

You will be asked to identify all the plans that cover members of your family. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim.

Any plan that does not contain your state's COB rules will always be primary.

When This Plan is Primary

If you or a family member is covered under another plan in addition to this one, we will be primary when:

Your Own Expenses

- The claim is for your own health care expenses, unless you are covered by Medicare and both you and your spouse are retired.

Your Spouse's Expenses

- The claim is for your spouse, who is covered by Medicare, and you are not both retired.

- **Your Child's Expenses.** The claim is for the health care expenses of your child who is covered by this plan; and

- You are married and your birthday is earlier in the year than your spouse's or you are living with another individual, regardless of whether or not you have ever been married to

that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule"; or

- You are separated or divorced and you have informed us of a court decree that makes you responsible for the child's health care expenses; or

- There is no court decree, but you have custody of the child.

Other Situations

We will be primary when any other provisions of state or federal law require us to be.

How We Pay Claims When We Are Primary

When we are the primary plan, we will pay the benefits according to the terms of your contract, just as if you had no other health care coverage under any other plan.

How We Pay Claims When We Are Secondary

When we are knowingly the secondary plan, we will make a reasonable estimate of the primary plan payment and base our payment on that amount. After payment information is received from the primary plan, we may recover from the primary plan any excess amount paid under the "right of recovery" provision in the plan. We may not delay our payments because of lack of information from the primary plan. We are required to pay claims within ninety days of receipt.

- If there is a difference between the amounts the plans allow, we will base our payment on the higher amount. However, if the primary plan has a contract with the provider, our combined payments will not be more than the amount called for in our contract or the amount called for in the contract of the primary plan, whichever is higher. Health maintenance organizations (HMOs) and health care service contractors usually have contracts with their providers as do some other plans.

- We will determine our payment by subtracting the amount we estimate that the primary plan will pay from the amount we would have paid if we had been primary. We must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal to one hundred percent of the total allowable expense (the highest of the amounts allowed under each plan involved) for your claim. If your provider negotiates reimbursement amounts with the plan(s) for the service provided, your provider may not bill you for any excess amounts once he/she has received payment for the highest of the negotiated amounts. After we make payment, we will credit any amount we would have paid in the absence of your other health care coverage toward our own plan deductible. When our deductible is fully credited, we will place any remaining amounts in a savings account to cover future claims which might not otherwise have been paid. For example, if the primary plan covers similar kinds of health care expenses, but allows expenses that we do not cover, we may pay for those expenses.

**Questions About Coordination of Benefits?
Contact Your State Insurance Department**

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-51-010	Purpose and scope.
WAC 284-51-015	Amount of reduction allowed.
WAC 284-51-020	Required provisions for coordination of benefits.
WAC 284-51-030	Benefits subject to coordination.
WAC 284-51-040	"Plan" defined.
WAC 284-51-045	"Preventive care" defined.
WAC 284-51-050	Allowable expense.
WAC 284-51-060	Claim determination period.
WAC 284-51-075	Order of benefit determination.
WAC 284-51-080	Determination of length of coverage.
WAC 284-51-090	Coordination procedures.
WAC 284-51-100	Time limit.
WAC 284-51-110	Small claim waivers.
WAC 284-51-120	Facility of payment.
WAC 284-51-130	Right of recovery.
WAC 284-51-140	Right to receive and release necessary information.
WAC 284-51-150	Disclosure of coordination.
WAC 284-51-170	Effective date.
WAC 284-51-185	Appendix B, form for "effect on benefits" provision.

WSR 07-07-126

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2006-02—Filed March 21, 2007, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-097.

Title of Rule and Other Identifying Information: Chapter 284-24D WAC, Medical malpractice closed claim data reporting rules for facilities and providers; and chapter 284-

24E WAC, Medical malpractice claim settlement data reporting rules for attorneys and claimants.

Hearing Location(s): Insurance Commissioner's Office, Insurance 5000 Building, 5000 Capital Boulevard, Room TR-120, Tumwater, WA 98504-0255, on April 25, 2007, at 10:00 a.m.

Date of Intended Adoption: June 1, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by April 23, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by April 23, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These are new procedural rules that implement sections 201-210, chapter 8, Laws of 2006, now codified as chapter 48.140 RCW and RCW 7.70.140. These rules describe the process and procedures that reporting entities must use to report medical malpractice closed claim and settlement data to the commissioner. These rules primarily establish standards for reporting by claimants, insuring entities, self-insurers, facilities, and providers. These rules:

(1) Define data elements, which will lead accurate reporting of medical malpractice closed claim data.

(2) Integrate the data elements used by the National Practitioner Data Bank (NPDB) into the reporting structure.

(3) Establish processes for reporting closed claim data.

(4) Identify which insuring entity or self-insurer has the primary obligation to report closed claims.

Reasons Supporting Proposal: These rules implement chapter 48.140 RCW and RCW 7.70.140, and will ensure that data reported to the commissioner by reporting entities are consistent and complete.

Statutory Authority for Adoption: RCW 48.02.060, 48.140.060.

Statute Being Implemented: Chapter 48.140 RCW and RCW 7.70.140.

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa Smego, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7134; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW requires state agencies to prepare a small business economic impact statement for proposed rules in certain circumstances. However, RCW 19.85.025(3) states: "This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4)." RCW 34.05.310(4) states: "This section does not apply to: ... (iii) Rules adopting or incorporating by reference without material changes... Washington state statutes... (v) Rules the content of which is explicitly and specifically dictated by statute..." Therefore, the office of the insurance commissioner (OIC) is not required to prepare a small business eco-

conomic impact statement for the proposed rules to implement the medical malpractice closed claims reporting requirements of chapter 6, Laws of 2006, since they adopt the medical malpractice closed claims reporting law without material changes, and those statutory provisions provide explicit and specific reporting requirements.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 says that a cost-benefit analysis must be prepared prior to the adoption of significant legislative rules, with certain exceptions. The relevant exceptions are contained in subsection (5)(b) which says "This section does not apply to: ... (iii) Rules adopting or incorporating by reference without material changes... Washington state statutes... (v) Rules the content of which is explicitly and specifically dictated by statute..." After a comparison of the language of the proposed rules and the relevant provisions of chapter 48.140 RCW, the OIC has determined that the proposed rules are not "significant legislative rules" because they adopt the medical malpractice closed claims reporting requirements of chapter 48.140 RCW without material changes, and those statutory provisions provide explicit and specific reporting requirements which are given an operational framework by the proposed rules. For these reasons the OIC is not required to conduct a cost-benefit analysis for this proposed rule making.

March 21, 2007

Mike Kreidler

Insurance Commissioner

Chapter 284-24D WAC

MEDICAL MALPRACTICE CLOSED CLAIM DATA REPORTING RULES FOR FACILITIES AND PROVIDERS

NEW SECTION

WAC 284-24D-010 Purpose. This chapter contains procedural rules to implement chapter 48.140 RCW. This chapter describes the rules, practices and procedures that insuring entities, self-insurers, health care facilities and providers must use to report data to the commissioner as required by chapter 48.140 RCW.

NEW SECTION

WAC 284-24D-020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Allocated loss adjustment expense" or "ALAE" means defense and cost containment expenses paid or incurred for defense, litigation and medical cost containment expenses and services. Either internal staff, such as in-house counsel or professional medical staff, or external staff, such as defense counsel or expert witnesses, may provide defense and cost containment services.

(a) Defense and cost containment expenses and services include:

(i) Defense services provided by:

(A) Attorneys or expert witnesses; and

(B) Private investigators, hearing representatives or fraud investigators.

(ii) Cost containment activities and services performed by external or internal experts to defend the claim, including:

(A) Case evaluation, such as an evaluation of whether the medical care provided met professional standards;

(B) Risk assessment;

(C) Case preparation and management;

(D) Medical record review; and

(E) Settlement negotiations.

(iii) Specific case-related expenses, such as:

(A) Surveillance expenses;

(B) Court costs;

(C) Medical examination fees;

(D) The costs of laboratory, X-ray and other medical tests;

(E) Autopsy expenses;

(F) Stenographic expenses;

(G) Fees associated with witnesses and summonses; and

(H) The costs to obtain copies of documents.

(b) Allocated loss adjustment expenses do not include:

(i) Expenses incurred to determine whether coverage is available; or

(ii) Expenses or costs associated with external or internal claims adjusting staff.

(2) "Claim" means the same as in RCW 48.140.010(1).

(3) "Claim identifier" means the unique number assigned to a claim by the reporting entity as required by RCW 48.140.030 (1)(a).

(4) "Claimant" means the same as in RCW 48.140.010 (2).

(5) "Closed claim" means the same as in RCW 48.140.-010(3).

(6) "Commissioner" means the insurance commissioner.

(7) "Companion claims" means the same as in RCW 48.140.030 (1)(b).

(8) "Economic damages" means the same as in RCW 4.56.250 (1)(a).

(9) "Excess insuring entity" means an insuring entity that provides insurance coverage above the limits of primary insurance or a self-insured retention.

(10) "Facility" means the same as in RCW 48.140.010 (6).

(11) "Paid and estimated economic damages" means economic damages paid to a claimant based on:

(a) Objectively verifiable evidence; and

(b) Estimates developed from the injured person's available personal data and related economic data. Estimated economic damages typically include, but are not limited to:

(i) Lost earnings and benefits;

(ii) Lost earnings potential;

(iii) Lost value of household services; and

(iv) Future medical care costs.

(12) "Incident identifier" means the unique number assigned by the reporting entity to a series of closed claims that result from a single incident or related series of incidents of actual or alleged medical malpractice.

(13) "Insuring entity" means the same as in RCW 48.140.010(8).

(14) "Medical malpractice" means the same as in RCW 48.140.010(9).

(15) "OIC" means office of insurance commissioner.

(16) "Primary insuring entity" means the insuring entity that originates the primary layer of insurance coverage.

(17) "Provider" means the same as in RCW 48.140.010(7).

(18) "Record identifier" means a number assigned to a claim by the reporting site when a reporting entity first enters closed claim data.

(19) "Reporting entity" means any person or entity required to report data under RCW 48.140.020.

(20) "Reporting site" means the OIC web-based application that insuring entities, facilities, providers, and self-insurers must use to report medical malpractice closed claim data.

(21) "Self-insurer" means the same as in RCW 48.140.-010(11).

(22) "User ID" is a permanent number assigned by the reporting site to each insuring entity, self-insurer, facility or provider.

NEW SECTION

WAC 284-24D-030 How will the commissioner ensure data confidentiality under RCW 48.140.060(2)? RCW 42.56.400(11) protects data filed under chapter 48.140 RCW from public disclosure. To ensure data confidentiality, the commissioner will:

(1) Develop a secure web-based data reporting application;

(2) Train OIC staff on applicable laws and agency practices related to protecting confidential and privileged information;

(3) Limit access to the claim data base to OIC staff responsible for preparing the statistical summaries and annual report;

(4) Develop and implement confidentiality procedures to be used by staff that has access to the closed claim data base;

(5) Develop procedures to use if data are accidentally released; and

(6) Use aggregate data in summaries and reports so that individual claim data cannot be identified.

NEW SECTION

WAC 284-24D-040 How are closed claims reported to the commissioner? (1) Except as provided in subsection (2) of this section, reporting entities must use the reporting site maintained by the OIC to report closed claims. To assist reporting entities in collecting data, the commissioner will post reporting forms on the OIC internet site so that reporting entities can organize data before entering data into the reporting site.

(2) The commissioner may permit a reporting entity to transmit data electronically in an alternative format if the reporting entity develops, at its own expense, an interface that is compatible with the data base maintained by the OIC.

NEW SECTION

WAC 284-24D-050 How will the OIC assign user ID codes to reporting entities? The reporting site will assign a permanent user ID to each reporting entity the first time it reports a closed claim.

NEW SECTION

WAC 284-24D-060 What types of claims must be reported to the commissioner? Every medical malpractice claim must be reported to the commissioner after it has been closed. The types of closed claims that must be reported include:

- (1) Claims closed with an indemnity payment;
- (2) Claims closed with paid allocated loss adjustment expenses; and
- (3) Claims closed with both indemnity payments and allocated loss adjustment expenses.

NEW SECTION

WAC 284-24D-070 Are write-offs or other small sums of money provided as customer service gestures considered claims? If a self-insurer, facility or provider waives copayments, forgives bills or deductibles, or makes other similar accommodations to a client, it is not a claim under RCW 48.140.010(1). Reporting entities are not required to report these types of accommodations to the commissioner.

NEW SECTION

WAC 284-24D-080 When is a claim considered closed? A claim is closed on the date the reporting entity takes final administrative action to close the claim. Final administrative action occurs after the reporting entity:

- (1) Issues the final payment to the claimant in the form of a check or draft;
- (2) Pays all outstanding bills for allocated loss adjustment expenses; and
- (3) If applicable, receives from the facility, provider or excess insuring entity all indemnity and allocated loss adjustment expense claim payment data needed for reporting under this chapter.

NEW SECTION

WAC 284-24D-090 When are closed claim reports due? Under RCW 48.140.020, reporting entities must report all claims closed in the preceding calendar year to the commissioner.

(1) Beginning in 2009, closed claim reports for the prior calendar year are due by March 1.

(2) A reporting entity may report a closed claim any time after the claim is closed, but no later than March 1.

NEW SECTION

WAC 284-24D-100 Can a reporting entity reopen a claim or make changes to previously reported data? The

reporting site will allow the reporting entity to change previously reported closed claim data, subject to these rules:

(1) Data contained in the reporting site will be frozen from March 15 through June 30 each year so the OIC can prepare reports and statistical summaries as required by RCW 48.140.040 and 48.140.050. The commissioner may accept changes to previously reported data if a correction or omission will significantly affect the conclusions stated in the annual report.

(2) After June 30, the reporting site will allow a reporting entity to change previously reported data.

(a) The reporting entity can reopen a claim report using their permanent user ID and the record identifier and make changes or corrections to data.

(b) Changes and corrections submitted by reporting entities after June 30 of each year will appear in future reports and statistical summaries.

NEW SECTION

WAC 284-24D-110 How should reporting entities assign claim and incident identifiers? (1) Consistent with requirements of RCW 48.140.030(1), the reporting entity must assign a different claim identification number to each closed claim report.

(a) The claim identifier must consist solely of numbers. When the reporting entity enters a claim into the reporting site, the site will automatically combine the reporting entity's user ID with the claim identifier to create a unique record identifier for each claim.

(b) The OIC will use the record identifier to trace the claim for auditing purposes.

(2) If a claimant makes claims against more than one facility or provider, the insuring entity or self-insurer must report each claim separately and include an incident identifier.

(a) The incident identifier for companion claims must consist solely of numbers.

(b) The insuring entity or self-insurer is responsible to report claims only if it provides insurance coverage for a facility or provider and defends the claim.

NEW SECTION

WAC 284-24D-120 When is the primary insuring entity responsible for reporting closed claims to the commissioner? Primary insuring entities are principally responsible for reporting closed claim data required under chapter 48.140 RCW and this chapter to the commissioner.

(1) The primary insuring entity must report the total amounts paid to settle the claim, including any claim payments or ALAE payments made by:

- (a) A facility or provider;
- (b) An excess insuring entity; or
- (c) Any other person or entity on behalf of the provider.

(2) Facilities or providers insured by the primary insuring entity must cooperate and assist the primary insuring entity in the reporting process.

(3) If a primary insuring entity and one or more excess insuring entities combine to pay a claim:

(a) The primary insuring entity must report all paid indemnity and allocated loss adjustment expense; and

(b) The excess insuring entity must cooperate and assist the primary insuring entity in the reporting process.

NEW SECTION

WAC 284-24D-130 When is an excess insuring entity responsible for reporting closed claims to the commissioner? (1) If an excess insuring entity insures a self-insurer and makes indemnity payments or incurs allocated loss adjustment expenses, the excess insuring entity is principally responsible to report closed claim data required under chapter 48.140 RCW and this chapter.

(a) Self-insurers must report all claim payments and allocated loss adjustment expenses to the excess insuring entity for reporting purposes; and

(b) The excess insuring entity must report data on behalf of itself and the self-insurer.

(2) An excess insurer is not responsible to report closed claim data reported by a primary insuring entity under WAC 284-24D-120.

NEW SECTION

WAC 284-24D-140 When is a self-insurer responsible for reporting closed claims to the commissioner? If a closed claim payment falls within its self-insured retention, the self-insurer must report closed claim data required under chapter 48.140 RCW and this chapter to the commissioner.

NEW SECTION

WAC 284-24D-150 May a self-insurer report claims on behalf of itself and an excess insuring entity? A self-insurer may designate itself to be the principal reporting entity and report closed claim data on behalf of itself and any excess insurer. If the self-insurer designates itself to be the principal reporting entity, the self-insurer must:

(1) Notify the commissioner in writing of this arrangement;

(2) Report closed claim data required under chapter 48.140 RCW and this chapter on behalf of itself and the excess insuring entity; and

(3) Accept responsibility for compliance with RCW 48.140.020(2).

NEW SECTION

WAC 284-24D-160 When is a facility or provider principally responsible for reporting claims to the commissioner? Under RCW 48.140.020 (1)(b), a facility or provider must report a closed claim only if:

(1) A claim is made against the facility or provider;

(2) The facility or provider makes indemnity payments directly to the claimant or incurs ALAE expenses to defend the claim, or both; and

(3) There is no insurance coverage available from an insuring entity or self-insurer to defend or pay for the claim.

NEW SECTION

WAC 284-24D-170 What does "date of notice" mean? RCW 48.140.030 (8)(b) says that reporting entities must report the date that the insuring entity, self-insurer, facility or provider is presented with the claim. For reporting purposes, the "date of notice" is the date on which the:

- (1) Insured notifies the primary insuring entity or self-insurer of a claim if insurance coverage is available; or
- (2) The claimant notifies the facility or provider is notified of a claim if insurance coverage is not available.

NEW SECTION

WAC 284-24D-180 How should the type of medical specialty be reported? When reporting medical specialties as required under RCW 48.140.030(2), reporting entities must use the *Specialty Codes* published by the National Practitioner Data Bank (NPDB).

NEW SECTION

WAC 284-24D-190 How should the type of health care facility be reported? When reporting the type of health care facility under RCW 48.140.030(3), the reporting entity must use the *Type of Organization Codes* published by the NPDB. Public facilities, such as prisons and universities, must review the NPDB *Type of Organization Codes* and enter the most similar classification.

NEW SECTION

WAC 284-24D-200 What should be reported as the primary location where the medical malpractice incident occurred? When reporting the location within a facility where the incident occurred under RCW 48.140.030(4), the reporting entity must use the incident locations published by the Physician Insurers Association of America in conjunction with its data-sharing project. The reporting entity must report one of these locations:

- (1) Catheterization lab;
- (2) Critical care unit;
- (3) Dispensary;
- (4) Emergency department;
- (5) Labor and delivery room;
- (6) Laboratory;
- (7) Nursery;
- (8) Operating room;
- (9) Outpatient department;
- (10) Patient room;
- (11) Pharmacy;
- (12) Physical therapy department;
- (13) Radiation therapy department;
- (14) Radiology department;
- (15) Recovery room;
- (16) Rehabilitation center;
- (17) Special procedure room;
- (18) Location other than an inpatient facility:
 - (a) Clinical support center, such a laboratory or radiology center;
 - (b) Office;

- (c) Walk-in clinic; or
- (d) Other;
- (19) Other department in hospital;
- (20) Unknown; and
- (21) Other.

NEW SECTION

WAC 284-24D-210 How should the incident city be reported? When reporting the incident city under RCW 48.140.030(5), the reporting entity must report the incident city based on the location of the facility where the incident occurred. If more than one incident led to the claim, the reporting entity must choose the location where the incident occurred that most directly caused the injury.

NEW SECTION

WAC 284-24D-220 How should injury severity be reported using the National Practitioner Data Bank (NPDB) severity scale? When reporting the severity of an injury under RCW 48.140.030(7), the reporting entity must report using the NPDB severity scale. This scale shows the medical outcome for temporary and permanent injuries, and is included below.

- (1) Temporary injuries include:
 - (a) Emotional injury only, such as fright, where no physical damage occurred;
 - (b) Insignificant injury such as lacerations, contusions, minor scars or rash where no delay in recovery occurs;
 - (c) Minor injury such as infection, fracture set improperly, or a fall in the hospital, where recovery is complete but delayed; or
 - (d) Major injury such as burns, surgical material left, drug side effect, brain damage, where recovery is complete but delayed.
- (2) Permanent injuries include:
 - (a) Minor injury such as loss of fingers, loss or damage to organs, where the injury is not disabling;
 - (b) Significant injury such as deafness, loss of limb, loss of eye, loss of one kidney or lung;
 - (c) Major injury such as paraplegia, blindness, loss of two limbs, brain damage;
 - (d) Grave injury such as quadriplegia, severe brain damage, life long care or fatal prognosis; or
 - (e) Death.
- (3) The reporting entity should report the principal injury if several injuries are involved.

NEW SECTION

WAC 284-24D-230 What should be reported as the reason for the medical malpractice claim? When reporting the reason for a medical malpractice claim under RCW 48.140.030(11), the reporting entity must use the same *Allegation Group and Specific Allegation Codes* published by the National Practitioner Data Bank.

NEW SECTION

WAC 284-24D-240 How should claim disposition information be reported? When reporting the final method of claim disposition under RCW 48.140.030(9), reporting entities must describe the method of claim disposition using one of the descriptions listed below:

- (1) Claim abandoned by claimant.
- (2) Claim settled by the parties.
- (3) Claim is disposed of by a court when the court issues a:
 - (a) Directed verdict for plaintiff;
 - (b) Directed verdict for defendant;
 - (c) Judgment notwithstanding verdict for plaintiff (judgment for defendant);
 - (d) Judgment notwithstanding verdict for defendant (judgment for plaintiff);
 - (e) Involuntary dismissal;
 - (f) Judgment for plaintiff;
 - (g) Judgment for defendant;
 - (h) Judgment for plaintiff after appeal; or
 - (i) Judgment for defendant after appeal.
- (4) Claim settled by alternative dispute resolution process, whether resolved by:
 - (a) Arbitration award for plaintiff;
 - (b) Arbitration for defense;
 - (c) Mediation;
 - (d) Private trial; or
 - (e) Other type of alternative dispute resolution process.

NEW SECTION

WAC 284-24D-250 How should information about the timing of the settlement be reported? When reporting the timing of the settlement under RCW 48.140.030(9), reporting entities must report whether the claim is settled:

- (1) Before filing suit, requesting arbitration or mediation hearing;
- (2) Before trial, arbitration or mediation;
- (3) During trial, arbitration or mediation;
- (4) After trial or hearing, but before judgment or award;
- (5) After judgment or decision, but before appeal;
- (6) During an appeal; or
- (7) After an appeal.

NEW SECTION

WAC 284-24D-260 Are claim payments reported on a gross or net basis? Reporting entities must report claim payments on a gross basis and provide the total amount paid to the claimant to settle the claim. The reporting entity must not deduct the value of offsets or recoverables, such as:

- (1) Reimbursement for a deductible by the insured;
- (2) Reimbursement for claim payments by a reinsurer; or
- (3) Anticipated subrogation recoveries.

NEW SECTION

WAC 284-24D-270 What does an insuring entity report when the damages exceed policy limits? When damages exceed the policy limits, the insuring entity must

report the total amount it paid on behalf of its insured. The reporting entity must report:

- (1) The actual claim payment, which may be either:
 - (a) The policy limit; or
 - (b) The actual amount paid on behalf of the insured. The actual amount paid by the insuring entity may be either higher or lower than the policy limit, depending on the settlement agreement.
- (2) Additional payments made to the claimant(s) by an insured facility or provider; and
- (3) Allocated loss adjustment expenses paid by both the insuring entity and the insured.

NEW SECTION

WAC 284-24D-280 Are subrogation recoveries subject to reporting? Subrogation between insuring entities or self-insurers may occur if there is a dispute over which entity should respond to a lawsuit. If an insuring entity or self-insurer receives a subrogation payment, it must report subrogation proceeds and any ALAE incurred to obtain those proceeds. If necessary, the insuring entity may reopen the claim under WAC 284-24D-100.

NEW SECTION

WAC 284-24D-290 How are structured settlements reported? (1) If a claim is paid with a structured settlement agreement, the reporting entity must report the lump-sum payment that is paid for the annuity.

(2) If a claim is paid with a combination of a lump-sum payment to the claimant and a structured settlement, the reporting entity must report the sum of both payments.

NEW SECTION

WAC 284-24D-300 If the court itemizes damages, what information must be reported? If the court itemizes damages, the reporting entity must report these itemized damages:

- (1) The total amount of the verdict, judgment, or settlement;
- (2) The gross amount paid to indemnify the claimant;
- (3) Itemized economic and noneconomic damages as allocated by the court; and
- (4) Allocated loss adjustment expenses paid by the insuring entities and defendants.

NEW SECTION

WAC 284-24D-310 What information must be reported if the court does not itemize damages or a claim is settled by the parties? When reporting claims under RCW 48.140.030 (10)(b), the reporting entity must report losses on a gross basis, including:

- (1) The total amount of the verdict, judgment, or settlement;
- (2) The gross amount paid to indemnify the claimant;
- (3) Paid and estimated economic damages; and
- (4) Allocated loss adjustment expenses paid by the insuring entities and defendants.

NEW SECTION

WAC 284-24D-320 How should "companion claims" be reported? If more than one claim is filed with a reporting entity due to an incident of medical malpractice, the reporting entity must report companion claims in this manner:

(1) If a claimant makes a claim against more than one facility or provider, the reporting entity must assign the same incident identifier to each "companion claim."

(2) The reporting entity must maintain all data required under chapter 48.140 RCW and this chapter for each facility or provider it defends.

(3) Indemnity payments and allocated loss adjustment expenses paid to defend and settle each claim must be reported separately for each facility or provider. The reporting entity must:

(a) Allocate indemnity payments between defendants based on an assessment of comparative fault; and

(b) Allocate ALAE payments between defendants based on which facility or provider the reporting entity purchased defense services on behalf of.

(4) If the reporting entity makes payments in the absence of clear legal liability, it may allocate claim or ALAE payments equally among all defendants.

(5) Under this section, the reporting entity is responsible for reporting incident level data only on its own claims.

NEW SECTION

WAC 284-24D-330 How much detail is required when reporting allocated loss adjustment expenses? When reporting allocated loss adjustment expenses under RCW 48.140.030 (10)(a)(v) or (b)(iv), the reporting entity must report:

(1) ALAE for defense counsel, including both in-house and outside counsel;

(2) ALAE for expert witnesses, including both in-house and outside experts;

(3) All other ALAE; and

(4) Total ALAE.

NEW SECTION

WAC 284-24D-340 If defense services are provided by company employees, must company overhead be reported with ALAE? (1) Some insuring entities and self-insurers use the services of internal staff to defend claims. For example, an insuring entity or self-insurer may:

(a) Ask its professional medical staff to:

(i) Evaluate medical care;

(ii) Review medical records; or

(iii) Assist in case preparation.

(b) Retain in-house legal counsel to:

(i) Assess risk of litigation;

(ii) Evaluate legal issues;

(iii) Engage in case preparation or management activities, or settlement negotiations.

(2) When calculating ALAE, a reporting entity that uses internal staff to defend a claim as described in subsection (1) of this section and WAC 284-24D-020(1):

(a) Must include salary, benefits and an allocation for overhead for those employees; and

(b) May use average salaries and time studies when calculating ALAE.

NEW SECTION

WAC 284-24D-350 How are economic damages allocated under RCW 48.140.030 (10)(b)(iii)? If the reporting entity makes indemnity payments to a claimant, the reporting entity must allocate economic damages based on documented evidence obtained during the claim resolution process. Reporting entities may not allocate using a fixed formula, such as fifty percent of total paid indemnity, to economic damages.

NEW SECTION

WAC 284-24D-360 What elements of economic loss must a reporting entity include when reporting economic damages? When reporting paid and estimated economic damages, reporting entities must use reasonable judgment to estimate the following elements of loss:

(1) Medical expenses;

(2) Loss of earnings;

(3) Burial costs;

(4) Cost of obtaining substitute domestic services;

(5) Loss of employment; and

(6) Loss of business or employment opportunities.

NEW SECTION

WAC 284-24D-362 What process must a person use to estimate economic damages? If a reporting entity makes indemnity payments to a claimant that include compensation for future economic damages, the person calculating damages must use the principles listed in this subsection.

(1) Where appropriate, the person estimating economic damages must:

(a) Project the elements of loss listed in WAC 284-24D-360:

(i) For the duration of the injury or disability; or

(ii) In the event of death, for the anticipated life span of the injured person; and

(b) Discount damages to present value;

(c) Consider related factors, such as:

(i) Issues of negligence and liability;

(ii) The relative strength of the defense; and

(iii) The component of the claim payment that was driven by economic damages.

(2) Reporting entities must select reasonable discount factors when estimating economic damages.

NEW SECTION

WAC 284-24D-364 What sources of information can a reporting entity use to estimate economic damages? When estimating economic damages, the person estimating damages may use data from public sources, such as the Bureau of Labor Statistics, to supplement data collected during the claim investigation.

NEW SECTION

WAC 284-24D-366 Will the OIC provide guidelines or tools which reporting entities can use when estimating economic damages? From time to time, the OIC may publish information or suggestions that reporting entities can use when estimating economic damages. Periodically, the OIC will update its internet site to include links to documents or information of interest to reporting entities.

NEW SECTION

WAC 284-24D-370 How are paid and estimated economic damages reported under RCW 48.140.040 (10)(b)(iii)? A reporting entity must:

- (1) Combine all elements of paid and estimated economic loss described in WAC 284-24D-360; and
- (2) Report one figure for paid and estimated economic loss to the commissioner.

Chapter 284-24E WAC**MEDICAL MALPRACTICE CLAIM SETTLEMENT DATA REPORTING RULES FOR ATTORNEYS AND CLAIMANTS**NEW SECTION

WAC 284-24E-010 Purpose. The rules in this chapter are procedural rules to implement RCW 7.70.140. This chapter describes the rules, practices and procedures that claimants and their attorneys must use to report claim settlement data to the commissioner.

NEW SECTION

WAC 284-24E-020 Definitions. The definitions in this section apply throughout this chapter.

- (1) "Claim" means the same as in RCW 48.140.010(1).
- (2) "Claimant" means the same as in RCW 48.140.010 (2), and, for reporting purposes, includes a claimant's legal representative.
- (3) "Commissioner" means the insurance commissioner.
- (4) "Facility" means the same as in RCW 48.140.010(6).
- (5) "Insuring entity" means the same as in RCW 48.140.010(8).
- (6) "Medical malpractice" means the same as in RCW 48.140.010(9).
- (7) "OIC" means office of insurance commissioner.
- (8) "Provider" means the same as in RCW 48.140.010 (7).
- (9) "Record identifier" means the number assigned to a claim by the reporting site when a person first enters claim settlement information.
- (10) "Reporting site" means the OIC web-based application that attorneys and claimants must use to report medical malpractice claim settlement data.
- (11) "Self-insurer" means the same as in RCW 48.140.-010(11).

(12) "User ID" is a permanent number assigned by the reporting site to any claimant or attorney who reports claim settlement data.

NEW SECTION

WAC 284-24E-030 How will the commissioner ensure data confidentiality under RCW 48.140.060(2)? RCW 42.56.400(11) protects data filed under RCW 7.70.140 from public disclosure. To ensure data confidentiality, the commissioner will:

- (1) Develop a secure web-based data reporting application;
- (2) Train OIC staff on applicable laws and agency practices related to protecting confidential and privileged information;
- (3) Limit access to the claim data base to OIC staff responsible for preparing the statistical summaries and annual report;
- (4) Develop and implement confidentiality procedures to be used by staff that has access to the closed claim data base;
- (5) Develop procedures to use if data are accidentally released; and
- (6) Use aggregate data in summaries and reports so that individual claim data cannot be identified.

NEW SECTION

WAC 284-24E-040 How is claim settlement data reported to the commissioner? Persons reporting claim settlement data must use the reporting site maintained by the commissioner. To assist attorneys and claimants to collect data, the commissioner will post a reporting form on the OIC internet site so that claimants can organize claim settlement data before it is entered into the reporting site.

NEW SECTION

WAC 284-24E-050 How will the OIC assign user ID codes? The reporting site will assign a permanent user ID to an attorney or claimant the first time the attorney or claimant files a report that includes claim settlement data at the reporting site.

NEW SECTION

WAC 284-24E-060 What types of settled claims must be reported to the commissioner? If a claim is actionable under chapter 7.70 RCW, the claimant or his or her attorney must report each medical malpractice claim settlement that results in an indemnity payment to the claimant. A claim is settled when the claimant:

- (1) Receives final indemnity payment(s) from all defendants;
- (2) Pays all related legal expenses; and
- (3) Pays all related attorney fees agreed to by the claimant and his or her attorney.

NEW SECTION

WAC 284-24E-070 Are write-offs or other small sums of money provided as customer service gestures considered claims? If a self-insurer, facility or provider waives copayments, forgives bills or deductibles, or makes other similar accommodations to a client, it is not a claim under RCW 48.140.010(1). Claimants are not required to report these types of accommodations to the commissioner.

NEW SECTION

WAC 284-24E-080 Who has the primary responsibility for reporting claims to the commissioner? (1) If a claimant is represented by an attorney, the attorney must report claim data to the commissioner after the claim is settled.

(2) If a claimant is not represented by an attorney:

(a) The claimant must report claim data to the commissioner; and

(b) An insuring entity, self-insurer or provider may assist or inform the claimant of his or her reporting responsibilities.

NEW SECTION

WAC 284-24E-090 When are claim reports due? Under RCW 7.70.140, a claimant or his or her attorney must report claims settled in the preceding calendar year to the commissioner.

(1) Beginning in 2009, claim settlement reports for the prior calendar year are due by March 1.

(2) An attorney or claimant may enter data into the reporting site at any time after the claim is settled, but no later than March 1.

NEW SECTION

WAC 284-24E-100 Can settlement reports be reopened to make changes or corrections to previously reported data? The reporting site will allow an attorney or claimant to change previously reported claim settlement data, subject to these rules:

(1) Data contained in the reporting site will be frozen from March 15 through June 30 each year so the OIC can prepare reports and statistical summaries can be prepared as required by RCW 48.140.040 and 48.140.050. The commissioner may accept changes to previously reported data if a correction or omission will significantly affect the conclusions stated in the annual report.

(2) After June 30, the reporting site will allow an attorney or claimant to change previously reported data.

(a) An attorney or claimant can reopen a claim report using their permanent user ID and the record identifier and make changes or corrections to data.

(b) Changes and corrections submitted after June 30 of each year will appear in future reports and statistical summaries.

NEW SECTION

WAC 284-24E-110 How should claim disposition information be reported? When reporting the final method of claim disposition under RCW 7.70.140 (2)(b)(v), an attorney or claimant must describe the method of claim disposition using one of the descriptions listed below:

(1) Claim is settled by the parties.

(2) Claim is disposed of by a court when the court issues

a:

(a) Directed verdict for plaintiff;

(b) Judgment notwithstanding verdict for defendant (judgment for plaintiff);

(c) Judgment for plaintiff; or

(d) Judgment for plaintiff after appeal.

(3) Claim settled by alternative dispute resolution process, whether resolved by:

(a) Arbitration;

(b) Mediation;

(c) Private trial; or

(d) Other type of alternative dispute resolution process.

NEW SECTION

WAC 284-24E-120 How should information about the timing of the settlement be reported? Persons reporting claims must report whether the claim is settled:

(1) Before filing suit, requesting arbitration or mediation hearing;

(2) Before trial, arbitration or mediation;

(3) During trial, arbitration or mediation;

(4) After trial or hearing, but before judgment or award;

(5) After judgment or decision, but before appeal;

(6) During an appeal; or

(7) After an appeal.

NEW SECTION

WAC 284-24E-130 How is the judgment or settlement amount reported? Persons reporting claims must report the total amount paid to the claimant to settle the claim.

NEW SECTION

WAC 284-24E-140 How are structured settlements reported? (1) If a claim is settled with a structured settlement agreement, the attorney or claimant must report the lump-sum payment that is paid for the annuity.

(2) If a claim is settled with a combination of a lump-sum payment to the claimant and a structured settlement, the attorney or claimant must report the sum of both payments.

NEW SECTION

WAC 284-24E-150 How should claims settlement data be reported if there is more than one defendant? An attorney or claimant must wait until all claims are settled before reporting under RCW 7.70.140. After all claims are settled, the person reporting claim settlement data must report these data to the commissioner:

- (1) The total of all settlements paid by all defendants;
- and
- (2) The total amounts paid by the claimant for legal expenses, itemized by:
 - (a) Court costs;
 - (b) Expert witnesses fees; and
 - (c) Attorney fees and expenses.