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@dshs.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@dshs.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@dshs.wa.gov.

March 12, 2007
Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

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

"Complication"—A condition occurring subsequent to and directly arising from the family planning services received under the rules of this chapter.

"Comprehensive family planning preventive medicine visit"—For the purposes of this program, is a comprehensive, preventive, contraceptive visit which includes:

• An age and gender appropriate history and examination offered to female Medicaid clients who are at-risk for unintended pregnancies;

• Education and counseling for risk reduction (ECRR) regarding the prevention of unintended pregnancy; and

• For family planning only and TAKE CHARGE clients, routine gonorrhea and chlamydia testing for women thirteen through twenty-five years of age only.

This preventive visit may be billed only once every twelve months, per client, by a department-contracted TAKE CHARGE provider and only for female clients needing contraception.

"Contraception"—Preventing pregnancy through the use of contraceptives.

"Contraceptive"—A device, drug, product, method, or surgical intervention used to prevent pregnancy.

"Delayed pelvic protocol"—The practice of allowing a woman to postpone a pelvic exam during a contraceptive visit to facilitate initiation or continuation of a hormonal contraceptive method.

"Department"—The department of social and health services.

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

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

• Signed a core provider agreement with the department;

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

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

"Family planning services"—Medically safe and effective medical care, educational services, and/or contraceptives that enable individuals to plan and space the number of children and avoid unintended pregnancies.

"Medical identification card"—The document the department uses to identify a client's eligibility for a medical program.

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

"Over-the-counter (OTC)"—See WAC 388-530-1050 for definition.

"Sexually transmitted disease infection (STD-I)"—((~~Is~~)) A disease or infection acquired as a result of sexual contact.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-100 Reproductive health services—Client eligibility. (1) The department covers limited reproductive health services for clients eligible for the following ((~~medical assistance programs~~)):

(a) State children's health insurance program (SCHIP);

(b) Categorically needy program (CNP);

(c) General assistance unemployable (GAU) program;

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

(e) Alcohol and Drug Abuse Treatment and Support Act (ADATSA) services.

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

(a) A department-approved family planning provider;

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

(c) A department-contracted provider for abortion services; or

(d) A department-contracted pharmacy for:

(i) Over-the-counter contraceptive drugs and supplies; and

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-110 Reproductive health services—Provider requirements. To be ((~~reimbursed~~)) paid by the department for reproductive health services provided to eligible clients, physicians, ARNPs, licensed midwives, and department-approved family planning providers must:

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

(2) Provide only those services that are within the scope of their licenses;

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

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

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

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

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

(1) **Services for women:**

(a) ((~~Cervical, vaginal, and breast cancer screening examination once per year as medically necessary~~)) The department covers one of the following per client, per year as medically necessary:

(i) A gynecological examination, billed by a provider other than a TAKE CHARGE provider, which may include a cervical and vaginal cancer screening examination when medically necessary; or

(ii) One comprehensive family planning preventive medicine visit, billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year. The comprehensive family planning preventive medicine visit must be:

(A) Provided by one or more of the following TAKE CHARGE trained providers:

(I) A physician or physician's assistant (PA);

(II) An advanced registered nurse practitioner (ARNP); or

(III) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the clinicians listed in (I) and (II) in subsection (1) of this section.

(B) Documented in the client's chart with detailed information that allows for a well-informed follow-up visit.

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

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

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

(i) Requested by the client; and

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

(e) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.

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

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

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

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

(j) Abortion.

(2) **Services for men:**

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

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

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

(i) Requested by the client; and

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

(d) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.

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

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-520 Family planning only program—Provider requirements. To be reimbursed by the department for services provided to clients eligible for the family planning only program, physicians, ARNPs, and/or department-approved family planning providers must:

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

(2) Provide only those services that are within the scope of their licenses;

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

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

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

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-530 Family planning only program—Covered services. The department covers the following services under the family planning only program:

(1) One of the following, per client, per year as medically necessary:

(a) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year. The comprehensive family planning preventive medicine visit must be:

(I) Provided by one or more of the following TAKE CHARGE trained providers:

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

(B) An advanced registered nurse practitioner (ARNP); or

(C) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the clinicians listed in subsection (A) and (B) of this section.

(II) Documented in the client's chart with detailed information that allows for a well-informed follow-up visit; or

(b) A gynecological examination ((~~that~~)), billed by a provider other than a TAKE CHARGE provider, which may include a cervical and vaginal cancer screening examination, one per year when it is:

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

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

(2) An office visit directly related to a family planning problem, when medically necessary.

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

(((~~3~~))) (4) Over-the-counter (OTC) contraceptive, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

(((~~4~~))) (5) Sterilization procedure that meets the requirements of WAC 388-531-1550, if it is:

(a) Requested by the client; and

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

(((~~5~~))) (6) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory test and procedures only when the screening and treatment is:

(a) For chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age; or

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

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

(((~~6~~))) (7) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-700 TAKE CHARGE program—Purpose. TAKE CHARGE is a ((~~five-year~~)) family planning demonstration and research program approved by the federal government under a Medicaid program waiver. The purpose of the TAKE CHARGE program is to make family planning services available to men and women with incomes at or below two hundred percent of the federal poverty level. ((~~TAKE CHARGE is approved by the federal government under a Medicaid program waiver and runs from July 1, 2001, through June 30, 2006 (unless terminated or extended prior to June 30, 2006).~~)) See WAC 388-532-710 for a definition of TAKE CHARGE.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

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

"Ancillary services"—Those family planning services provided to TAKE CHARGE clients by ((~~MAA's~~)) department-contracted providers who are not TAKE CHARGE providers. These services include, but are not limited to, family planning pharmacy services, family planning laboratory services and sterilization ((~~surgical~~)) services.

"Application assistance"—The process a TAKE CHARGE provider follows in helping a client to complete and submit an application to ((~~MAA~~)) the department for the TAKE CHARGE program.

"Education, counseling and risk reduction intervention" or **"ECRR"—**((~~A stand alone department-designated service, specifically intended for clients at higher risk of contraceptive failure, that strengthen a client's decision-making skills to make the best choice of contraceptive method and reduce the risk of unintended pregnancy. ECRR services must include:~~

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

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

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

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

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

~~(6) If no contraceptive method is chosen, discussing the likelihood of a pregnancy and helping the client assess his/her emotional, physical, and financial readiness for pregnancy and/or parenting~~)) Client-centered education and counseling services designed to strengthen decision making skills and support a client's safe, effective and successful use of his or her chosen contraceptive method. For women, ECRR is part of the annual preventive medicine visit. For men, ECRR is a stand alone service for those men seeking family planning services and whose partners are at moderate to high risk of unintended pregnancy.

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

"TAKE CHARGE"—The department's ((~~five-year~~)) demonstration and research program approved by the federal government under a Medicaid program waiver to provide family planning services.

"TAKE CHARGE provider"—A provider who is approved by the department to participate in TAKE CHARGE by:

(1) Being a department-approved family planning provider; and

(2) Having a supplemental TAKE CHARGE agreement to provide TAKE CHARGE family planning services to eligible

clients under the terms of the federally approved Medicaid waiver for the TAKE CHARGE program.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

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

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in chapter 388-424 WAC and provide proof of citizenship or qualified alien status, and identity;

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

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

(d) Need family planning services;

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

((~~(c) Need family planning services but have:~~

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

~~(ii) Family planning coverage that does not cover one hundred percent of the applicant's chosen birth control~~)) (f) Not be currently covered through another medical assistance program for family planning or have any health insurance that covers family planning.

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

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

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

(a) Be a department-approved family planning provider as described in WAC 388-532-050;

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

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

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

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

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

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

(f) Forward the client's medical identification card and TAKE CHARGE brochure to the client within seven working days of receipt unless otherwise requested in writing by the client;

(g) Inform the client of his or her right to seek services from any TAKE CHARGE provider within the state; and

(h) Refer the client to available and affordable non-family planning primary care services, as needed.

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

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-740 TAKE CHARGE program—Covered services for women. ((~~(1)~~)) The department covers the following TAKE CHARGE services for ((~~men and~~)) women:

((~~(a)~~)) (1) One session of application assistance per client, per year;

((~~(b)~~)) (2) Food and Drug Administration (FDA) approved prescription and nonprescription contraceptives as provided in chapter 388-530 WAC;

((~~(c)~~)) (3) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter ((~~388-538~~)) 388-530 WAC, Pharmacy services);

((~~(d)~~)) (4) ((~~Gynecological examination that may include a cervical and vaginal cancer screening exam, one per year when it is:~~

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

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

~~(e) Education, counseling, and risk reduction (ECRR) intervention, specifically intended for clients at higher risk of contraceptive failure, that have identified or demonstrated~~

~~risks of unintended pregnancy. MAA limits ECRR as follows:~~

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

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

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

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

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

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

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

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

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

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

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

~~(f)~~)) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year. The comprehensive family planning preventive medicine visit must be:

(a) Provided by one or more of the following TAKE CHARGE trained providers:

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

(ii) An advanced registered nurse practitioner (ARNP); or

(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians.

(b) Documented in the client's chart with detailed information that allows for a well-informed follow-up visit.

(5) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:

(i) Requested by the TAKE CHARGE client; and

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

(((~~g~~))) (6) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is:

(((~~i~~))) (a) For chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age; or

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

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

(((~~h~~))) (7) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

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

(8) An office visit directly related to a family planning problem, when medically necessary.

NEW SECTION

WAC 388-532-745 TAKE CHARGE Program—Covered services for men. The department covers the following TAKE CHARGE services for men:

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

(2) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter 388-530 WAC, Pharmacy Services);

(3) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:

(a) Requested by the TAKE CHARGE client; and

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

(4) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is related to, and medically necessary for, a sterilization procedure.

(5) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(6) One education and counseling session for risk reduction (ECRR) per client, every twelve months. ECRR must be:

(a) Provided by one or more of the following TAKE CHARGE trained providers:

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

(ii) An advanced registered nurse practitioner (ARNP); or

(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the clinicians listed in subsection (i) and (ii) of this section; and

(b) Documented in the client's chart with detailed information that allows for a well-informed follow-up visit.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-750 TAKE CHARGE program—Noncovered services. The department does not cover medical services under the TAKE CHARGE program ((~~unless those services are~~)):

(1) Abortions and other pregnancy-related services;

(2) Any other medical services, unless those services are:

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

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-760 TAKE CHARGE program—Documentation requirements. In addition to the documentation requirements in WAC 388-502-0020, TAKE CHARGE providers must keep the following records:

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

(2) Signed supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE program;

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

(4) Chart notes that reflect the primary focus and diagnosis of the visit was family planning;

(5) Contraceptive methods discussed with the client;

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

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

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

(9) Documentation of referrals to or from other providers;

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

(11) The client's written and signed consent requesting that his or her medical identification card be sent to the TAKE CHARGE provider's office to protect confidentiality;

(12) A copy of the client's picture identification;

(13) A copy of the documentation used to establish United States citizenship or legal permanent residency; and

(14) If applicable, a copy of the completed DSHS sterilization consent form [DSHS 13-364 - available for download at http://www.dshs.wa.gov/msa/forms/eforms.html] (see WAC 388-531-1550).

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-780 TAKE CHARGE program—Reimbursement and payment limitations. (1) The department limits reimbursement under the TAKE CHARGE program to those services that:

(a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; and

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

(2) The department reimburses providers for covered TAKE CHARGE services according to the department's published TAKE CHARGE fee schedule.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-790 TAKE CHARGE program—Good cause exemption from billing third party insurance. (1) TAKE CHARGE applicants who are ((~~either adolescents or young adults~~)) eighteen years of age or younger and ((~~who~~)) depend on their parents' medical insurance, or individuals who are domestic violence victims who depend on their spouses insurance may request an exemption of available third party family planning coverage due to "good cause." Under the TAKE CHARGE program, "good cause" means that use of the third party coverage would violate his or her privacy because the third party:

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

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

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

WSR 07-08-001
PROPOSED RULES
WASHINGTON STATE LOTTERY

[Filed March 21, 2007, 1:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-042.

Title of Rule and Other Identifying Information: To repeal the following chapter of the Washington Administrative Code: WAC 315-33A-010 Definitions for Quinto, 315-33A-020 Price of Quinto play, 315-33A-030 Play for Quinto, 315-33A-040 Prizes for Quinto, 315-33A-050 Ticket purchases, and 315-33A-060 Drawings.

Hearing Location(s): Washington's Lottery, 814 4th Avenue, Olympia, WA 98506, on May 8, 2007, at 10:00 a.m.

Date of Intended Adoption: May 8, 2007.

Submit Written Comments to: Jana Jones, P.O. Box 43000, Olympia, WA 98506, e-mail jjones@walottery.com, fax (360) 586-1039, by May 6, 2007.

Assistance for Persons with Disabilities: Contact Joan Reuell by May 6, 2007, TTY (360) 586-0933 or (360) 664-4818.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal the lottery draw game rules regarding the game of Quinto in that the lottery commission has voted to retire Quinto and has adopted and launched a new draw game to replace Quinto called Hit 5.

Reasons Supporting Proposal: The lottery will no longer offer the game of Quinto in its profile of games.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington state lottery commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jana Jones, Washington's Lottery, (360) 664-4833; Implementation: Michael Cousins, Washington's Lottery, (360) 664-4728; and Enforcement: Len Brudvik, Washington's Lottery, (360) 664-4742.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The only business allowed by law to sell lottery products are existing licensed lottery retailers.

Wednesday [Tuesday], March 20, 2007
Jana L. Jones
Director of Legal Services

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 315-33A-010	Definitions for Quinto.
WAC 315-33A-020	Price of Quinto play.
WAC 315-33A-030	Play for Quinto.
WAC 315-33A-040	Prizes for Quinto.
WAC 315-33A-050	Ticket purchases.
WAC 315-33A-060	Drawings.

WSR 07-08-002
PROPOSED RULES
WASHINGTON STATE LOTTERY

[Filed March 21, 2007, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-114.

Title of Rule and Other Identifying Information: In compliance with regulatory reform and rules review, the Washington's lottery commission has revised the language in chapters 315-02, 315-04, and 315-30 WAC to reflect improved organization of the rules in the chapters and to more clearly describe what has been called an on-line game rule, to a draw game category rule. These revisions improve on grammar, organization, and use accurate descriptive words of existing lottery business practice.

Hearing Location(s): Washington's Lottery, 814 4th Avenue, Olympia, WA 98506, on May 8, 2007, at 10:30 a.m.

Date of Intended Adoption: May 8, 2007.

Submit Written Comments to: Jana Jones, P.O. Box 43000, Olympia, WA 98506, e-mail jjones@walottery.com, fax (360) 586-1039, by May 6, 2007.

Assistance for Persons with Disabilities: Contact Joan Reuell by May 6, 2007, TTY (360) 586-0933 or (360) 664-4818.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise chapters 315-02, 315-04, and 315-30 WAC by improving on grammar, organization, and use of accurate descriptive words reflecting existing lottery business practice. The changes proposed to chapter 315-30 WAC will rename the existing chapter to draw game rules and eliminates the terminology of "on-line game rules." The changes also create a more clear category of draw game rules.

Reasons Supporting Proposal: In furtherance of regulatory reform and improved organization and reading of Title 315 WAC.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington state lottery commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jana Jones, Washington's Lottery, (360) 664-4833; Implementation: Michael Cousins, Washington's Lottery, (360) 664-4728; and Enforcement: Len Brudvik, Washington's Lottery, (360) 664-4742.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The only business allowed by law to sell lottery products are existing licensed lottery retailers.

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

Wednesday [Tuesday], March 20, 2007
Jana L. Jones
Director of Legal Services

AMENDATORY SECTION (Amending Order 3, filed 10/15/82)

WAC 315-02-010 Washington state lottery commission. The Washington state lottery commission, hereinafter called "the commission," is the commission appointed by the governor pursuant to ((~~chapter 7, Laws of 1982 2nd ex. sess.~~)) RCW 67.70.030 as the regulatory agency charged with the authority and duty to regulate lottery activities.

AMENDATORY SECTION (Amending Order 3, filed 10/15/82)

WAC 315-02-050 Director of the Washington state lottery. The director of the Washington state lottery, hereinafter called "the director," is the director appointed by the governor pursuant to ((~~section 5, chapter 7, Laws of 1982 2nd ex. sess.~~)) RCW 67.70.050, to be responsible for the supervision and administration of the operation of the lottery in accordance with the ((~~provisions of chapter 7, Laws of 1982 2nd ex. sess.~~)) RCW 67.70.060 and with the rules of the commission. The director may delegate to ((~~his or her~~)) employees such responsibilities as the director may deem necessary to carry out the duties and responsibilities ((~~of this chapter~~)) contained in chapter 315-02 WAC.

AMENDATORY SECTION (Amending Order 3, filed 10/15/82)

WAC 315-02-100 Definitions. Words and terms used in these rules shall have the same meaning as each has under chapter ((~~7, Laws of 1982 2nd ex. sess.~~)) 67.70 RCW, unless otherwise specifically provided in these rules, or the context in which they are used clearly indicates that they be given some other meaning.

AMENDATORY SECTION (Amending WSR 98-08-067, filed 3/30/98, effective 4/30/98)

WAC 315-02-220 Ticket defined. "Ticket" means a lottery ticket or share issued by the director for sale to the general public ((~~or for use in authorized promotional events and activities and authorized retailer incentive programs~~)).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 315-02-150	General license defined.
WAC 315-02-160	Lottery retailer defined.
WAC 315-02-200	Provisional license defined.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-04-010 Lottery retailers. The director shall license as lottery retailers such persons who will best serve the public interest and convenience, promote the sale of tickets and meet the eligibility criteria for application and licensure. "Lottery retailer," formerly known as "licensed agent" means a person licensed by the director and shall have the same meaning as licensed agent. Said lottery retailers shall be authorized to sell such tickets as in the director's opinion will promote the best interests of the commission and produce maximum revenue, but a lottery retailer need not be authorized to sell tickets for all games operated by the director. A lottery retailer may be required to post a bond or cash in lieu of a bond in such terms and conditions as the director may require.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-04-040 General license. The director may issue a general license, which authorizes a lottery retailer to conduct the routine sale of tickets at a fixed structure or facility, to an applicant who qualifies for licensure. The general license shall authorize the lottery retailer to conduct the routine sale of tickets at the location specified on the general license. An addendum to the general or provisional license may be obtained as provided for in WAC 315-04-220, permitting the lottery retailer to sell tickets in locations other than that specified on its license. The general license shall be valid until terminated by the lottery or the lottery retailer, provided, the lottery retailer shall provide periodic updates of license information as required by the director.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-04-060 Provisional license. A provisional license temporarily authorizes a lottery retailer to conduct the sale of tickets pending processing of the general license or application renewal.

(1) The director may issue a provisional license to an applicant for a general license after receipt of a person's fully completed lottery retailer's application, the authorization of a complete personal background check, and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the general license or ninety days from the date the provisional license is issued, whichever occurs first. The provisional license may be extended by the director for one additional ninety-day period of time.

(2) If the ownership of an existing lottery retailer location changes, the director may issue a provisional license to the new owner. The provisional license shall expire twenty working days from the date of issuance if the director has not received the new owner's fully completed lottery retailer's application and authorization of a complete personal background check. If the required materials have been timely received by the director and a preliminary background check has been completed, the provisional license shall expire at the time of issuance of the general license or ninety days from the date the provisional license is issued, whichever occurs first.

AMENDATORY SECTION (Amending Order 4, filed 10/15/82)

WAC 315-04-080 Bad checks submitted as payment for fees. The payment of a fee with a check which for any reason is not promptly paid by the drawee bank shall be grounds for immediate denial of an application for the license, or for the suspension or revocation of a license issued for which the fee is due. The director ((~~shall~~)) may add ((~~$15.00 to each~~)) the customary bank fee when payment of a check originally submitted is denied by the drawee bank, or when the check is required to be resubmitted for payment for any reason.

AMENDATORY SECTION (Amending WSR 98-20-013, filed 9/25/98, effective 10/26/98)

WAC 315-04-090 License issuance eligibility. (1) The director may issue a license to any person to act as a lottery retailer who meets the eligibility criteria established by chapter ((~~7, Laws of 1982 2nd ex. sess.~~)) 67.70 RCW, and ((~~these rules~~)) chapter 315-04 WAC.

(2) Before issuing a license, the director shall consider:

(a) The financial responsibility and security of the person and its business or activity;

(b) The background and reputation of the ((~~applicant~~)) person in the community for honesty and integrity;

(c) The type of business owned or operated by the ((~~applicant~~)) person, defined in RCW 67.70.070, to ensure consonance with the dignity of the state, the general welfare of the people and the operation and integrity of the lottery;

(d) The conformance of businesses located in residential areas to local land use and zoning codes, regulations, and ordinances;

(e) The accessibility of the ((~~applicant's~~)) person's place of business or activity to the public;

(f) The sufficiency of existing licenses to serve the public convenience;

(g) The volume of expected sales;

(h) The veracity of the information supplied in the application for a lottery retailer license; and

(i) The ((~~applicant's~~)) person's indebtedness to the state of Washington, local subdivisions of the state and/or the United States government.

(3) The director may condition the issuance of any license upon the posting of a bond or cash in lieu of a bond in such terms and conditions as the director may require.

(((~~(4) The director shall establish procedures to assure that approval of the appropriate local governmental unit is obtained prior to issuance of a license to a business located in a residential area which is a nonconforming use under local land use and zoning codes, regulations, and ordinances.~~)))

AMENDATORY SECTION (Amending WSR 98-20-013, filed 9/25/98, effective 10/26/98)

WAC 315-04-095 Retailer credit criteria. (1) The director shall deny ((~~an instant scratch ticket license or an on-line~~)) a lottery retailer license ((~~endorsement~~)) to any applicant whose credit is found to be poor.

(2) The director may grant ((~~an instant scratch ticket~~)) a lottery retailer license ((~~or an on-line license endorsement~~)) to an applicant whose credit is rated as marginal or minimum as defined in this section. Provided, the director shall require:

(a) Applicants whose credit is rated as marginal as defined in this section to obtain a surety bond or savings certificate under terms and conditions established by the director prior to issuance of the license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond or certificate shall be in the amount of ((~~seven~~)) three thousand five hundred dollars unless the director determines a higher amount is required.

(b) Applicants whose credit is rated as minimum as defined in this section may be required to obtain a surety bond or post cash in lieu of a bond under terms and conditions established by the director or submit ((~~five~~)) three letters of credit to the lottery prior to issuance of the ((~~on-line license endorsement~~)) a lottery retailer license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond or cash shall be in the amount of ((~~seven~~)) three thousand five hundred dollars unless the director determines a higher amount is required, based on sales volume and financial solvency of the retailer.

(3) In the event the retailer's credit is rated as poor or marginal subsequent to the issuance of the license the director may:

(a) Revoke or suspend a retailer's license; and/or

(b) Require such a retailer to secure a surety bond from a company licensed to do business in the state of Washington or post a savings certificate under terms and conditions established by the director. The surety bond or saving certificate shall be in the amount of ((~~seven~~)) three thousand five hundred dollars unless the director determines, based on sales volume and financial solvency of the retailer, a higher amount is required.

(4) Credit rating is defined as the ability to meet financial obligations when they become due. It includes current reporting accounts payable and public financial record information including, but not limited to, court records, other public records and reports from credit bureaus or other credit reporting agencies up to three years prior to the lottery's credit check request. A significant incident shall be defined as public financial record information which includes any lien, judgment, bankruptcy, involuntary collection action or any similar incident which reflects on the individual's willingness and ability to pay creditors. A numerical rating of "one" represents excellent credit. A numerical rating of "nine" represents involuntary collection.

(a) A "poor" credit rating indicates public record showing three or more significant incidents within the past three years.

(b) A "marginal" credit rating indicates public record information showing one or more significant incidents within the past three years.

(c) A "minimum" credit rating indicates the information is insufficient for evaluation.

(d) An "acceptable" credit rating indicates that there have been no significant incidents in the public record within the past three years. Provided, at least three accounts must be evaluated in order to receive an "acceptable" rating.

(5) Credit rating checks shall be conducted as follows:

(a) Corporation business credit ratings shall be checked. Personal credit ratings of the corporate officers and owners of ten percent or more equity in the corporation may also be checked.

(b) Sole proprietors and partnership business credit ratings shall be checked. Personal credit ratings of:

(i) The sole proprietor and his or her spouse; or

(ii) All partners and their spouses shall also be checked.

(c) Findings shall be applied in accordance with subsections (1), (2) and (3) of this section.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-04-125 Change of name or location. Every change of business name or change of location without a change of ownership of a lottery retailer must be reported to the lottery prior to the change. The lottery shall review the change considering standard licensing criteria and compliance with WAC 315-04-090. Upon the lottery's approval, the lottery shall issue a license in the new name or with the new location address.

AMENDATORY SECTION (Amending WSR 98-20-013, filed 9/25/98, effective 10/26/98)

WAC 315-04-130 Death or incapacity of licensee. (1) In the event of the proven incapacity, death, receivership, bankruptcy or assignment for benefit of creditors of any lottery retailer, upon approval of the director, the license may be transferred to a court appointed or court confirmed guardian, executor or administrator, receiver, trustee, or assignee for the benefit of creditors, who may continue to operate the activity under the license, subject to the provisions of chapter ((~~7, Laws of 1982 2nd ex. sess.~~)) 67.70 RCW and these rules.

(2) The person to whom a license is transferred hereunder must be otherwise qualified to hold a license.

(3) The license following transfer shall be void upon that person ceasing to hold such a court appointed or court confirmed position.

(4) The director may condition the transfer of any license under this section upon the posting of a bond or cash in lieu of a bond in such terms and conditions as the director may require.

AMENDATORY SECTION (Amending WSR 90-11-040, filed 5/10/90, effective 6/10/90)

WAC 315-04-132 Change of business structure, ownership, or officers. (1) Every change of business structure of a person to whom a license has been issued must be reported to the lottery prior to the change. A change of business structure shall mean the change from one form of business organization to another, such as from sole proprietorship to partnership or corporation.

(2) Every substantial change of ownership of a person to whom a license has been issued must be reported to the lottery prior to the change. A substantial change of ownership shall mean the transfer of ten percent or more equity, or the addition or deletion of an owner of ten percent or more of the person.

(3) Every change of officers of a person to whom a license has been issued must be reported to the lottery not later than ten days following the effective day of the change.

(4) If the substantial change of ownership involves the addition or deletion of one or more owners or officers, the lottery retailer shall submit a license application reflecting the change(s) and any other documentation the director may require.

(5) If the substantial change of ownership involves the addition of one or more owners or officers who does not have on file with the lottery current "personal history information" and "criminal history information" forms, the director may require each such owner or officer ((~~shall~~)) to submit the required forms.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-04-140 License ((~~not a vested right~~)) capacity. (((~~(1) The possession of a license issued by the director to any person to act as a lottery retailer in any capacity is a privilege personal to that person and is not a legal right.~~

~~(2)~~))) The possession of a license issued by the director to any person to act as a lottery retailer in any capacity does not entitle that person to sell tickets or obtain materials for any particular game.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-04-170 Tickets convenient to public. (1) Every lottery retailer shall make the purchase of tickets convenient and readily accessible to the public.

(2) Each lottery retailer shall make tickets available for sale during its normal business hours at the location designated on its lottery retailer license, master business license, and lottery retailer contract.

AMENDATORY SECTION (Amending WSR 98-11-091, filed 5/20/98, effective 6/20/98)

WAC 315-04-180 Obligations of lottery retailers. (1)(a) ((~~The method of accounting for a retailer's payment to the director for instant ticket packs received prior to the lot-~~

~~tery's instant ticket accounting system (ITAS) being fully operational shall be governed by Title 315 WAC and other applicable law as it was in effect prior to March 2, 1994.~~

~~(b) The method of accounting for a retailer's payment to the director for instant ticket packs received on or after the day ITAS becomes fully operational shall be governed by Title 315 WAC and other applicable law as it was in effect on the day of ITAS' becoming fully operational.~~

~~(c) It is the intent of the Washington state lottery commission that those repeals and amendments filed with the state of Washington office of the code reviser to take effect no earlier than February 9, 1994, shall take effect when ITAS is fully operational.~~

~~(d) The instant ticket accounting system referred to above became fully operational on March 2, 1994.~~

~~(2)(a)~~)) Upon acceptance of a pack of instant tickets from the director, the retailer shall be responsible for the condition and security of the pack. The retailer shall hold the pack in its own safekeeping until it is ready to begin sale of the pack. Immediately prior to beginning sale, the retailer shall place the pack in "activated" status in the lottery's instant ticket accounting system (ITAS). Placement in activated status designates that the tickets in the pack may be sold, and prizes in the pack may be paid.

(b) In the event that instant tickets accepted by the retailer are lost, stolen or in any way unaccounted for prior to their being placed in activated status on ITAS, the retailer shall, upon discovery of their disappearance, immediately notify the director of each pack or portion of a pack so unaccounted for, lost or stolen. The retailer may be required to provide the director a police report or other evidence of the pack's disappearance. The retailer may be charged twenty-five dollars for each pack or portion of a pack unaccounted for, lost or stolen.

(c) A retailer may return an unopened pack, at no charge, to the director at any time prior to the pack having been placed in activated status. Within thirty days of the official end of an instant game, a retailer shall return to the director all packs never activated in that game. ((~~Retailers shall be charged twenty-five dollars for each pack or portion thereof which was not returned to the director and not activated in accordance with this section.~~))

(d) Upon placement of a pack in activated status, the retailer shall be liable to the director for payment for the pack, in the amount calculated under WAC 315-06-035. Payment for a pack shall be due to the director no later than ((~~twenty~~)) fifty calendar days after the pack has been placed in activated status or when eighty percent of the low tiered prizes have been validated, thereby validating the pack. The director shall not reimburse the retailer for any ticket losses which occur after activation of the pack from which the tickets came, except as allowed by WAC 315-04-210(2) or 315-06-190.

(e) Each lottery retailer and lottery license applicant shall sign and comply with a lottery instant retailer agreement. Failure to sign or to comply shall result in revocation or denial of a retailer's lottery license.

(((~~3~~))) (2) Each lottery retailer shall abide by the law, these rules and all other directives or instructions issued by the director.

(((~~4~~))) (3) Each lottery retailer grants to the director an irrevocable license to enter upon the premises of the lottery retailer in which tickets may be sold or any other location under the control of the lottery retailer where the director may have good cause to believe lottery materials and/or tickets are stored or kept in order to inspect said lottery materials and/or tickets and the licensed premises.

(((~~5~~))) (4) All property given, except tickets, to a lottery retailer remains the property of the director, and, upon demand, the lottery retailer agrees to deliver forthwith the same to the director.

(((~~6~~))) (5) All books and records pertaining to the lottery retailer's lottery activities shall be made available for inspection and copying, during the normal business hours of the lottery retailer and between 8:00 a.m. and 5:00 p.m., Monday through Friday, upon demand by the director.

(((~~7~~))) (6) All books and records pertaining to the lottery retailer's lottery activities shall be subject to seizure by the director without prior notice.

(((~~8~~))) (7) No lottery retailer shall advertise or otherwise display advertising in any part of the lottery retailer's premises as a licensed location which may be considered derogatory or adverse to the operations or dignity of the lottery ((~~and the lottery retailer shall remove any advertising forthwith if requested by the director~~)).

AMENDATORY SECTION (Amending WSR 00-24-102, filed 12/6/00, effective 1/6/01)

WAC 315-04-190 Compensation. (1) Lottery retailers shall be entitled to a discount on the retail price of the instant game tickets. The commission must approve the discount paid to the retailers.

(2) Lottery retailers authorized to sell ((~~on-line~~)) draw game tickets shall be entitled to a discount on the total of gross ((~~on-line~~)) draw game ticket sales less ((~~on-line~~)) draw game ticket cancellations. The commission must approve the discount paid to the retailers.

(3) Lottery retailers may receive additional compensation through programs including but not limited to additional discounts, retailer games, retailer awards, and retailer bonuses.

(a) The commission must approve each such program prior to its implementation.

(b) The director shall establish and publish the procedures necessary to implement any such program approved by the commission prior to initiation of the program.

(4) The lottery, when selling instant or ((~~on-line~~)) draw game tickets, as a lottery retailer, may use the proceeds from the applicable discount on the retail price of the tickets sold to pay fees or other charges associated with those sales.

AMENDATORY SECTION (Amending WSR 99-01-038, filed 12/9/98, effective 1/9/99)

WAC 315-04-200 Denial, suspension or revocation of a license. The director may deny an application for or suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

(1) Failure to meet or maintain the eligibility criteria for license application and issuance established by chapter ((~~7, Laws of 1982 2nd ex. sess.~~)) 67.70 RCW, or these rules;

(2) Failure to account for lottery tickets received or the proceeds of the sale of tickets or to post a bond if required by the director or to comply with the instructions of the director concerning the licensed activity;

(3) Failure to pay to the lottery any obligation when due;

(4) Violating any of the provisions of chapter ((~~7, Laws of 1982 2nd ex. sess.~~)) 67.70 RCW, or these rules;

(5) Failure to file any return or report or to keep records required by the director or by these rules;

(6) Failure to pay any federal, state or local tax or indebtedness;

(7) Fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the lottery;

(8) If public convenience is adequately served by other licensees;

(9) Failure to sell a sufficient number of tickets to meet administrative costs;

(10) If there is a history of thefts or other forms of losses of tickets or revenue ((~~therefrom~~)) there from;

(11) Failure to follow the instructions of the director for the conduct of any particular game or special event;

(12) Failure to follow security procedures of the director for the handling of tickets or for the conduct of any particular game or special event;

(13) Makes a misrepresentation of fact to the purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event;

(14) Failure to comply with lottery point-of-sale requirements which have been published and disseminated to lottery retailers;

(15) Failure or inability to meet financial obligations as they fall due in the normal course of business;

(16) If there is a delay in accounting or depositing in the designated depository the revenues from the ticket sales;

(((~~12~~))) (17) Has violated, failed or refused to comply with any of the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW (Gambling Act), or chapter 7, Laws of 1982 2nd ex. sess., or when a violation of any provisions of chapter 7, Laws of 1982 2nd ex. sess., has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(((~~13~~))) (18) Knowingly causes, aids, abets or conspires with another to cause any person to violate any of the laws of this state;

(((~~14~~))) (19) Has obtained a license by fraud, misrepresentation, concealment or through inadvertence or mistake;

(((~~15~~))) (20) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports ((~~therewith~~)), or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any misdemeanor, involving any gambling activity or physical harm to individuals or involving moral turpitude, or of any misdemeanor within the past six months of the license application date, or of any felony within ten years of the license application date; except as specifically provided by law, the provisions of chapter 9.96A RCW apply. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(((~~16~~))) (21) Makes a misrepresentation of, or fails to disclose, a material fact to the commission or director on any report, record, application form or questionnaire required to be submitted to the commission or director. Misrepresentation of, or failure to disclose criminal history shall be considered a material fact for purposes of this section;

(((~~17~~))) (22) Denies the commission or director or their authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted, or fails to promptly produce for inspection or audit any book, record, document or item required by law or these rules;

(((~~18~~))) (23) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses indicated under subsection (((~~15~~))) (20) of this section: Provided, That at the request of an applicant for an original license, the director may defer decision upon the application during the pendency of such prosecution or appeal;

(((~~19~~))) (24) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in lottery or gambling or related activities would be inimical to the proper operation of an authorized lottery or gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

(((~~20~~))) (25) Is a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to be inimical to the policy of this state or to the proper operation of the authorized lottery or gambling or related activities in this state. For the purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel shall be defined as any group of persons who operate together as career offenders((~~;~~

~~(21) Failure to follow the instructions of the director for the conduct of any particular game or special event;~~

~~(22) Failure to follow security procedures of the director for the handling of tickets or for the conduct of any particular game or special event;~~

~~(23) Makes a misrepresentation of fact to the purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event;~~

~~(24) Failure to comply with lottery point-of-sale requirements which have been published and disseminated to lottery retailers; or~~

~~(25) Failure or inability to meet financial obligations as they fall due in the normal course of business~~)).

AMENDATORY SECTION (Amending WSR 96-03-039, filed 1/10/96, effective 2/10/96)

WAC 315-04-220 Limited off premises sales permit. (1) The director may permit any lottery retailer who has been issued a general or provisional license to sell tickets in locations other than that specified on its license and to employ persons to make such sales provided that:

(a) A lottery retailer requesting a "limited off premises sales permit" shall submit an application, completed in its entirety, using a form approved by the director.

(b) An application for a "limited off premises sales permit" for ((~~instant~~)) lottery tickets must be submitted to the lottery a minimum of thirty days prior to the event to provide adequate time for processing. ((~~An application for a "limited off premises sales permit" for on-line games must be submitted a minimum of thirty days prior to the event to provide adequate time for processing.~~)) Applications received after these time limits may not be approved.

(c) The geographical area and type of location in which such sales are requested shall be individually approved by the director.

(d) Each lottery retailer making such sales shall be individually approved by the director and shall display identification in such form and manner as shall be prescribed by the director.

(e) The lottery retailer and its employees shall abide by such other instructions and restrictions as may be prescribed by the director to govern such sales.

(2) ((~~The lottery retailer's license shall bear an addendum with the phrase "limited off premises sales permitted," and the licensed agent shall display with its license the addendum which sets forth the terms and conditions under which such sales may be made. A photocopy of the addendum shall be posted at each location where off premises sales are permitted.~~

~~(3)~~)) Lottery retailers must redeem all tickets winning $600 or less presented for redemption at the off premises location and at their licensed location. The location of the licensed location must be posted at the off premises location. Lottery retailers must also provide claim forms to holders of tickets winning more than $600 at both locations.

(((~~4~~))) (3) The "limited off premises sales permit" shall be valid for not more than thirty days and may be renewed twice, if approved by the director, for periods not to exceed thirty days each.

(((~~5~~))) (4) Lottery retailers granted "limited off premises sales permits" will not be required to conduct other licensed business activities at the off premises locations.

(((~~6~~))) (5) Lottery retailers granted "limited off premises sales permits" shall bear all costs associated with such sales including but not limited to construction of booths, stands, etc.; telephone line installation; telephone line charges and installation of a dedicated electric circuit, provided, that the director, in his/her sole discretion, may agree that the lottery will bear some or all of said associated costs.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 315-04-110	Duplicate licenses.
WAC 315-04-150	License to be displayed.

Chapter 315-30 WAC

((~~ON-LINE~~)) DRAW GAMES—GENERAL RULES

AMENDATORY SECTION (Amending Order 44, filed 12/8/83)

WAC 315-30-010 ((~~On-line~~)) Draw games—Authorized—Director's authority. The commission hereby authorizes the director to select and operate ((~~on-line~~)) draw games which meet the criteria set forth in this chapter.

(1) The director may contract for the development and operation of draw games, as determined necessary by the director.

(2) The director shall establish and approve the final draw game specifications, including the determination of winning tickets, prior to presentation of any new draw game proposal to the commission for a vote of the commission.

(3) New draw games shall not be made available for sale without approval of the commission.

(4) All draw game procedures and play criteria shall be made available to the public on request.

AMENDATORY SECTION (Amending WSR 92-11-033, filed 5/15/92, effective 6/15/92)

WAC 315-30-020 Definitions. (1) ((~~On-line~~)) Draw game. A lottery game in which a player pays a fee to a lottery retailer and selects a combination of digits, numbers, or symbols; type and amount of play; and drawing date and receives a computer generated ticket with those selections printed on it; or pays for a ticket with predetermined numbers, symbols or characters selected by the lottery terminal; or pays for a raffle ticket. The lottery will conduct a drawing to determine the winning ticket or the winning combination(s) in accordance with the ((~~rules of the specific game being played~~)) specific draw game procedures and play criteria. Each ticket bearer whose valid ticket includes a winning combination, or is the winning ticket, shall be entitled to a prize if claim is submitted within the specified time period.

(2) ((~~On-line~~)) Draw game retailer. A lottery retailer authorized by the lottery to sell ((~~on-line~~)) draw game tickets. All ((~~on-line~~)) draw game retailers may also ((~~shall~~)) sell ((~~instant~~)) other lottery game tickets offered by the lottery and approved by the commission.

(3) ((~~On-line~~)) Draw game ticket. A computer-generated ticket issued by ((~~an on-line~~)) a lottery retailer to a player as a receipt for the combination(s) a player has selected, or as a receipt of the predetermined numbers, symbols or characters selected by the lottery terminal, or a raffle ticket. That ticket shall be the only acceptable evidence of the combination(s) of digits, numbers, or symbols selected. ((~~On-line~~)) Draw

game tickets may be purchased only from ((~~on-line~~)) a lottery retailer((~~s~~)) authorized to sell draw game tickets.

(4) ((~~Ticket distribution machine (TDM).~~)) Lottery terminal. The computer hardware through which ((~~an on-line retailer enters the combination selected by a player and by which on-line~~)) tickets are generated and ((~~claims are~~)) validated.

(5) Drawing. The procedure determined by the director by which the lottery selects the winning combination in accordance with the rules of the game.

(6) Certified drawing. A drawing about which the lottery and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred; or the random selection of a winning ticket occurred.

(7) Winning combination. One or more digits, numbers, or symbols randomly selected by the lottery in a drawing which has been certified.

(8) Validation. The process of determining whether ((~~an on-line~~)) a ticket presented for payment is a winning ticket.

(9) Validation number. ((~~The twelve-digit number printed on the front of each on-line ticket~~)) A unique number printed on each ticket, which is used ((~~for validation~~)) to determine whether the ticket is a winning ticket.

(10) Ticket bearer. The person who has signed the ((~~on-line~~)) ticket or who has possession of an unsigned ticket.

(~~((11) Metropolitan area. Benton, Clark, Franklin, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties. (These geographic areas have been identified as the metropolitan statistical areas in the state of Washington by the Federal Committee on Standard Metropolitan Statistical Areas of the Office of Management and Budget.))~~)

AMENDATORY SECTION (Amending WSR 94-03-020, filed 1/7/94, effective, see WAC 315-04-180)

WAC 315-30-030 ((~~On-line~~)) Draw games criteria. (1) The base price of ((~~an on-line~~)) a play shall not be less than $.50 and not more than ((~~$5.00~~)) $20.00.

(2) On the average the total of all prizes available to be won in ((~~an on-line~~)) a draw game shall not be less than forty-five percent of the ((~~on-line~~)) game's projected revenue.

(3) The manner and frequency of drawings may vary with the type of ((~~on-line~~)) game, except that no draw game shall have a drawing more than once in a twenty-four hour period.

(4) The times, locations, and drawing procedures shall be determined by the director.

(5) A ticket bearer claiming a prize shall submit the apparent winning ticket as specified by the director. The ticket must be validated pursuant to WAC 315-30-050 by the lottery or ((~~an on-line~~)) a lottery retailer through use of the validation number and any other means as specified by the director.

(6) Procedures for claiming ((~~on-line~~)) prizes are as follows:

(a) To claim ((~~an on-line~~)) a game prize of $600.00 or less, the claimant shall present the winning ((~~on-line~~)) ticket to any ((~~on-line~~)) lottery retailer authorized to sell draw game tickets or to the lottery.

(i) If the ((~~claim~~)) ticket is presented to ((~~an on-line~~)) a lottery retailer authorized to sell draw game tickets, the ((~~on-line~~)) retailer shall validate the ((~~claim~~)) ticket and, if determined to be a winning ticket, may make payment of the amount due the claimant. If the ((~~on-line~~)) retailer cannot validate the ((~~claim~~)) ticket, the claimant may submit the disputed ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall ((~~present or mail a check to the claimant in payment of the amount due~~)) pay the prize. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. ((~~Nonwinning tickets will not be returned to the claimant.~~))

(ii) If the ((~~claim~~)) ticket is presented to the lottery, the claimant shall submit the ((~~apparent winning~~)) ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall ((~~present or mail a check to the claimant in payment of the amount due, less the withholding required by the Internal Revenue Code~~)) pay the prize. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. ((~~Nonwinning tickets will not be returned to the claimant.~~))

(b) To claim ((~~an on-line~~)) a prize of more than $600.00, the claimant shall obtain and complete a claim form or otherwise provide necessary information, as provided in WAC 315-06-120, and submit it with the ((~~apparent winning~~)) ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall ((~~present or mail a check to the claimant in payment of the amount due, less the withholding required by the Internal Revenue Code~~)) pay the prize. Prizes greater than $600.00 are subject to federal income tax withholding requirements according to the Internal Revenue Service publications for state lotteries. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. ((~~Nonwinning tickets will not be returned to the claimant.~~))

AMENDATORY SECTION (Amending WSR 92-11-033, filed 5/15/92, effective 6/15/92)

WAC 315-30-040 Drawings and end of sales prior to drawings. (1) Drawings shall be conducted in a location and at days and times designated by the director. Each ((~~on-line~~)) drawing script shall contain the statement, "Digits/numbers/symbols drawn are not official until validated."

(2) The director shall announce for each type of ((~~on-line~~)) game the time for the end of sales prior to the drawings. ((~~TDMs~~)) Lottery terminals will not process orders for ((~~on-line~~)) tickets for that drawing after the time established by the director.

(3) The director shall designate the type of equipment to be used and shall establish procedures to randomly select the winning combination for each type of ((~~on-line~~)) game.

(4) The equipment used to determine the winning combination shall not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The equipment

shall be tested prior to and after each drawing to assure proper operation and lack of tampering or fraud. Drawings shall not be certified until all checks are completed. No prizes shall be paid until after the drawing is certified.

(5) The director shall establish procedures governing the conduct of drawings for each type of ((~~on-line~~)) game. The procedures shall include provisions for deviations which include but are not limited to: (a) Drawing equipment malfunction before validation of the winning combination; (b) video and/or audio malfunction during the drawing; (c) fouled drawing; (d) delayed drawing; and (e) other equipment, facility and/or personnel difficulties.

(6) In the event a deviation occurs, the drawing will be completed under lottery supervision. If the drawing was to be broadcast, the drawing shall be video taped for later broadcast, if broadcast time is available. The drawing shall be certified and the deviation documented on the certification form. The winning combination will be provided to the television network for dissemination to the public.

(7) If during any live-broadcasted drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all digits, numbers, or symbols, a "foul" shall be called by the lottery drawing official. Any digit/number/symbol drawn prior to a "foul" being called will stand and be deemed official after passing lottery validation tests.

(8) The director shall delay payment of all prizes if any evidence exists or there are grounds for suspicion that tampering or fraud has occurred. Payment shall be made after an investigation is completed and the drawing certified. If the drawing is not certified, another drawing will be conducted to determine the actual winner.

AMENDATORY SECTION (Amending Order 116, filed 6/1/89)

WAC 315-30-050 Validation requirements. (1) To be a valid winning on-line ticket, all of the following conditions must be met:

(a) All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and date printed on the ticket.

(b) The ticket shall be intact.

(c) The ticket shall not be mutilated, altered, or tampered with in any manner.

(d) The ticket shall not be counterfeit or an exact duplicate of another winning ticket.

(e) The ticket must have been issued by an authorized on-line retailer in an authorized manner.

(f) The ticket must not have been stolen.

(g) The ticket must not have been ((~~cancelled~~)) canceled or previously paid.

(h) The ticket shall pass all other confidential security checks of the lottery.

(2) Any ticket failing any validation requirement listed in WAC 315-30-050(1) is invalid and ineligible for a prize. Provided, if a court of competent jurisdiction determines that a claim based on a ticket which has failed to validate solely because of subsection (1)(g) of this section is valid, the claim shall be paid as a prize pursuant to WAC 315-06-120, 315-30-030, and the rules for that specific type of game. The agent that cancelled or paid such ticket shall indemnify the lottery for payment of the prize and from any other claim, suit, or action based on that ticket.

(3) The director may replace an invalid ((~~on-line~~)) ticket with ((~~an on-line~~)) a ticket for a future drawing of the same game. The director may pay the prize for a ticket that is partially mutilated or is not intact if the ((~~on-line~~)) ticket can still be validated by the other validation requirements.

(4) In the event a ticket is issued in error or a defective ((~~on-line~~)) ticket is purchased, the only responsibility or liability of the lottery, its vendors or the ((~~on-line~~)) lottery retailer shall be the replacement of the erroneous or defective ((~~on-line~~)) ticket with another ((~~on-line~~)) ticket for a future drawing of the same game.

AMENDATORY SECTION (Amending Order 83, filed 12/16/85)

WAC 315-30-060 Payment of prizes by ((~~on-line~~)) lottery retailers. (1) ((~~An on-line~~)) A lottery retailer ((~~shall~~)) authorized to sell draw games may pay to the ticket bearer ((~~on-line game~~)) prizes of $600.00 or less for any validated claims presented to that ((~~on-line~~)) lottery retailer regardless of where the ((~~on-line~~)) ticket was purchased. These prizes ((~~shall~~)) may be paid during all normal business hours of that ((~~on-line~~)) lottery retailer, provided, the ((~~on-line~~)) draw game system is operational and claims can be validated. The ((~~on-line~~)) lottery retailer shall not charge the claimant any fee for payment of the prize or for cashing a business check drawn on the lottery retailer's account.

(2) ((~~An on-line~~)) A lottery retailer may pay prizes in cash or by business check, certified check, or money order. ((~~An on-line~~)) A lottery retailer that pays a prize with a check which is dishonored may be subject to suspension or revocation of its license, pursuant to WAC 315-04-200.

AMENDATORY SECTION (Amending Order 116, filed 6/1/89)

WAC 315-30-070 Retailer settlement. (1) Each ((~~on-line~~)) lottery retailer authorized to sell draw games shall establish an account for deposit of ((~~monies~~)) moneys derived from ((~~on-line~~)) draw games with a financial institution that has the capability of electronic funds transfer (EFT). Funds generated from the sale of ((~~on-line~~)) draw game tickets shall be held in trust by the retailer for the lottery.

(2) Each ((~~on-line~~)) lottery retailer shall make a deposit to that account at least once each week. The amount deposited shall be sufficient to cover ((~~monies~~)) moneys due the lottery for that weekly accounting period. The lottery will withdraw by EFT the amount due the lottery on the day specified by the director. In the event the day specified for withdrawal falls on a legal holiday, withdrawal will be accomplished on the following business day.

AMENDATORY SECTION (Amending Order 116, filed 4/10/89)

WAC 315-30-075 ((~~On-line~~)) Lottery retailer agreement. Each ((~~on-line~~)) lottery retailer shall enter into an agreement with the lottery containing such terms and condi-

tions as the director may require pursuant to WAC 315-30-080. Failure to enter into such an agreement may result in denial of a ((~~TDM~~)) lottery terminal; immediate discontinuance of a ((~~TDM's~~)) lottery terminal operation, or removal of a ((~~TDM~~)) lottery terminal from ((~~an on-line~~)) a location.

AMENDATORY SECTION (Amending WSR 98-20-013, filed 9/25/98, effective 10/26/98)

WAC 315-30-080 ((~~On-line~~)) Retailer selection criteria. (1) The selection and distribution of ((~~on-line~~)) draw game retailers throughout the state will be based on:

(a) The number of licensed retailers in each of the regions identified in WAC 315-12-030, and then;

(b) The potential for revenue generation, demographics, and public accessibility within that region.

(2) ((~~An on-line license endorsement shall be issued only to~~)) Only a person who possesses a valid provisional or general license((~~, provided, the director may issue an on-line endorsement to a lottery retailer who possesses a valid provisional license if that retailer is a new owner of a previously established on-line location~~)) may be authorized by the director to sell draw game tickets.

(3) In addition, the director ((~~shall~~)) may consider the following factors in the selection of ((~~on-line~~)) lottery retailers authorized to sell draw games.

(a) Business and security considerations which include but are not limited to: (i) Instant game accounts receivable record, (ii) criminal history of owners and officers, (iii) history of criminal activity at the business establishment, (iv) past security problems, (v) credit rating as defined in WAC 315-04-095, (vi) licensing requirements, and (vii) history of administrative or regulatory actions.

(b) Marketing considerations which include but are not limited to: (i) Instant ticket sales history, (ii) outside vehicle traffic, (iii) retail customer count, (iv) access to location, and (v) management attitude and willingness to promote lottery products.

(4) The director shall determine the total number of ((~~TDM's~~)) lottery terminals to be installed throughout the state and shall establish procedures for ((~~on-line~~)) draw game site selection. In determining the order in which TDMs will be installed within a given geographic area, an on-line site selection survey will be completed in which, the factors considered will include but not be limited to:

(a) General information;

(b) Description of proposed site;

(c) Proposed ((~~TDM~~)) lottery terminal location;

(d) Products sold;

(e) Services available;

(f) Store's hours;

(g) Estimated ((~~on-line~~)) draw game sales;

(h) Instant sales per week;

(i) Nearest four ((~~on-line agents'~~)) draw game lottery retailer sales per week;

(j) District sales representative's assessment; and

(k) Regional sales manager's assessment.

(5) The director may, after a ((~~TDM~~)) lottery terminal has been in operation for six months, order the removal of a ((~~TDM~~)) lottery terminal from a low producing ((~~on-line~~)) retailer location after considering marketing factors which include but are not limited to:

(a) Sales volume not increasing at statewide average;

(b) Weekly sales volume below that of similar businesses with similar market potential;

(c) Sales volume below $5,000 per week in metropolitan areas;

(d) Public is adequately served by other ((~~on-line agent~~)) draw game retailer locations; and

(e) Failure to generate sufficient sales volume to cover the lottery's administrative costs.

(6) The director may immediately discontinue a ((~~TDM's~~)) lottery retailer operation, order removal of a ((~~TDM~~)) lottery terminal from ((~~an on-line~~)) a draw game lottery retailer location, or take any other action authorized under WAC 315-04-200 in the event that the ((~~on-line agent~~)) lottery retailer authorized to sell draw game tickets:

(a) Fails to comply with any rule established by the commission, any instruction issued by the director;

(b) Tampers with or attempts to tamper with the ((~~TDM or on-line system~~)) lottery terminal;

(c) Fails to make payment of a prize;

(d) Makes payment with a business check and the check is dishonored for any reason; or

(e) Fails to enter into the uniform agreement with the lottery as required in WAC 315-30-075.

WSR 07-08-003
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed March 21, 2007, 2:45 p.m.]

Continuance of WSR 07-03-172.

Preproposal statement of inquiry was filed as WSR 06-02-040.

Title of Rule and Other Identifying Information: Chapter 16-25 WAC, Disposal of dead livestock, subsequent to public hearings, the department is extending the comment period and adoption date.

Date of Intended Adoption: April 6, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, 1111 Washington Street S.E., Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by April 2, 2007.

March 21, 2007
Leonard E. Eldridge
State Veterinarian

WSR 07-08-004
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed March 21, 2007, 2:49 p.m.]

Continuance of WSR 07-03-173.

Preproposal statement of inquiry was filed as WSR 06-11-071.

Title of Rule and Other Identifying Information: Chapter 16-54 WAC, Animal importation, this chapter relates to the importation of livestock, including foreign and exotic species. Subsequent to the public hearings, the department is extending the comment period and the adoption date.

Date of Intended Adoption: April 6, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, 1111 Washington Street S.E., Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by April 2, 2007.

March 21, 2007
Leonard E. Eldridge
State Veterinarian

WSR 07-08-006
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION
[Filed March 22, 2007, 8:49 a.m.]

Continuance of WSR 07-04-083.

Title of Rule and Other Identifying Information: Continuance of hearing on WAC 390-17-400 until June 28, 2007.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on June 28, 2007, at 9:30 a.m.

Date of Intended Adoption: June 28, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by June 25, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

March 19, 2007
Vicki Rippie
Executive Director

WSR 07-08-018
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed March 26, 2007, 4:20 p.m.]

Continuance of WSR 07-07-086.

Title of Rule and Other Identifying Information: Chapter 16-610 WAC, Livestock inspection and identification, the department is filing a continuance to extend the comment date and the date of intended adoption.

Date of Intended Adoption: May 1, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, 1111 Washington Street S.E., Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., April 30, 2007.

Assistance for Persons with Disabilities: Contact WSDA receptionist by 5:00 p.m., April 30, 2007, TTY (360) 902-1996 or (360) 902-1976.

March 26, 2007
Robert W. Gore
Deputy Director

WSR 07-08-019
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed March 26, 2007, 4:22 p.m.]

Continuance of WSR 07-07-085.

Title of Rule and Other Identifying Information: Chapter 16-70 WAC, Animal diseases—Reporting, the department is filing a continuance to extend the comment date and the date of intended adoption.

Date of Intended Adoption: May 1, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, 1111 Washington Street S.E., Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., April 30, 2007.

Assistance for Persons with Disabilities: Contact WSDA receptionist by 5:00 p.m., April 30, 2007, TTY (360) 902-1996 or (360) 902-1976.

March 26, 2007
Robert W. Gore
Deputy Director

WSR 07-08-031
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed March 27, 2007, 3:01 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-570 What is the purpose of a sick leave pool?, 357-31-575 Must an agency have a written policy regarding sick leave pools?, 357-31-580 What criteria does an employee have to meet to be eligible to participate in a sick leave pool?, 357-31-585 Is participation in a sick leave pool voluntary?, 357-31-590 When is an employee who participates in a sick leave pool eligible to use sick leave from the pool?, 357-31-595 Is a participant eligible to use sick leave from a pool if his/her illness or injury is work-related?, 357-31-600 Is there a limit to the amount of sick leave a participating employee may withdraw from a sick leave pool?, 357-31-605 What rate of pay is the participant who withdraws sick leave from the pool paid?, 357-31-610 How does a part-time participating employee withdraw sick leave credits from a sick leave pool?, 357-31-615 When a participating employee uses leave from a sick leave pool will he/she be required to recontribute such sick leave to the pool?, 357-31-620 When an agency has determined that abuse of a sick leave pool has occurred will

the employee have to repay the sick leave credits drawn from the pool?, 357-31-625 When an employee cancels his/her membership in a sick leave pool, can the employee withdraw the days of sick leave he/she had contributed to the pool?, 357-31-630 Can a participant who moves from one general government position to a different general government position transfer from one sick leave pool to another sick leave pool?, 357-31-635 What records must an employer maintain pertaining to sick leave pools?, 357-31-400 How much shared leave may an employee receive?, and 357-31-150 Can an employee be paid for accrued sick leave?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 10, 2007, at 8:30 a.m.

Date of Intended Adoption: May 10, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 4, 2007, FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 4, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 6059 passed during the 2006 legislative session. This bill created the ability for agencies to allow their employees to participate in sick leave pools. The bill is effective July 1, 2007.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: These rules are necessary to comply with SB 6059.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of Personnel.

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

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

March 27, 2007
Eva N. Santos
Director

NEW SECTION

WAC 357-31-570 What is the purpose of a sick leave pool? The purpose of a sick leave pool is to allow general government state employees, within an agency, to pool sick leave to be used by participating employees who have a personal illness, accident, or injury. Sick leave contributed to a sick leave pool will be deducted from the contributing employee's sick leave balance.

NEW SECTION

WAC 357-31-575 Must an agency have a written policy regarding sick leave pools? Prior to creating a sick leave pool, an agency that decides to participate in the sick leave pool program must appoint an administrator for each sick leave pool and develop a written policy which at a minimum addresses:

(1) Eligibility requirements for employees who wish to participate;

(2) Enrollment process including when open enrollment will occur;

(3) Amount of sick leave an employee must initially contribute to become a participant;

(4) Amount of sick leave a participating employee must contribute when a pool becomes depleted;

(5) When a pool will be considered to be "depleted";

(6) What happens when a participating employee does not have enough leave to contribute to the pool;

(7) The process and criteria that will be used when a sick leave pool participant needs to withdraw sick leave from the pool;

(8) What happens when there is not enough leave in a pool to cover pool participants' requests to withdraw leave;

(9) The manner in which alleged abuse of the sick leave pool will be investigated and what actions will be taken if it has been determined that abuse has occurred;

(10) The manner in which employees can request an internal review of a finding of wrongdoing under subsection (9) of this section;

(11) Transferring of sick leave credits when a pool participant moves from one pool to another pool; and

(12) What happens to leave credits that are in a pool if the pool is disbanded.

NEW SECTION

WAC 357-31-580 What criteria does an employee have to meet to be eligible to participate in a sick leave pool? An employee is eligible to participate in a sick leave pool after one continuous year of state employment and after accruing at least forty-eight hours of unused sick leave.

NEW SECTION

WAC 357-31-585 Is participation in a sick leave pool voluntary? Participation in a sick leave pool must, at all times, be voluntary on the part of the employee.

NEW SECTION

WAC 357-31-590 When is an employee who participates in a sick leave pool eligible to use sick leave from the pool? A participating employee is eligible to use sick leave from a pool only when the employee has a personal illness, accident, or injury and the employee has exhausted all of his/her personal holiday and all of his/her sick, vacation, and compensatory time.

NEW SECTION

WAC 357-31-595 Is a participant eligible to use sick leave from a pool if his/her illness or injury is work-related? If the illness or injury is work-related and the participant has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW the participant may be eligible to use leave from a pool if he/she has exhausted all of his/her personal holiday and all of his/her sick, vacation, and compensatory time.

NEW SECTION

WAC 357-31-600 Is there a limit to the amount of sick leave a participating employee may withdraw from a sick leave pool? A participating employee may not withdraw more than two hundred sixty-one (261) days from a sick leave pool for the entire duration of state employment. The two hundred sixty-one (261) days includes any days an employee has received under the Washington Shared Leave Program. One day equals eight hours of leave.

NEW SECTION

WAC 357-31-605 What rate of pay is the participant who withdraws sick leave from the pool paid? A participant who withdraws sick leave from a sick leave pool will be paid his/her regular rate of pay.

NEW SECTION

WAC 357-31-610 How does a part-time participating employee withdraw sick leave credits from a sick leave pool? A part-time participating employee withdraws sick leave credits from a sick leave pool on a pro-rata basis.

NEW SECTION

WAC 357-31-615 When a participating employee uses leave from a sick leave pool will he/she be required to recontribute such sick leave to the pool? When a participating employee uses leave from a sick leave pool he/she will not be required to recontribute such leave to the pool unless the agency has determined that abuse of the pool has occurred.

NEW SECTION

WAC 357-31-620 When an agency has determined that abuse of a sick leave pool has occurred will the employee have to repay the sick leave credits drawn from the pool? Alleged abuse of the use of a sick leave pool will be investigated, and, on a finding of wrongdoing, the employee must repay all of the sick leave credits drawn from the sick leave pool. The employee may be subject to other disciplinary action as determined by the agency head. The only time an employee will have to repay sick leave credits is when there is a finding of wrongdoing.

NEW SECTION

WAC 357-31-625 When an employee cancels his/her membership in a sick leave pool, can the employee withdraw the days of sick leave he/she had contributed to the pool? An employee who cancels his/her membership in a sick leave pool is not eligible to withdraw the hours of sick leave he/she had contributed to the pool.

NEW SECTION

WAC 357-31-630 Can a participant who moves from one general government position to a different general government position transfer from one sick leave pool to another sick leave pool? A participant who moves between general government positions within his/her agency or with a different agency may transfer from one pool to another if the eligibility criteria of the pools are comparable and the administrators of the pools have agreed on a formula for transfer of credits.

NEW SECTION

WAC 357-31-635 What records must an employer maintain pertaining to sick leave pools? Each agency shall maintain accurate and reliable records showing the amount of sick leave which has been accumulated and available to sick leave pool participants and the amount of leave that has been used by participants.

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-400 How much shared leave may an employee receive? The employer determines the amount of leave, if any, which an employee may receive under these rules. However, an employee must not receive more than two hundred sixty-one (261) days of shared leave during total state employment and a nonpermanent employee who is eligible to use accrued leave or personal holiday may not use shared leave beyond the expected end date of the appointment. Leave used under the sick leave pool program, as described in WAC 357-31-570, is included in the two hundred sixty-one (261) day limit.

Employers are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

AMENDATORY SECTION (Amending WSR 07-03-051, filed 1/12/07, effective 2/15/07)

WAC 357-31-150 Can an employee be paid for accrued sick leave? In accordance with the attendance incentive program established by RCW 41.04.340, employees are eligible to be paid for accrued sick leave as follows:

(1) In January of each year, an employee whose sick leave balance at the end of the previous year exceeds four hundred eighty hours may elect to convert the sick leave hours earned in the previous calendar year, minus those hours used during the year, to monetary compensation.

(a) No sick leave hours may be converted which would reduce the calendar year-end balance below four hundred eighty hours.

(b) Monetary compensation for converted hours is paid at the rate of twenty-five percent and is based on the employee's current salary.

(c) All converted hours are deducted from the employee's sick leave balance.

(d) Hours which are accrued, donated, and returned from the shared leave program in the same calendar year may be included in the converted hours for monetary compensation.

(e) For the purpose of this section, hours which are contributed to a sick leave pool per WAC 357-31-570 are considered hours used.

(2) Employees who separate from state service because of retirement or death must be compensated for their total unused sick leave accumulation at the rate of twenty-five percent or the employer may deposit equivalent funds in a medical expense plan as provided in WAC 357-31-375. Compensation must be based on the employee's salary at the time of separation. For the purpose of this subsection, retirement does not include "vested out-of-service" employees who leave funds on deposit with the department of retirement systems (DRS).

(3) No contributions are to be made to the department of retirement systems (DRS) for payments under subsection (1) or (2) of this section, nor are such payments reported to DRS as compensation.

WSR 07-08-033
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed March 27, 2007, 3:02 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-28-125 How is an employee's base salary affected when the employee's position is allocated to a new class as a result of the director taking action to implement the new classification plan as required by RCW 41.06.136? and 357-28-130 How is an employee's base salary determined if the director creates, abolishes, or revises a class after the initial implementation of the classification plan?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 10, 2007, at 8:30 a.m.

Date of Intended Adoption: May 10, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694 by May 4, 2007, FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 4, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change to WAC 357-28-125 will result in an employee's salary being adjusted to the same step in the new range as held in the previous range (unless otherwise determined by the director) when an employee's position is reallocated to a new class as a result of the director taking action to implement the new classification plan.

The proposed change to WAC 357-28-130 states that when reallocation to a class with a higher salary range is necessary because the director creates, abolishes, or revises a class after the initial implementation of the classification plan, the employee must have his/her base salary adjusted to the same step in the new range as held in the previous range unless otherwise determined by the director.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

March 27, 2007
Eva N. Santos
Director

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

WAC 357-28-125 How is an employee's base salary affected when the employee's position is allocated to a new class as a result of the director taking action to implement the new classification plan as required by ((~~RCW 41.06.136~~)) WAC 357-10-010(1)? When an employee's position is reallocated to a new class as a result of the director taking action to implement the new classification plan as required by ((~~RCW 41.06.136~~)) WAC 357-10-010(1), the ((~~employee retains his/her previous base salary and periodic increment date upon reallocation unless the employee's previous base salary is less than the minimum step of the salary range assigned to the new class. In that case, the employee's base salary is the minimum step of the salary range assigned the new class and the periodic increment date is six months from the effective date of reallocation~~)) employee's salary will be adjusted to the same step in the new range as held in the previous range unless otherwise determined by the director.

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

WAC 357-28-130 How is an employee's base salary determined if the director creates, abolishes, or revises a class after the initial implementation of the classification plan? When reallocation is necessary because the director

creates, abolishes, or revises a class after the initial implementation of the classification plan, an employee's base salary is determined as follows:

(1) An employee occupying a position reallocated to a class with the same or lower salary range must be paid an amount equal to his/her previous base salary.

(2) An employee occupying a position reallocated to a class with a higher salary range must have his/her base salary ((~~set in accordance with the salary provisions established by the director~~)) adjusted to the same step in the new range as held in the previous range unless otherwise determined by the director.

WSR 07-08-034
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed March 27, 2007, 3:03 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-43-001 What definitions apply to this chapter of the civil service rules?, 357-43-003 Can EBU members choose which civil service rules will apply to them?, 357-43-007 What provisions apply when an employee's position is eliminated because of the employer has awarded a contract through the competitive contracting process?, 357-43-008 What happens if a displaced employee chooses to be removed from the employee business unit before the effective date of a contract that is awarded to the employee business unit?, 357-43-115 What return rights does a former employee business unit member have following appointment to an exempt position?, 357-46-012 Following the award of a contract under the competitive contracting process, how does an employer layoff displaced employees as defined by WAC 357-43-001?, 357-46-020 What must be included in the employer's layoff procedure?, 357-58-065 Definitions for WMS, 357-43-010 Do the other rules in Title 357 WAC governing classified employees apply to employee business unit members?, 357-43-055 Can employee business unit members accrue vacation leave?, 357-43-060 Can employee business unit members accrue sick leave?, 357-43-065 Can employee business unit members cash out sick leave?, 357-43-070 Are employee business unit members eligible for legal holidays?, 357-43-075 Are employee business unit members eligible to receive a personal holiday?, 357-43-080 Are employee business unit members eligible to participate in the employer's shared leave program?, 357-43-085 Are employee business unit members eligible to receive military leave?, 357-43-095 Must an employee business unit have a layoff procedure?, 357-43-100 What layoff rights must be included in the employee business unit's layoff procedure?, 357-43-105 When is a general government employee business unit member eligible for placement in the general government transition pool?, and 357-43-120 Can EBU members receive financial incentives for any cost savings that result from completing performance requirements for less cost or better efficiency than what was anticipated in the agreement with the EBU?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 10, 2007, at 8:30 a.m.

Date of Intended Adoption: May 10, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 4, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 4, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes clean up the employee business unit rules.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The department of personnel staff worked closely with stakeholders on these changes.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

March 27, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-193, filed 12/21/04, effective 7/1/05)

WAC 357-43-001 What definitions apply to this chapter of the civil service rules? The following definitions apply to chapter 357-43 WAC:

(1) **Appointing authority:** An individual lawfully authorized to appoint, transfer, layoff, reduce, dismiss, suspend, or demote employees.

(((2) ~~**Competitive contracting:** The process by which classified employees compete with businesses, individuals, nonprofit organizations, or other entities for the performance of services those employees have customarily and historically performed.~~))

(((~~(3)~~))) (2) **Contract:** A formal and binding agreement or an amendment to an agreement between an employer and an employee business unit for performing services as defined in the competitive contracting solicitation.

(((4) ~~**Displaced employee:** A classified employee whose position or work would be eliminated, resulting in the employee being laid off or assigned to a different job classification, as a result of an award via the competitive contracting process.~~))

(((~~(5)~~))) (3) **Employee business unit:** A group of employees who perform services for which an employer proposes to competitively contract and who:

(a) Notify the agency of their intent to submit a bid for the performance of those services through competitive contracting; or

(b) Receive award of a contract from the employer as a result of being a successful bidder.

(((~~(6)~~))) (4) **Employee business unit member:** A classified employee working under the provisions of chapter 357-43 WAC.

(((~~(7)~~))) (5) **Employer:** A state agency, an institution of higher education, or a related higher education board.

NEW SECTION

WAC 357-43-003 Can EBU members choose which civil service rules will apply to them? EBU members may choose to opt-out of civil service rules that are not required in statute.

AMENDATORY SECTION (Amending WSR 05-01-185, filed 12/21/04, effective 7/1/05)

WAC 357-43-007 What provisions apply when an employee's position is eliminated because ((~~of~~)) the employer has awarded a contract through the competitive contracting process as described in Title 236 WAC? WAC 357-46-012 governs layoff actions resulting from the competitive contracting ((~~[contracting]~~)) process as described in Title 236 WAC.

AMENDATORY SECTION (Amending WSR 05-19-003, filed 9/8/05, effective 10/10/05)

WAC 357-43-008 What happens if an ((~~displaced~~)) employee chooses to ((~~be removed from~~)) not be a part of the employee business unit ((~~before the effective date of a contract that is awarded to the employee business unit~~))? When an ((~~displaced~~)) employee chooses to ((~~be removed from an employee business unit prior to the effective date of the contract that is awarded to the employee business unit~~)) not be a part of the employee business unit, the following applies:

(1) If the ((~~displaced~~)) employee chooses to ((~~be removed~~)) not be a part of the employee business unit before the employer's ((~~notifies the employee business unit~~)) notification of the intent to award the contract to the employee business unit (as described in WAC 236-51-600), the ((~~displaced~~)) employee has layoff rights in accordance with WAC 357-46-012.

(2) If the ((~~displaced~~)) employee chooses to ((~~be removed~~)) not be a part of the employee business unit after the employer's ((~~notifies the employee business unit~~)) notification of the intent to award the contract to the employee business unit (as described in WAC 236-51-600), the ((~~displaced~~)) employee has no layoff rights under chapter 357-46 WAC and is considered to have resigned when his/her position is eliminated.

AMENDATORY SECTION (Amending WSR 05-01-193, filed 12/21/04, effective 7/1/05)

WAC 357-43-115 ((~~What return rights does a former employee business unit member have following appointment to an exempt position?~~)) If an employee business unit member accepts an appointment to an exempt position, what are the employee's return rights? A former employee business unit member who was appointed to an exempt position from the employee business unit has return rights provided in RCW 41.06.070.

AMENDATORY SECTION (Amending WSR 05-19-004, filed 9/8/05, effective 10/10/05)

WAC 357-46-012 Following the award of a contract under the competitive contracting process (as described in Title 236 WAC), how does an employer layoff ((~~displaced~~)) employees ((~~as defined by WAC 357-43-001~~)) whose positions are being eliminated due to the awarded contract? (1) If an employee business unit as defined by WAC 357-43-001 is not awarded the contract, all ((~~displaced~~)) employees ((~~as defined by WAC 357-43-001~~)) whose positions are being eliminated are subject to the employer's layoff procedure when the positions are eliminated or reduced.

(2) ((~~Displaced employees as defined by WAC 357-43-001~~)) Employees whose positions are being eliminated who are not part of the employee business unit awarded the contract are subject to the employer's layoff procedure when the employees' positions are eliminated or reduced. (See WAC 357-43-008 for what happens if an ((~~displaced~~)) employee chooses to ((~~be removed from an~~)) not be a part of the employee business unit.)

(((~~(3) Displaced employees as defined by WAC 357-43-001 who are part of the employee business unit awarded the contract become an employee business unit member on the effective date of the contract. The layoff rights of employee business unit members are determined by the employee business unit's layoff procedure as provided in WAC 357-43-100. Employee business unit members do not have layoff rights under chapter 357-46 WAC.~~)))

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-020 What must be included in the employer's layoff procedure? The employer's layoff procedure must:

(1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;

- Employers may establish separate and exclusive layoff units for project employment, employee business units, or special employment programs.

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay;

(3) Require the appointing authority to provide written notice of layoff to employees in accordance with WAC 357-46-025;

(4) Provide layoff options for permanent employees being laid off as provided in WAC 357-46-035;

(5) Address the time frame in which employees must select a layoff option;

(6) Define what the employer considers when determining the comparability of a position;

(7) Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-46-035;

- Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

(8) Describe how employment retention ratings will be calculated, including options for factoring performance into ratings; and

(9) Specify how the employer will break ties when more than one employee has the same employment retention rating.

AMENDATORY SECTION (Amending WSR 05-21-060, filed 10/13/05, effective 11/15/05)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) **Washington general service (WGS).** Washington general service is the system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

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

REPEALER

The following sections of the Washington Administrative Code is repealed:

WAC 357-43-010	Do the other rules in Title 357 WAC governing classified employees apply to employee business unit members?
WAC 357-43-055	Can employee business unit members accrue vacation leave?
WAC 357-43-060	Can employee business unit members accrue sick leave?
WAC 357-43-065	Can employee business unit members cash out sick leave?
WAC 357-43-070	Are employee business unit members eligible for legal holidays?
WAC 357-43-075	Are employee business unit members eligible to receive a personal holiday?
WAC 357-43-080	Are employee business unit members eligible to participate in the employer's shared leave program?

WAC 357-43-085	Are employee business unit members eligible to receive military leave?
WAC 357-43-095	Must an employee business unit have a layoff procedure?
WAC 357-43-100	What layoff rights must be included in the employee business unit's layoff procedure?
WAC 357-43-105	When is a general government employee business unit member eligible for placement in the general government transition pool?
WAC 357-43-120	Can EBU members receive financial incentives for any cost savings that result from completing performance requirements for less cost or better efficiency than what was anticipated in the agreement with the EBU?

WSR 07-08-035
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed March 27, 2007, 3:04 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-265 What is the effect of suspended operations on employees who are not required to work during the closure?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 10, 2007, at 8:30 a.m.

Date of Intended Adoption: May 10, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 4, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 4, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 357-31-265 needs to be modified for two reasons:

(1) For overtime-eligible employees, if the employee chooses leave without pay (LWOP) and wants to make up the lost work time, the employee can make up the time during the work week which results in no LWOP.

(2) The employer can require an overtime-exempt employee to use accrued paid leave to cover the absence. If the overtime-exempt employee has no paid leave to cover the absence the employee's pay may be docked. Employers can require overtime-exempt employees work additional hours to make up lost work time.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

March 27, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-265 What is the effect of suspended operations on employees who are not required to work during the closure? At a minimum, employees not required to work during suspended operations must be allowed to use their personal holiday((,)) or accrued vacation leave((,)). Overtime-eligible employees must also be allowed to use accrued compensatory time((~~, or leave without pay~~)) to account for the time lost due to the closure. ((~~If an employer's suspended operations procedure allows, employees may also be released without a loss in pay or given a reasonable opportunity to make up work time lost as a result of the suspended operations.~~)) Overtime-eligible employees may be allowed to use leave without pay and given an opportunity to make up work time lost (as a result of suspended operations) within the work week. For overtime eligible employees, compensation for making up lost work time must be ((~~granted on a compensatory time basis at not less than straight time nor more than time and one half~~)) in accordance with WAC 357-28-255, 357-28-260, and 357-28-265 if it causes the employee to work in excess of forty hours in the workweek, and must be part of the employer's suspended operations procedures. The amount of compensation earned under this section must not exceed the amount of salary lost by the employee due to suspended operation.

If the employer's suspended operations procedure allows, employees may be released without a loss in pay.

WSR 07-08-036
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed March 27, 2007, 3:05 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 10, 2007, at 8:30 a.m.

Date of Intended Adoption: May 10, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694 by May 4, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 4, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This change is housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

March 27, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth? Under RCW ((~~49.78.005~~)) 49.78.390, the family leave required by ((~~U.S.C. 29.2612 (a)(1)(A) and (B) of~~)) the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) must be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as provided in WAC 357-31-500.

WSR 07-08-037
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed March 27, 2007, 3:49 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-255 What types of leave may an employee use when absent from work or arriving late to work because of inclement weather?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Olympia, WA 98504, on May 10, 2007, at 8:30 a.m.

Date of Intended Adoption: May 10, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 4, 2007. FOR DOP TRACKING PURPOSES, PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 4, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This change is necessary to clarify that the employer's policy may allow leave with pay when an employee is absent due to inclement weather.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This change is necessary to clarify that the employer's policy may allow leave with pay when an employee is absent due to inclement weather.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

March 27, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-255 What types of leave may an employee use when absent from work or arriving late to work because of inclement weather? When the employer determines inclement weather conditions exist, the employer's leave policy governs the order in which accrued leave and compensatory time may be used to account for the time an employee is absent from work due to the inclement weather. The employer's policy must allow the use of accrued vacation leave, accrued sick leave up to a maximum of three days in any calendar year, and the use of leave without pay in lieu of paid leave at the request of the employee. The employer's policy may allow leave with pay when an employee is absent due to inclement weather.

WSR 07-08-047
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 28, 2007, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-168.

Title of Rule and Other Identifying Information: WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience.

Hearing Location(s): Red Lion Hotel at the Park, West 303 North River Drive, Spokane, WA 99201, on May 16, 2007, at 8:30 a.m.

Date of Intended Adoption: May 16, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by May 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by May 10, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Further explanation was needed in this section to clarify its intent for school apportionment purposes specifically. It does not change the certification of CTE teachers in any way.

Reasons Supporting Proposal: School apportionment division can now refer to the specific provision that was originally intended.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 42736, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

March 28, 2007
Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates for certification who have not completed approved programs set forth in WAC 181-82-322 shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation ((~~of three years (six thousand hours)~~)) of paid occupational experience in the specific career and technical education subcategory for which certification is sought. ((~~One year (two thousand hours) must be within the past six years. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience.~~))

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

(i) General and specific safety;

(ii) Career and technical education teaching methods;

(iii) Occupational analysis;

(iv) Course organization and curriculum design;

(v) Philosophy of vocational education;

(vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

(i) School law;

(ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in diversified occupations or coordinator of work based learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to

teach with an authorized employer—i.e., school district(s) or skills center(s).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 42736, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

March 28, 2007
Nasue Nishida
Policy and Research Analyst

WSR 07-08-048
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 28, 2007, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-023.

Title of Rule and Other Identifying Information: WAC 181-79A-130 Fee for certification, 181-79A-145 Levels of certificates, initial/residency and continuing/professional, 181-79A-150 General requirements—Teachers, administrators, educational staff associates, and new section WAC 181-79A-252 First peoples' language/culture certificates.

Hearing Location(s): Red Lion Hotel at the Park, West 303 North River Drive, Spokane, WA 99201, on May 16, 2007, at 8:30 a.m.

Date of Intended Adoption: May 16, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by May 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by May 10, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sections in this chapter need to be revised to address certificate fees related to the first peoples' language/culture certificate, provisional certificate to residency certificate fees, the first peoples' language/culture certificate levels, requirements and certificate renewal.

Reasons Supporting Proposal: Effects of these changes will result in more streamlined implementation of these certificates.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-130 Fee for certification. (1) In accordance with provisions of RCW 28A.410.060 and 28A.415.-010, the fee for certificates which are valid for more than one year, issued by authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be as follows:

(a) The first issue of the residency certificate, thirty-five dollars;

(b) The continuing certificate, seventy dollars;

(c) The reinstatement, additional endorsement on the teaching certificate, duplicate certificates, substitute certificates, and certificates issued for the purpose of showing a name change, fifteen dollars; ((~~and~~))

(d) The first peoples' language/culture teacher certificate, twenty-five dollars; and

(e) Any other certificate or credential or any renewal thereof, five dollars for each year of validity:

(((~~(e)~~))) (f) Provided, That the fee for all career and technical education certificates shall be one dollar:

(((~~(f)~~))) (g) Provided, That a one-time late fee for a renewed initial or continuing certificate issued under the provisions of WAC 181-79A-123 (7), (8), or (9) for those whose initial certificate had already expired shall be one hundred dollars.

(2) The fee for any other certificate/credential, or for any renewal thereof, issued by the authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be five dollars.

(3) Officials authorized to collect certification fees are educational service district superintendents, local school district superintendents, deans and directors of education at colleges and universities, or their designees. The fee must accompany the application for a certificate and shall be transmitted by the receiving district, college or university, or program unit designee at least quarterly to the educational service district within which the application is filed for disposition in accordance with provisions of RCW 28A.410.060. The fee shall not be refunded unless the application is withdrawn before it is finally considered (i.e., the issuance of a certificate or a written communication denying such issu-

ance) by the superintendent of public instruction or his or her designee. Fees not refunded shall apply as credit toward certificate fees if such applicant reapplies within twenty-four months of the date of denial. Moneys accrued from certification fees within the boundaries of an educational service district shall be divided in the following manner:

(a) Local school districts employing more than one hundred teachers and other professional staff and collecting certification fees may retain one dollar of each fee in order to hold a professional training institute. If such district does not hold an institute, all such moneys shall be placed to the credit of the educational service district.

(b) No less than fifty percent of the funds accruing within the boundaries of an educational service district shall be used to support program activities related to statewide precertification professional preparation and evaluation.

(c) The remaining funds shall be used to support professional in-service training programs and evaluations thereof.

(d) Use of certification fees described in this section shall be reported annually to the professional educator standards board pursuant to WAC 181-79A-131(5).

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-145 Levels and validity of certificates((~~, initial/residency and continuing/professional~~)). Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has lapsed or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors, school psychologists, and school social workers no later than September 1, 2005.

(b) The residency certificate for principals, program administrators, and educational staff associates is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250 (2)(b) and (c).

(c) The first issue of a residency certificate for teachers employed in a school district or state agency that provides educational services for students shall be valid until the holder is no longer on provisional status. When the teacher for the first time in their career completes provisional status, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the teacher must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(a).

(d) The first issue of a residency certificate for teachers employed in a state approved private school shall be valid until the holder has completed two years of successful teaching. When the teacher for the first time in their career completes two years of successful teaching, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the teacher must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(a).

(e) The first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two successful years of service in the role. When the principal, program administrator, or educational staff associate for the first time in their career completes two years of successful service in a school district, state approved private school, or state agency, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(b) and (c).

(f) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors, school psychologists, and school social workers beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language/culture certificates: The first peoples' language/culture certificate will be issued to teachers beginning in January 2007. The first peoples' language/culture certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-150 General requirements—Teachers, administrators, educational staff associates and first peoples' language/culture teachers. The following requirements are to be met by candidates for certification as teachers including career and technical education teachers, administrators, ((~~or~~)) educational staff associates, or first peoples' language/culture teachers:

(1) Age. No person who is less than eighteen years of age shall receive a certificate to serve in the public or nonpublic schools of Washington state.

(2) Character. Applicants for certificates in Washington state who are not holders of a valid Washington state teacher's, administrator's, educational staff associate's, ((~~or~~)) career and technical education, or first peoples' language/culture teacher's certificate must give evidence of good moral character and personal fitness as specified in WAC 181-79A-155 and must complete a record check through the Washington state patrol criminal identification system and through the Federal Bureau of Investigation at the applicant's expense as required by RCW 28A.410.010; such record check shall include a fingerprint check using a Washington state patrol approved fingerprint card: Provided, That the superintendent of public instruction may waive the record check for an applicant who has had a record check within the two years prior to application.

(3) Degrees and course work. A candidate for certification shall hold appropriate degrees, licenses, and additional course work as prescribed in chapters 181-79A and 181-77 WAC or have qualified under WAC 181-79A-257 or 181-78A-700.

(4) Approved preparation program. Applicants for certification as teachers, administrators, school counselors, school psychologists and school social workers, except as otherwise provided in WAC 181-79A-257, and 181-79A-231, and in chapter 181-77 WAC, in order to be certified within the state of Washington shall have completed a state approved college/university preparation program in the professional field for which certification is to be issued. Applicants for certification as first peoples' language/culture teachers shall have completed a sovereign tribal government's first peoples' language/culture teaching certification program.

(5) Certificates.

(a) Candidates for principal's certificates must hold or have held:

(i) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates; or

(ii) A valid educational staff associate certificate and have demonstrated successful school-based experience in an instructional role with students. Persons whose teacher or educational staff associate certificates were revoked, suspended, or surrendered are not eligible for principal's certificates.

(b) Candidates for superintendent's certificates must hold a valid teacher, educational staff associate, program administrator, or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(6) Assessments. See RCW 28A.410.220.

NEW SECTION

WAC 181-79A-252 First peoples' language/culture certificates—Renewal and continuing education requirements. The following shall apply to first peoples' language/culture certificates issued pursuant to this chapter:

A first peoples' language/culture certificate may be renewed for an additional five-year period on application and verification that the individual has met tribal renewal/continuing education requirements.

WSR 07-08-049
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 28, 2007, 3:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-089.

Title of Rule and Other Identifying Information: WAC 181-78A-700 First peoples' language/culture certification pilot program.

Hearing Location(s): Red Lion Hotel at the Park, West 303 North River Drive, Spokane, WA 99201, on May 16, 2007, at 8:30 a.m.

Date of Intended Adoption: May 16, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by May 10, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by May 10, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to this section of rule, provide for full implementation of the permanent first peoples' language culture teacher certificate.

Reasons Supporting Proposal: Effects of these changes will result in more streamlined implementation of this certificate.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 42736, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236,

phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

March 28, 2007
Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-04-015, filed 1/25/07, effective 2/25/07)

WAC 181-78A-700 First peoples' language/culture certification ((~~pilot~~)) program—Findings, purposes and intent—Definitions—Program established—Tribal eligibility to participate—Program requirements—Assignment of teachers—Reports. (1) **FINDINGS.** The professional educator standards board endorses the following:

(a) Teaching first peoples' languages can be a critical factor in successful educational experiences and promoting cultural sensitivity for all students. The effect is particularly strong for native American students;

(b) First peoples' languages are falling silent. Despite tribal efforts, first peoples' languages are not fully incorporated into the school systems. This is a loss to the cultural heritage of the affected tribes and to the cultural resources of Washington state;

(c) Recognition of native American languages under RCW 28A.230.090(3) and 28B.80.350(2), as satisfying state or local graduation requirements and minimum college admission requirements, while concentrating on promoting a positive impact on student learning through state policies, is insufficient to meet the educational needs of native American students;

(d) The potential to have a positive impact on student learning is in part dependent on the willingness of the local education agency to collaborate with the sovereign tribal government's language/culture program;

(e) It is within the statutory authority of the professional educator standards board to enhance the learning opportunities for all students by helping prevent the loss of first peoples' languages through assisting the state's sovereign neighbors to sustain, maintain or recover their linguistic heritage, history and culture;

(f) From the Multi-Ethnic Think Tank position statement, June 2001:

(i) "…A culturally inclusive pedagogy will ensure the success of all students, who will develop greater appreciation of other cultures and worldviews;"

(ii) "All students have prior experiences that frame their worldview; learn from childbirth and are lifelong learners; can academically achieve at high levels when they are appropriately taught; and are entitled to learn in a multicultural context;"

(g) Research has shown that students who study another language may benefit in the following ways: Greater academic success in other areas of study, including reading, social studies, and mathematics; a clearer understanding of the English language including function, vocabulary and syntax; and an increase on standardized test scores, especially in verbal areas;

(h) From the Native American Languages Act, Public Law 101-477, Section 102, 1990:

(i) "The traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values;"

(ii) "Languages are the means of communication for the full range of human experiences and are critical to the survival of cultural and political integrity of any people"; and

(i) There are many sovereign tribal nations in the state of Washington and they serve the needs of many groups of first peoples, each possessing unique languages, cultures and worldviews.

(2) **PURPOSES.** The purpose of this section of the established first peoples' language/culture program is to accomplish the following goals:

(a) To honor the sovereign status of tribal governments in their sole expertise in the transmission of their indigenous languages, heritage, cultural knowledge, customs, traditions and best practices for the training of first peoples' language/culture teachers;

(b) Contribute to a positive impact on student learning by promoting continuous improvement of student achievement of the sovereign tribal government's language/culture learning goals, as established by each sovereign tribal government's language/culture program, and by supporting the goals for multicultural education included in the 2001 position statement developed by the Washington state Multi-Ethnic Think Tank;

(c) Contribute to the preservation, recovery, revitalization, and promotion of first peoples' languages and cultures;

(d) Meaningfully acknowledge that language is inherently integral to native American culture and ways of life;

(e) Implement in a tangible way the spirit of the 1989 Centennial Accord and the 2000 Millennium Accord between Washington state and the sovereign tribal governments in the state of Washington;

(f) Provide a mechanism for the professional educator standards board to recognize tribally qualified language/culture teachers as eligible to receive a Washington state first peoples' language/culture teaching certificate; and

(g) Provide the opportunity for native American students to learn first peoples' languages and cultures while at school and provide another avenue for students to learn core curricula through first peoples' worldviews.

(3) **INTENT.** It is the intent of the professional educator standards board to work in collaboration with the sovereign tribal governments of Washington state to establish a Washington state first peoples' language/culture teacher certification program in order to:

(a) Act in a manner consistent with the policy as specified in the Native American Languages Act, P.L. 101-477 Sec. 104(1) "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages";

(b) Act in a manner consistent with Washington state's government-to-government relationship with Washington state sovereign tribal governments and use the Washington state first peoples' language/culture certification programs to model effective government-to-government relationships;

(c) Act in a manner consistent with the goal of the state Basic Education Act under RCW 28A.150.210;

(d) Act in a manner consistent with the following purposes of Public Law 107-110, "No Child Left Behind Act":

(i) "Holding schools, local education agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education," [Sec. 1002(4)];

(ii) "Providing children an enriched and accelerated educational program, including the use of schoolwide programs or additional services that increase the amount and quality of instructional time," [Sec. 1002(8)];

(iii) "Promoting schoolwide reform and ensuring the access of children to effective, scientifically based instructional strategies and challenging academic content," [Sec. 1002(9)];

(iv) "…Supporting local education agencies, Indian tribes, organizations, postsecondary institutions and other entities to meet the unique education, culturally related academic needs of American Indian and Alaskan Native Students" [Sec. 7102(a)];

(e) Act on its involvement with and adoption of the 1991 joint policy statement on Indian education:

"K-12 American Indian dropout prevention is a priority of schools. Effective education needs to be implemented throughout the K-12 school system if the American Indian student is to achieve academic and personal success";

(f) Acknowledge that there is a public responsibility to make available to all students in the state of Washington an accurate and balanced study of the American Indian experiences with and contributions to life on this continent;

(g) Act on the following professional educator standards board beliefs:

(i) In order to meet the needs of all students, highly qualified teachers are required;

(ii) All professional educator standards board policies and activities should meet the needs of the state's diverse student population;

(iii) In order for all students to achieve at high levels, multiple learning styles and needs must be supported; and

(h) Act on the following goals from the professional educator standards board's 2002-05 work plan:

(i) Professional education and certification requirements are aligned with education reform and support a positive impact on student learning;

(ii) All students shall be provided equitable educational opportunities.

(4) **DEFINITIONS.**

(a) "Positive impact on student learning" shall mean:

(i) The same as under WAC 181-78A-010(8) and 180-16-220 (2)(b); and

(ii)(A) Supporting the goal of basic education under RCW 28A.150.210, "…to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives…";

(B) Promoting continuous improvement of student achievement of the state learning goals and the sovereign tribal government's language/culture learning goals as established by each sovereign tribal government's language/culture program;

(C) Recognizing nonacademic student learning and growth related, but not limited, to: Oral traditions, community involvement, leadership, interpersonal relationship skills, teamwork, self-confidence, resiliency, and strengthened unique cultural identities;

(iii) Developing greater appreciation of other cultures and worldviews;

(b) A "culturally sensitive environment" honors the unique history, culture, values, learning styles, and community of the student. For example, to demonstrate the value of the language and culture, the homeroom teacher participates in the language/culture classroom. A "culturally sensitive environment" also includes those provisions as outlined in the Washington state joint policy on equity in education, revised in May 2000.

(c) For the purpose of this section, "highly qualified teachers" shall mean those teachers who meet the standards of the sovereign tribal government's language/culture program.

(5) **PROGRAM ESTABLISHED.** A Washington state first peoples' language/culture teacher certification program is established in January 2007. First peoples' language/culture teacher certificates issued prior and subsequent to June 30, 2006, shall be kept valid per subsection (7)(d)(iv) of this section.

(6) **TRIBAL ELIGIBILITY TO PARTICIPATE.** Any sovereign tribal government in the state of Washington shall be eligible to participate individually on a government-to-government basis in the pilot program.

(7) **PROGRAM REQUIREMENTS.**

(a) Each sovereign tribal government will appoint ((~~and certify~~)) individuals who meet the tribe's criteria for certification as instructors in the Washington state first peoples' language/culture program.

(b) Each sovereign tribal government's language/culture program shall submit to the ((~~professional educator standards board~~)) superintendent of public instruction the following information for each eligible language/culture teacher desiring to participate in the program:

(i) Written documentation that each designated teacher has completed the sovereign tribal government's language/culture teacher certification program;

(ii) Written documentation that each designated teacher has completed the background check required under RCW 28A.410.010 and WAC 181-79A-150 (1) and (2);

(iii) Written documentation that each designated teacher has completed a course on issues of abuse as required by RCW 28A.410.035 and WAC 181-79A-030(6);

(iv) Designation of which language(s), or dialects thereof, shall be listed on the Washington state first peoples' language/culture certificate;

(c) After meeting the requirements of ((~~subsection (8)~~))(b) of this ((~~section and receiving professional educator standards board approval~~)) subsection, the office of the superintendent of public instruction shall issue each teacher a

Washington state first peoples' language/culture teaching certificate;

(d) Tribes will individually determine the continuing education and first peoples' language/culture certificate renewal requirements for their tribal language endorsement. As such, each tribe will do the following. Notify the certification division of the office of superintendent of public instruction when:

(i) A teacher has met the requirements for renewal/continuing education; or

(ii) A teacher has not met the requirements for renewal/continuing to hold a first peoples' language/culture certificate; or

(iii) A tribe, at any time, withdraws a teacher certification for any reason.

(iv) Every five years, the tribes will provide documentation that the certificate holder continues to meet the requirements of (a) of this subsection;

(e) To support a positive impact on student learning, the local education agency in consultation with the sovereign tribal government's language/culture program is strongly encouraged to provide:

(i) A minimum of one contact hour per day, five days a week;

(ii) Access to the same students from year to year, to the extent possible, so that students who receive instruction during the first year of the ((~~project~~)) program can continue to receive instruction throughout the three years of the project;

(iii) A culturally sensitive environment as defined in subsection (4)(b) of this section; or

(iv) Some combination of (e)(i), (ii), and (iii) of this subsection which will allow a positive impact on student learning;

(f) To document a positive impact on student learning, the sovereign tribal government's language/culture program is encouraged to provide written documentation of how teaching the first peoples' language/culture has supported the promotion of continuous improvement of student achievement of the program learning goals as established by each sovereign tribal government's language/culture program;

(g) To support a greater understanding of the government-to-government relationship, ((~~the professional development and certification committee of the professional educator standards board and~~)) the professional educator standards board are strongly encouraged to make site visits and attend meetings with the local education agency and the sovereign tribal government's language/culture program;

(h) Nothing in this section shall be interpreted as precluding any eligible tribe in consultation with the state or in consultation with any local education agency from entering into an inter-governmental agreement or compact related to the teaching of first peoples' languages and cultures in order to address unique issues related to individual sovereign tribal governments.

(8) **ASSIGNMENT OF TEACHERS.**

(a) The holder of a Washington state first peoples' language/culture teacher certificate shall be deemed qualified to be a teacher of first peoples' language/culture with the ability to meet individual tribal competency criteria for language/culture, history, and English.

(b) A Washington state first peoples' language/culture teacher certificate qualifies the holder to accept a teaching position in a public school district.

(c) The holder of a Washington state first peoples' language/culture teacher certificate who does not also hold an initial ((~~or~~)), residency, continuing or professional certificate shall be assigned to teach only the language(s)/culture(s) designated on the certificate, and no other subject.

(d) The Washington state first peoples' language/culture teacher certificate is recognized by the state of Washington for as long as the teacher holds a valid language/culture certificate from a participating sovereign tribal government.

(e) A Washington state first peoples' language/culture teacher certificate will serve as the sole endorsement in first peoples' language/culture for anyone holding an initial ((~~or~~)), residency, continuing or professional certificate.

(9) **TRIBAL PREPARATION PROGRAM REVIEW.**

(a) Every five years, the joint committee of the professional educator standards board and the first peoples' language/culture committee shall prepare a report that includes:

(i) Reports from each participating tribe related to progress in meeting program objectives, with particular emphasis on positive impact on students;

(ii) Appraisal of the government-to-government relationship; and

(iii) Any relevant recommendations for continued program success.

(b) In order to promote understanding and collaboration, beginning with the second year of the program, the professional educator standards board may accept invitations from participating tribes to visit at least two tribal programs per year as identified and invited by the individual tribal programs.

(c) Annually, the professional educator standards board will commit to ensuring a professional educator standards board member(s) and staff attends the first peoples' language/culture committee meeting. The professional educator standards board will proactively identify opportunities to share information about the first peoples' language/culture program in order to support its growth and development.

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

WSR 07-08-056
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 29, 2007, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-146.

Title of Rule and Other Identifying Information: WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or Basic Food benefits?

Hearing Location(s): Blake Office Park East, Rose Room,

4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. 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, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.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 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or Basic Food benefits?, so we can allow recipients to choose whether to participate in Washington combined application project (WASHCAP) or apply for Basic Food benefits if their food benefits under Basic Food would be at least $40 more due to excess shelter costs or legally-obligated child support payments. The change also removes the high rent threshold as an opt out criterion, to be replaced by the benefit difference criterion, and corrects the date for the grandfathered rule consistent with a court order.

Reasons Supporting Proposal: The United States Department of Agriculture, Food and Nutrition Service approved an extension to the WASHCAP waiver from December 1, 2006, through November 30, 2011. A letter, dated January 17, 2007, from Arthur Foley, Director of Program Development Division, FNS, gives the department authorization to establish a food stamp benefit loss of $40 as the threshold at which households participating in WASHCAP may opt out and participate in the regular food stamp program. Additional changes are consistent with a Thurston County Superior Court Order from November 2006.

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

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

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, Implementation and Enforcement: Jenny Grayum, 1009 College Street S.E., Lacey, WA 98504, (360) 725-4583.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefits programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to… rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning for care or [of] dependents."

March 27, 2007
Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 06-21-011, filed 10/6/06, effective 11/6/06)

WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or Basic Food benefits? You can choose to have Basic Food benefits instead of WASHCAP food benefits when:

(1) ((~~Your nonutility shelter costs as defined in WAC 388-450-0190 (1)(a) through (d) are more than five hundred sixty-seven dollars a month;~~

~~(2)~~)) Your out-of-pocket medical expenses are more than thirty-five dollars a month; ((~~or~~

~~(3)~~)) (2) You chose to have Basic Food benefits instead of WASHCAP benefits prior to ((~~January 1~~)) April 25, 2005; or

(3) Your food benefits under Basic Food would be at least forty dollars more due to excess shelter costs under WAC 388-450-0190 (1)(a) through (e) or legally obligated child support payments.

WSR 07-08-086
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 2, 2007, 3:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-12-052.

Title of Rule and Other Identifying Information: The office of superintendent of public instruction (OSPI) is repealing chapter 392-172 WAC, which contain the rules for provision of special education services to special education students. The rules will be contained in new chapter 392-172A WAC, rules for the provision of special education services. This new chapter incorporates changes required as a result of the reauthorization of the federal Individuals with Disabilities Education Act of 2004 (IDEA 2004) and the federal regulations implementing Part B of IDEA. 2004 School district and other public agencies identify students who may be eligible for special education services and provide services to those students. The state is required to adopt state rules in conformance with Part B of IDEA 2004 in order to be eligible for federal funding.

Hearing Location(s): Educational Service District 101, 4202 South Regal Street, Spokane, WA 99223-7738, Room K-20 Room, on Wednesday, May 23, 2007, at 1:00 p.m.; at the Hilton Garden Inn, 401 East Yakima Avenue, Yakima, WA 98901, on Thursday, May 17, 2007, at 3:00 p.m.; and at the Office of Superintendent of Public Instruction, 600 Washington Street S.E., Brouillet Conference Room, 4th Floor,

Olympia, WA 98504-7200, on Monday, May 14, 2007, at 9:00 a.m.

Date of Intended Adoption: June 15, 2007.

Submit Written Comments to: Doug Gill, Special Education, 600 Washington Street S.E., Olympia, WA 98504, e-mail SpecEdWACComments@k12.wa.us, fax (360) 586-0247, by June 10, 2007.

Assistance for Persons with Disabilities: Contact Jessica Diaz by May 15, 2007, TTY (360) 586-0126 or (360) 725-6075.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule changes are to conform to the federal regulations that implement Part B of IDEA. The rule changes implement already existing statutory changes required as a result of the reauthorization of IDEA and reorders the regulations so that they more closely align with the federal regulation format. The new chapter contains additional definitions, including information regarding the cross-requirements of the IDEA and the Elementary and Secondary Education Act (ESEA); and contains changes including: Consent; unilateral private school placement and child find; nonpublic agency placement; additional related services; transition; evaluation procedures for specific learning disabilities; IEP content and procedural requirements; extendend [extended] school year services; discipline; state complaint procedures; due process hearing requests and procedures for appeals; other procedural safeguards changes; maintenance of effort for local education agencies; early intervening services; hearing procedures related to public agency eligibility for Part B funds; federal reimbursement for high need students under the state's safety fund; state monitoring requirements, including district performance as measured by the state's performance indicators; and disproportionality. The new chapter incorporates federal regulations, required state procedures for implementing Part B of IDEA and state requirements.

Statutory Authority for Adoption: RCW 28A.155.090 (7).

Statute Being Implemented: Chapter 28A.155 RCW.

Rule is necessary because of federal law, 20 U.S.C. Sections 1400 et. seq.

Name of Proponent: OSPI, special education, governmental.

Name of Agency Personnel Responsible for Drafting: Pam McPartland, Supervisor, Office of Superintendent of Public Instruction, (360) 725-6075; Implementation and Enforcement: Douglas H. Gill, Director, Office of Superintendent of Public Instruction, (360) 725-6075.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule changes affect governmental agency requirements for provision of special education services.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not one of the agencies required under RCW 34.05.328 to complete the significant legislative analysis. In addition, this rule incorporates requirements contained in 20 U.S.C. Secs. 1400 et. seq.; 34 C.F.R. Part 300, and chapter 28A.155 RCW.

April 2, 2007
Bob Harmon
Assistant Superintendent

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 392-172-010	Authority.
WAC 392-172-020	Purposes.
WAC 392-172-030	Students' rights to special education programs.
WAC 392-172-035	Definitions of "free appropriate public education," "adult student," "special education student," "parent," and "public agency."
WAC 392-172-040	Definitions of "evaluation," "reevaluation," "consent," "day" and "native language."
WAC 392-172-045	Definition of "special education" and other terms.
WAC 392-172-055	Related services.
WAC 392-172-065	Definition—Supplementary aids and services.
WAC 392-172-070	Definition—Assistive technology device.
WAC 392-172-073	Definition—Assistive technology service.
WAC 392-172-075	Availability of assistive technology.
WAC 392-172-080	Proper functioning of hearing aids.
WAC 392-172-100	Child find.
WAC 392-172-102	Referrals.
WAC 392-172-104	Referral procedures—Time line.
WAC 392-172-105	Parent participation in meetings and notice.
WAC 392-172-106	General areas of evaluation.
WAC 392-172-108	Evaluation procedures.
WAC 392-172-10900	Determination of needed evaluation data for an initial evaluation.
WAC 392-172-10905	Evaluation report and documentation of determination of eligibility.

WAC 392-172-111	Determination of eligibility and parental notification.
WAC 392-172-114	Definition and eligibility criteria for developmentally delayed.
WAC 392-172-116	Areas of developmental delay—Definitions.
WAC 392-172-118	Definition and eligibility for emotionally/behaviorally disabled.
WAC 392-172-120	Definition and eligibility for communication disordered.
WAC 392-172-122	Definition and eligibility for orthopedically impaired.
WAC 392-172-124	Definition and eligibility for health impaired.
WAC 392-172-126	Definition and eligibility for specific learning disability.
WAC 392-172-128	Specific learning disability—Evaluation procedures.
WAC 392-172-130	Discrepancy tables for determining severe discrepancy under WAC 392-172-132.
WAC 392-172-132	Method for documenting severe discrepancy.
WAC 392-172-134	Definition and eligibility for mental retardation.
WAC 392-172-136	Definition and eligibility for multiple disabilities.
WAC 392-172-138	Definition and eligibility for deafness.
WAC 392-172-140	Definition and eligibility criteria for hearing impairment.
WAC 392-172-142	Definition and eligibility for visually impaired/blindness.
WAC 392-172-144	Definition and eligibility for deaf/blindness.
WAC 392-172-146	Definition and eligibility for autism.
WAC 392-172-148	Definition and eligibility for traumatic brain injury.
WAC 392-172-150	Independent educational evaluation.
WAC 392-172-153	IEP team members.
WAC 392-172-156	IEP meetings.
WAC 392-172-15700	Parent and general education teacher participation in IEP meetings.
WAC 392-172-15705	Parent involvement in placement decisions.
WAC 392-172-158	Individualized education program—Implementation.
WAC 392-172-159	Development, review, and revision of individualized education program-consideration of special factors.
WAC 392-172-160	Individualized education program.
WAC 392-172-162	Physical education required.
WAC 392-172-163	Extended school year services.
WAC 392-172-164	Parent notice of individualized education program meeting—Transition needs or services.
WAC 392-172-166	Transition services, student participation.
WAC 392-172-170	Initial service delivery—Parental consent for initial placement—Notice required.
WAC 392-172-172	Least restrictive environment.
WAC 392-172-174	Continuum of alternative service delivery options.
WAC 392-172-176	Transition to preschool program.
WAC 392-172-180	Procedures for establishing educational placement.
WAC 392-172-182	Reevaluation—Requirement.
WAC 392-172-185	Reevaluation—Notice and consent requirements.
WAC 392-172-186	Reevaluation—Review of existing data and need for additional data.
WAC 392-172-190	Reevaluation—Notice of results.
WAC 392-172-200	Staff qualifications for special education funding.
WAC 392-172-202	Emergency—Temporary out-of-endorsement assignment.
WAC 392-172-204	Transportation.
WAC 392-172-208	Comparable facilities.
WAC 392-172-210	Program length.
WAC 392-172-212	Health or safety standards.
WAC 392-172-218	Home/hospital instruction.
WAC 392-172-219	Applicability.

WAC 392-172-360	Final decision—Appeal to court of law.
WAC 392-172-362	Attorneys' fees.
WAC 392-172-364	Student's status during hearing and judicial review processes.
WAC 392-172-370	Disciplinary exclusion—Purpose.
WAC 392-172-371	Disciplinary exclusion—Definitions.
WAC 392-172-373	Change of placement for disciplinary removals.
WAC 392-172-37500	Removals—Ten school days or less.
WAC 392-172-37505	Required services.
WAC 392-172-37510	Change of placement—Removals for weapons or drugs.
WAC 392-172-377	Functional behavioral assessment and intervention plan.
WAC 392-172-379	Dangerous behavior—Authority of hearing officer.
WAC 392-172-381	Determination of interim alternative educational setting.
WAC 392-172-38300	Manifestation determination review requirements.
WAC 392-172-38305	Procedures for conducting a manifestation determination.
WAC 392-172-38310	Determination that behavior was not manifestation of disability.
WAC 392-172-38400	Parent appeal.
WAC 392-172-38405	Placement during appeals.
WAC 392-172-38410	Protections for students not yet eligible for special education and related services.
WAC 392-172-38415	Expedited due process hearings.
WAC 392-172-385	Referral to and action by law enforcement and judicial authorities.
WAC 392-172-388	Aversive interventions.
WAC 392-172-390	Aversive interventions—Definition.
WAC 392-172-392	Aversive interventions—Prohibited forms.
WAC 392-172-394	Aversive interventions—Other forms—Conditions.
WAC 392-172-396	Aversive interventions—Individualized education program requirements.
WAC 392-172-400	Definition of "educational records" as used in records rules.
WAC 392-172-402	Definitions—"Destruction," "participating agency" and "personally identifiable."
WAC 392-172-404	Notice to parents.
WAC 392-172-406	Opportunity to examine records.
WAC 392-172-408	Access rights.
WAC 392-172-410	Record of access.
WAC 392-172-412	Records on more than one student.
WAC 392-172-414	List of types and locations of information.
WAC 392-172-416	Fees.
WAC 392-172-418	Amendment of records at the request of a parent or adult student.
WAC 392-172-420	Hearing procedures regarding records.
WAC 392-172-422	Consent.
WAC 392-172-424	Safeguards.
WAC 392-172-426	Destruction of information.
WAC 392-172-500	Advisory council.
WAC 392-172-502	Interagency agreements.
WAC 392-172-50300	Special education students covered by public insurance.
WAC 392-172-50305	Special education students covered by private insurance.
WAC 392-172-504	Monitoring.
WAC 392-172-506	State use and allocation of Part B funds.
WAC 392-172-507	State level nonsupplanting and maintenance of effort.
WAC 392-172-508	Definition of "unlawfully received or expended funds."
WAC 392-172-510	Child count procedures.
WAC 392-172-511	Disproportionality.
WAC 392-172-512	Audits.
WAC 392-172-514	Fund withholding.

WAC 392-172-516	Recovery of funds.
WAC 392-172-518	Fund withholdings to enforce parent appeal decisions.
WAC 392-172-520	Implementation by state of special education students placed or referred by school districts or other public agencies.
WAC 392-172-522	Students in public or private institutions.
WAC 392-172-524	Technical assistance training and monitoring activities.
WAC 392-172-526	State responsibility.
WAC 392-172-550	Comprehensive system of personnel development.
WAC 392-172-552	Definitions.
WAC 392-172-553	Adequate supply of qualified personnel.
WAC 392-172-559	Improvement strategies.
WAC 392-172-561	School district implementation of comprehensive system of personnel development.
WAC 392-172-572	Personnel standards.
WAC 392-172-574	Professional standards review.
WAC 392-172-576	Personnel shortages—Requirement.
WAC 392-172-57700	Performance goals and indicators.
WAC 392-172-57800	Participation in assessments and reporting results.
WAC 392-172-57900	Reporting on suspension and expulsion rates.
WAC 392-172-580	School district eligibility—Requirements.
WAC 392-172-582	Collaborative requests.
WAC 392-172-583	Exception for prior policies and procedures.
WAC 392-172-584	Review and amendment process.
WAC 392-172-585	Amendments to policies and procedures.
WAC 392-172-586	Notification of grant award.
WAC 392-172-588	Availability of information and public participation.
WAC 392-172-590	Denial of requests—Opportunity for hearing.
WAC 392-172-595	Records related to grant funds.
WAC 392-172-600	School district or other public agency use of amounts.
WAC 392-172-605	School district or other public agency use of federal funds for preschool children.
WAC 392-172-610	School district or other public agency maintenance of effort.
WAC 392-172-615	School district or other public agency exceptions to maintenance of effort.
WAC 392-172-620	School district or other public agency—Treatment of federal funds in certain fiscal years.
WAC 392-172-625	School-wide programs under Title I of the ESEA.
WAC 392-172-630	School district or other public agency permissive use of funds.
WAC 392-172-635	School district or other public agency coordinated services system.
WAC 392-172-640	School-based improvement plan.
WAC 392-172-645	Plan requirements.
WAC 392-172-650	School district responsibilities.
WAC 392-172-655	Limitation.
WAC 392-172-660	Additional requirements.
WAC 392-172-665	Extension of plan.

Chapter 392-172A WAC

RULES FOR THE PROVISION OF SPECIAL EDUCATION

GENERAL

NEW SECTION

WAC 392-172A-01000 Authority. The state authority for this chapter is RCW 28A.155.090(7). This authority enables the superintendent of public instruction to promulgate rules and regulations to implement chapter 28A.155 RCW. This authority is supplemented by RCW 28A.300.070 which authorizes the superintendent of public instruction to receive federal funds in accordance with the provisions of federal law. Federal authority for this chapter is 20 U.S.C. Sec. 1400 et seq., the Individuals with Disabilities Education Act.

NEW SECTION

WAC 392-172A-01005 Purposes. The purposes of this chapter are to:

(1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.;

(2) Ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(3) Ensure that the rights of students eligible for special education and their parents are protected;

(4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education; and

(5) Assess and ensure the effectiveness of efforts to educate students eligible for special education.

NEW SECTION

WAC 392-172A-01010 Applicability. (1)(a) The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of students eligible for special education, including:

(i) The OSPI to the extent that it receives payments under Part B and exercises supervisory authority over the provision of the delivery of special education services by school districts and other public agencies;

(ii) School districts, and educational service districts; and

(iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, state schools for the deaf and blind established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates established and operated pursuant to chapter 28A.193 RCW; and

(b) Are binding on each public agency in the state that provides special education and related services to students eligible for special education, regardless of whether that agency is receiving funds under Part B of the act.

(2) Each school district or public agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education who are:

(a) Referred to or placed in private schools and facilities by that public agency under the provisions of WAC 392-172A-04070 through 392-172A-04105; or

(b) Placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

DEFINITIONS

NEW SECTION

WAC 392-172A-01020 Act. Act means Part B of the Individuals With Disabilities Education Act, as amended.

NEW SECTION

WAC 392-172A-01025 Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device.

NEW SECTION

WAC 392-172A-01030 Assistive technology service. Assistive technology service means any service that directly assists a student eligible for special education in the selection, acquisition, or use of an assistive technology device. The term includes:

(1) The evaluation of the needs of a student, including a functional evaluation of the student in the student's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students eligible for special education;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a student eligible for special education or, if appropriate, that student's family; and

(6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

NEW SECTION

WAC 392-172A-01035 Child with a disability or student eligible for special education. (1)(a) Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: Mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a development delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in subsec-

tion (1)(a) of this section, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that there are other federal and state civil rights laws and rules that apply to students who have a disability regardless of the student's eligibility for special education and related services and such services must be provided in accordance with those laws.

(c) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in this definition of a student eligible for special education are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," may also use any other eligibility category prior to the student turning nine.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those children under three years of age who:

(A) Meet the eligibility criteria established in Part C of IDEA; or

(B) Qualify for one of the other eligibility categories specified in this chapter; and

(C) Are in need of early intervention services under Part C of IDEA. Children who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

NEW SECTION

WAC 392-172A-01040 Consent. (1) Consent means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive. This means that it does not undo an action that occurred after consent was given and before the consent was revoked.

NEW SECTION

WAC 392-172A-01045 Core academic subjects. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

NEW SECTION

WAC 392-172A-01050 Day—Business day—School day. (1) Day means calendar day unless otherwise indicated as business day or school day.

(2) Business day means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of a business day, in other sections of this chapter.

(3) School day means any day, including a partial day that students are in attendance at school for instructional purposes, including students with and without disabilities.

NEW SECTION

WAC 392-172A-01055 Educational service district. Educational service district means a regional public multiservice agency:

(1) Authorized under chapter 28A.310 RCW to develop, manage, and provide services or programs to students eligible for special education within school districts.

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools.

NEW SECTION

WAC 392-172A-01060 Elementary or secondary school. Elementary or secondary school means a public school, a nonprofit institutional day or residential school that provides education to students in any combination of kindergarten through twelfth grade. The definition does not include any education beyond grade twelve.

NEW SECTION

WAC 392-172A-01065 Equipment. Equipment means:

(1) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(2) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

NEW SECTION

WAC 392-172A-01070 Evaluation. Evaluation means procedures used in accordance with WAC 392-172A-03005 through 392-172A-03080 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.

NEW SECTION

WAC 392-172A-01075 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in a school district during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

(1) Amounts received:

(a) Under Part B of the act;

(b) Under Part A of Title I of the ESEA; and

(c) Under Parts A and B of Title III of the ESEA; and

(2) Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subsection (1) of this section, but excluding any amounts for capital outlay or debt service.

NEW SECTION

WAC 392-172A-01080 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the OSPI, and the act;

(3) Include an appropriate preschool, elementary school, or secondary school education in the state; and

(4) Are provided in conformity with an individualized education program (IEP) that meets the requirements of WAC 392-172A-03090 through 392-172A-03135.

NEW SECTION

WAC 392-172A-01085 Highly qualified special education teachers. (1)(a) For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56; and in addition, to meet the definition of highly qualified, public elementary school or secondary school special education teachers must have a bachelors degree and obtained full certification as a teacher and a special education endorsement, which can include certification obtained through alternative routes to certification, or a continuing certificate.

(b) A teacher does not meet the highly qualified definition if he or she is teaching pursuant to a temporary out-of-endorsement assignment or are teaching special education with a preendorsement waiver.

(c) A teacher will be considered to meet the highly qualified standard in (a) of this subsection if that teacher is participating in an alternative route to special education certification program under which the teacher:

(i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(iv) Demonstrates satisfactory progress toward full certification according to the state professional standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(2) Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the state certification requirements and has an endorsement in special education, or holds a continuing certificate.

(3) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to students who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(b) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school

teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, based on the state professional standards board's certification requirements.

(4) Requirements for special education teachers teaching multiple subjects. Subject to subsection (5) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to students eligible for special education, highly qualified means that the teacher may:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 (b) or (c);

(b) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(c) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(5) Teachers may meet highly qualified standards through use of the state's HOUSSE which meets all the requirements for a HOUSSE for a general education teacher.

(6) Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular school district employee to be highly qualified, or to prevent a parent from filing a state citizen complaint under WAC 392-172A-05025 through 392-172A-05040 about staff qualifications with the OSPI.

(7)(a) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(b) A certified general education teacher who subsequently receives a special education endorsement is a new special education teacher when first hired as a special education teacher.

(8) Teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by school districts to provide equitable services to parentally placed private school students eligible for special education are not required to meet highly qualified standards addressed in this section. Teachers in nonpublic agencies are required to meet the certification and endorsement standards established by the professional educators standards board in Title 181 WAC.

NEW SECTION

WAC 392-172A-01090 Homeless children. Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. Sec. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. Sec. 11431 et seq.

NEW SECTION

WAC 392-172A-01095 Include. Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

NEW SECTION

WAC 392-172A-01100 Individualized education program. Individualized education program or IEP means a written statement of an educational program for a student eligible for special education that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 392-172A-03135.

NEW SECTION

WAC 392-172A-01105 Individualized education program team. Individualized education program team or IEP team means a group of individuals described in WAC 392-172A-03095, responsible for developing, reviewing, or revising an IEP.

NEW SECTION

WAC 392-172A-01110 Limited English proficient. Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

NEW SECTION

WAC 392-172A-01115 Local educational agency or school district. (1) Local educational agency or school district means a public board of education with administrative control and direction of a public kindergarten through schools in a school district.

(2) The term includes educational service districts (ESDs); and any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including the school for the deaf and the school for the blind.

(3) For the purposes of this chapter, use of the term school district includes public agencies responsible for the provision of special education and related services.

NEW SECTION

WAC 392-172A-01120 Native language. (1) Native language, when used with respect to an individual who is limited English proficient, means the following:

(a) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in (b) of this subsection.

(b) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.

(2) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

NEW SECTION

WAC 392-172A-01125 Parent. (1) Parent means:

(a) A biological or adoptive parent of a child;

(b) A foster parent;

(c) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the student, but not the state, if the student is a ward of the state;

(d) An individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the student lives, or an individual who is legally responsible for the student's welfare; or

(e) A surrogate parent who has been appointed in accordance with WAC 392-172A-05130.

(2)(a) Except as provided in (b) of this subsection, if the biological or adoptive parent is attempting to act as the parent under this chapter, and when more than one party meets the qualifications to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the student.

(b) If a judicial decree or order identifies a specific person or persons under subsection (1)(a) through (d) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this section.

(3) The use of the term, "parent," includes adult students whose rights have transferred to them pursuant to WAC 392-172A-05135.

NEW SECTION

WAC 392-172A-01130 Parent training and information center. Parent training and information center means a center assisted under sections 671 or 672 of the act.

NEW SECTION

WAC 392-172A-01135 Part-time enrollment. Part-time enrollment means a student eligible for special education who is home schooled or attends private school, and who chooses to enroll in his or her resident school district pursuant to RCW 28A.250.350 and chapter 392-134 WAC.

NEW SECTION

WAC 392-172A-01140 Personally identifiable. Personally identifiable means information that contains:

(1) The name of the student, the student's parent, or other family member;

(2) The address of the student;

(3) A personal identifier, such as the student's Social Security number or student number; or

(4) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

NEW SECTION

WAC 392-172A-01145 Private school. Private school means a nonpublic school or school district conducting a program consisting of kindergarten and at least grade one, or a program of any combination of grades one through twelve and meeting minimum state board private school approval standards as outlined in chapter 180-90 WAC.

NEW SECTION

WAC 392-172A-01150 Public agency. Public agency includes school districts, ESDs, state operated programs identified in WAC 392-172A-02000 and any other political subdivisions of the state that are responsible for providing special education or related services or both to students eligible for special education.

NEW SECTION

WAC 392-172A-01155 Related services. (1) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(2) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. Nothing in this subsection:

(a) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP team to be necessary for the student to receive FAPE;

(b) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(c) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(3) Individual related services terms used in this definition are defined as follows:

(a) Audiology includes:

(i) Identification of students with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of students, parents, and teachers regarding hearing loss; and

(vi) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(b) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(c) Early identification and assessment of disabilities in students means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(d) Interpreting services includes:

(i) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for students who are deaf or hard of hearing; and

(ii) Special interpreting services for students who are deaf-blind.

(e) Medical services means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

(f) Occupational therapy means services provided by a qualified occupational therapist and includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing through early intervention, initial or further impairment or loss of function.

(g) Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and can include teaching the student:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(i) Physical therapy means services provided by a qualified physical therapist.

(j) Psychological services includes:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(k) Recreation includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sec. 701 et seq.

(m) School health services and school nurse services means health services that are designed to enable a student eligible for special education to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(n) Social work services in schools includes:

(i) Preparing a social or developmental history on a student eligible for special education;

(ii) Group and individual counseling with the student and family;

(iii) Working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(o) Speech-language pathology services includes:

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(p) Transportation includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student eligible for special education.

NEW SECTION

WAC 392-172A-01160 Residency or resident student. Residency or resident student has the same meaning as is defined in WAC 392-137-115.

NEW SECTION

WAC 392-172A-01165 Scientifically based research. Scientifically based research:

(1) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(2) Includes research that:

(a) Employs systematic, empirical methods that draw on observation or experiment;

(b) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(c) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(d) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random assignment experiments, or other designs to the extent that those designs contain within condition or across condition controls;

(e) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(f) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

NEW SECTION

WAC 392-172A-01170 Services plan. Services plan means a written statement that describes the special education and related services the school will provide to a parentally placed student eligible for special education who is enrolled in a private school who has been designated to receive services. The plan will include the location of the services and any transportation necessary. The plan will be developed using the procedures for development and implementation of an IEP.

NEW SECTION

WAC 392-172A-01175 Special education. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(2) Special education includes:

(a) The provision of speech-language pathology, occupational therapy, audiology, and physical therapy service as defined in WAC 392-172A-01155 when it meets the criteria in WAC 392-172A-01035 (1)(c);

(b) Travel training; and

(c) Vocational education.

(3) The terms in this section are defined as follows:

(a) At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

(b) Physical education means the development of:

(i) Physical and motor fitness;

(ii) Fundamental motor skills and patterns; and

(iii) Skills in aquatics, dance, and individual and group games and sports including intramural and lifetime sports; and

(iv) Includes special physical education, adapted physical education, movement education, and motor development.

(c) Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction:

(i) To address the unique needs of the student that result from the student's disability; and

(ii) To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

(d) Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other eligible students who require this instruction, to enable them to:

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(e) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

NEW SECTION

WAC 392-172A-01180 State educational agency. State educational agency or SEA means the office of superintendent of public instruction (OSPI).

NEW SECTION

WAC 392-172A-01185 Supplementary aids and services. The term "supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements in WAC 392-172A-02050 through 392-172A-02065.

NEW SECTION

WAC 392-172A-01190 Transition services. (1) Transition services means a coordinated set of activities for a student eligible for special education that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes:

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(2) Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education to benefit from special education.

NEW SECTION

WAC 392-172A-01195 Universal design. The term universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. Sec. 3002. It means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

NEW SECTION

WAC 392-172A-01200 Ward of the state. Ward of the state means a student within the jurisdiction of the department of social and health services, children's administration through shelter care, dependency or other proceedings to protect abused and neglected children, except that it does not include a foster child who has a foster parent who meets the definition of a parent in WAC 392-172A-01125.

FAPE REQUIREMENTS

NEW SECTION

WAC 392-172A-02000 Student's rights to a free appropriate public education. (1) Each school district, other public agency, and residential or day schools operated pursuant to chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education between the age of three and twenty-one years, a free appropriate public education program (FAPE). The right to a FAPE includes special education for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education; or

(b) The special education student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The special education student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year.

NEW SECTION

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1) A student eligible for special education residing in a state adult correctional facility is eligible for special education services pursuant to chapter 28A.193 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapter 28A.193 RCW.

(2)(a) Students determined eligible for special education services and incarcerated in other adult correctional facilities will be provided special education and related services.

(b) Subsection (2)(a) of this section does not apply to students aged eighteen to twenty-one if they:

(i) Were not actually identified as being a student eligible for special education; and

(ii) Did not have an IEP; unless the student:

(A) Had been identified as a student eligible for special education and had received services in accordance with an IEP, but who left school prior to incarceration; or

(B) Did not have an IEP in his or her last education setting, but who had actually been identified as a student eligible for special education.

NEW SECTION

WAC 392-172A-02010 Methods of payment for FAPE. (1) If the delivery of services in a public or private residential educational program is necessary to provide special education services to an eligible student, the program, including nonmedical care and room and board, must be at no cost to the parents of the student. Nothing in this chapter limits the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a FAPE to students eligible for special education.

(2) Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to students eligible for special education.

(3) Consistent with the IEP provisions in this chapter, the OSPI shall ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

NEW SECTION

WAC 392-172A-02015 Availability of assistive technology. (1) Each school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a special education student if required as part of the student's:

(a) Special education;

(b) Related services; or

(c) Supplementary aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

NEW SECTION

WAC 392-172A-02020 Extended school year services. (1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education:

(a) Beyond the normal school year;

(b) In accordance with the student's IEP; and

(c) Are provided at no cost to the parents of the student.

(2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.

(3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.

(4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

(5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

(6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.

(7) For the purposes of subsection (6) of this section:

(a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;

(b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

NEW SECTION

WAC 392-172A-02025 Nonacademic services. (1) Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students eligible for special education an equal opportunity for participation in those services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

NEW SECTION

WAC 392-172A-02030 Physical education. (1) Physical education services, specially designed if necessary, must be made available to every student receiving FAPE.

(2) Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless:

(a) The student is enrolled full time in a separate facility; or

(b) The student needs specially designed physical education, as described in the student's individualized education program.

(3) If specially designed physical education is required in a student's individualized education program, the school dis-

trict shall ensure that the public agency responsible for the education of that student provides the service directly, or makes arrangements for it to be provided through other public or private programs.

(4) The school district shall ensure that any student eligible for special education who is enrolled in a separate facility will be provided with appropriate physical education services.

NEW SECTION

WAC 392-172A-02035 Program options. Each school district shall ensure that its students eligible for special education have available to them the variety of educational programs and services available to nondisabled students in the school district's area, including art, music, industrial arts, consumer and homemaking education, and vocational education.

NEW SECTION

WAC 392-172A-02040 Child find. (1) The school district shall conduct child find activities calculated to reach students aged three through twenty-one for the purpose of locating, evaluating and identifying students with a suspected disability, regardless of the severity of their disability. The child find activities shall extend to students residing in the district and students attending private elementary or secondary schools located within the district.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade.

(3) The local school district shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include but are not limited to activities such as:

(a) Written notification to all parents of students in the district's jurisdiction regarding access to and the use of its child find system;

(b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of special education programs;

(c) Offering preschool developmental screening;

(d) Conducting local media informational campaigns;

(e) Coordinating distribution of information with other child find programs within public and private agencies; and

(f) Internal district review of students such as screening district-wide test results, in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

NEW SECTION

WAC 392-172A-02045 Routine checking of hearing aids and external components of surgically implanted medical devices. (1) Hearing aids. Each school district must ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.

(2) External components of surgically implanted medical devices. Each school district must ensure that the external components of surgically implanted medical devices are functioning properly.

(3) A school district is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

LEAST RESTRICTIVE ENVIRONMENT

NEW SECTION

WAC 392-172A-02050 Least restrictive environment. Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

(2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

NEW SECTION

WAC 392-172A-02055 Continuum of alternative placements. (1) Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.

(2) The continuum required in this section must:

(a) Include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and

(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

NEW SECTION

WAC 392-172A-02060 Placements. (1) When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(2) The selection of the appropriate placement for each student shall be based upon:

(a) The student's individualized education program;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

(4) A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum.

(5) Notwithstanding subsections (1) through (4) of this section, an IEP team, or other team making placement decisions for a student convicted as an adult and receiving educational services in an adult correctional facility, may modify the student's placement if there is a demonstrated bona fide security or compelling penological interest that cannot otherwise be accommodated.

NEW SECTION

WAC 392-172A-02065 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, each public agency must ensure that each student eligible for special education participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency must ensure that each student eligible for special education has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

NEW SECTION

WAC 392-172A-02070 Students in public or private institutions. The state shall make arrangements with public and private institutions as may be necessary to ensure that the least restrictive environment provisions in this chapter are effectively implemented.

OTHER REQUIREMENTS

NEW SECTION

WAC 392-172A-02075 Prohibition on mandatory medication. (1) School district personnel are prohibited from requiring parents to obtain a prescription for substances identified under Schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. Sec. 812 (c)) for a student as a condition of attending school, receiving an evaluation, or receiving special education services.

(2) Nothing in subsection (1) of this section shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

NEW SECTION

WAC 392-172A-02080 Transition of children from the Part C program to preschool programs. Each school district shall have policies and procedures for transition to preschool programs to ensure that:

(1) Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with the Part C requirements.

(2) Each school district will participate in transition planning conferences arranged by the designated lead agency for Part C in the state. A transition planning conference will be convened for each student who may be eligible for preschool services at least ninety days prior to the student's third birthday.

(3) By the third birthday of a student described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172A-02000(1).

NEW SECTION

WAC 392-172A-02085 Homeless children. In carrying out the provision of this chapter, school districts shall ensure that the rights of homeless children and youth are protected consistent with the requirements under the McKinney-Vento Homeless Assistance Act, as amended.

NEW SECTION

WAC 392-172A-02090 Personnel qualifications. (1) In addition to the highly qualified requirements for teachers, pursuant to WAC 392-172A-01085, all school district personnel providing special education services shall meet the following qualifications:

(a) All employees shall hold such credentials, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement of this subsection (1), all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special education shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) Other certificated related services personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

(d) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early childhood special education assignment must be given first to employees having early childhood special education endorsement.

(e) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

(f) Paraprofessional staff and aides shall present evidence of skills and knowledge necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate, as provided in (g) of this subsection. Paraprofessional staff in Title One school-wide programs shall meet ESEA standards for paraprofessionals. Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.-310.

(g) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must ensure that they take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain highly qualified teachers, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet state board criteria pursuant to WAC 181-81-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course work which are applicable to an endorsement in special education. The following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(D) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 181-16-195.

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of highly qualified.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee be highly qualified, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

NEW SECTION

WAC 392-172A-02095 Transportation. (1) Methods. Transportation options for students eligible for special education shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents. Board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of a spe-

cial education student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of a special education student shall be in accordance with rules of the superintendent of public instruction governing transportation by public school districts and other public agencies.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district or other public agency superintendent or designee.

(4) Special equipment. Special equipment may include lifts, wheelchair holders, restraints, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the superintendent of public instruction.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(7) Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district or other public agency pursuant to an interagency agreement—i.e., an appropriate placement in the least restrictive environment.

NEW SECTION

WAC 392-172A-02100 Home/hospital instruction. Home or hospital instruction shall be provided to both special education students and other students who are unable to attend school for an estimated period of four weeks or more because of physical disability or illness. As conditions to such services, the parent(s) of a student or the adult student shall request the services and provide a written statement to the school district or other public agency from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not otherwise disabled pursuant to WAC 392-172-035 who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a special education student for the purposes of generating state or federal special education funds. A school district or other public agency shall not pay the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to special education students. It shall be limited to placement as is deemed necessary to provide temporary intervention as a result of a physical disability or illness.

EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

Consent

NEW SECTION

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (2) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond or refuses to consent to services the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for

the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the public agency requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the due process procedures to override consent or mediation to obtain an agreement from the parent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the public agency, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

EVALUATIONS AND REEVALUATIONS

NEW SECTION

WAC 392-172A-03005 Referral and timelines for evaluations and reevaluations. (1) A parent of a child, a school district, or a public agency may initiate a request for an initial evaluation to determine if the student is eligible for special education.

(2) The school district must document the referral and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent, school district or other public agency; and

(c) Within twenty-five school days after receipt of the referral, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent(s); or

(b) Thirty-five school days after the date the refusal of the parent is obtained by agreement through mediation, or overridden by due process procedures; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) A student enrolls in another school after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

NEW SECTION

WAC 392-172A-03010 Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

NEW SECTION

WAC 392-172A-03015 Reevaluation timelines. (1) A school district must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when:

(a) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation.

(2) A reevaluation conducted under subsection (1) of this section:

(a) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(3) Reevaluations shall be completed within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent(s);

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, within the time frames in subsection (2) of this section.

NEW SECTION

WAC 392-172A-03020 Evaluation procedures. (1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the public agency must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one public agency to another public agency in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

NEW SECTION

WAC 392-172A-03025 Review of existing data for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the

special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (1) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the public agency must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

NEW SECTION

WAC 392-172A-03030 Evaluations before change in eligibility. (1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

NEW SECTION

WAC 392-172A-03035 Evaluation report. (1) The evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education and related services needed by the student;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

NEW SECTION

WAC 392-172A-03040 Determination of eligibility. (1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's essential academic learning requirements;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

ADDITIONAL PROCEDURES FOR IDENTIFYING STUDENTS WITH SPECIFIC LEARNING DISABILITIES

NEW SECTION

WAC 392-172A-03045 District procedures for specific learning disabilities. In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for

the identification of students with specific learning disabilities which may include the use of:

(1) A severe discrepancy between intellectual ability and achievement; or

(2) A process based on the student's response to scientific, research-based intervention; or

(3) A combination of both.

NEW SECTION

WAC 392-172A-03050 Evaluation group. The determination of whether the student is eligible for special education services in the specific learning disability category shall be made by the student's parent and a group of qualified professionals which must include:

(1) The student's general education classroom teacher; or

(2) If the student does not have a general education classroom teacher, a general education classroom teacher qualified to teach a student of his or her age; or

(3) For a student of less than school age, an individual qualified to teach a student of his or her age; and

(4) At least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher.

NEW SECTION

WAC 392-172A-03055 Specific learning disability—Determination. The group described in WAC 392-172A-03050 may determine that a student has a specific learning disability if:

(1) The student does not achieve adequately for the student's age or meet essential academic learning requirements when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:

(a) Oral expression.

(b) Listening comprehension.

(c) Written expression.

(d) Basic reading skill.

(e) Reading fluency skills.

(f) Reading comprehension.

(g) Mathematics calculation.

(h) Mathematics problem solving.

(2)(a) The student does not make sufficient progress to meet age or essential academic learning requirements in one or more of the areas identified in subsection (1) of this section when using a process based on the student's response to scientific, research-based intervention; or

(b) The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, essential academic learning requirements, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data; or

(c) The group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas identified in subsection (1) of this section; and

(3) The group determines that its findings under subsection (2)(a), (b), or (c) of this section are not primarily the result of:

(a) A visual, hearing, or motor disability;

(b) Mental retardation;

(c) Emotional disturbance;

(d) Cultural factors;

(e) Environmental or economic disadvantage; or

(f) Limited English proficiency.

(4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider:

(a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(5) The district or other public agency must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the time frames for an initial evaluation:

(a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection (4)(a) and (b) of this section; and

(b) Whenever a student is referred for an evaluation.

NEW SECTION

WAC 392-172A-03060 Process based on a student's response to scientific research-based intervention. (1) School districts using a process based on a student's response to scientific, research-based interventions to determine if a student has a specific learning disability shall adopt policies and procedures to ensure that such process includes the following elements:

(a) Universal screening and/or benchmarking at fixed intervals at least two or three times throughout the school year;

(b) A high quality core curriculum that sufficiently meets the instructional needs of the majority of the students;

(c) Scientific research-based interventions are identified for use with students needing additional instruction;

(d) Scientific research-based interventions used with a student are appropriate for the student's identified need and are implemented with fidelity;

(e) A multitiered model is developed for delivering both the core curriculum and strategic and intensive scientific research-based interventions in the general education setting;

(f) Frequent monitoring of individual student progress occurs in accordance with the constructs of the multitiered delivery system implemented in the school consistent with the intervention and tier at which it is being applied; and

(g) Decision making is based upon student centered data including the use of curriculum based measures, available

standardized assessment data, intensive interventions, and instructional performance level.

(2) Such policies and procedures outlined in subsection (1) of this section shall be designed so that districts can specifically establish that:

(a) The student's grade level placement in the general education core curriculum provided the student the best opportunity to increase her or his rate of learning;

(b) Two or more intensive scientific research-based interventions, identified to allow the student to progress toward his or her improvement targets, were implemented with fidelity and for a sufficient duration to establish that the student's rate of learning using intensive scientific research-based interventions in the general education setting, in addition to or in place of the core curriculum, did not increase or allow the student to reach the targets identified for the student;

(c) The duration of the strategic and intensive scientific research-based interventions that were implemented was long enough to gather at least four data points for each of the interventions through progress monitoring to determine the effectiveness of the interventions.

(3) OSPI has developed guidelines for using response to intervention to assist districts in developing procedures.

NEW SECTION

WAC 392-172A-03065 Use of discrepancy tables for determining severe discrepancy. (1) If the school district uses a severe discrepancy model, it will use the OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement.

(2) The tables are developed on the basis of a regressed standard score discrepancy method that includes:

(a) The reliability coefficient of the intellectual ability test;

(b) The reliability coefficient of the academic achievement test; and

(c) An appropriate correlation between the intellectual ability and the academic achievement tests.

(3) The regressed standard score discrepancy method is applied at a criterion level of 1.55.

NEW SECTION

WAC 392-172A-03070 Method for documenting severe discrepancy. (1) For the purposes of applying the severe discrepancy tables, the following scores shall be used:

(a) A total or full scale intellectual ability score;

(b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and

(c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the areas addressed in WAC 392-172A-03055(1) shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above.

(2) Where the evaluation results do not appear to accurately represent the student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group, described in WAC 392-172A-03050, may apply professional judgment in order to determine the presence of a specific learning disability. Data obtained from formal assessments, reviewing of existing data, formal assessments of student progress, observation of the student, and information gathered from all other evaluation requirements for students being identified for a specific learning disability must be used when applying professional judgment to determine if a severe discrepancy exists. When applying professional judgment, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy, including a description of all data used to make the determination through the use of professional judgment.

NEW SECTION

WAC 392-172A-03075 Observation of students suspected of having a specific learning disability. (1) School districts must ensure that a student who is suspected of having a specific learning disability is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty.

(2) The evaluation group must:

(a) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or

(b) Have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained.

(3) In the case of a student of less than school age or out of school, a group member must observe the student in a learning environment appropriate for that student.

NEW SECTION

WAC 392-172A-03080 Specific documentation for the eligibility determination of students suspected of having specific learning disabilities. (1) For a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

(a) Whether the student has a specific learning disability;

(b) The basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040;

(c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;

(d) Any educationally relevant medical findings;

(e) Whether:

(i) The student does not achieve adequately for the student's age or meet essential academic learning requirements in one or more of the areas described in WAC 392-172A-03055(1); and

(ii)(A) The student does not make sufficient progress to meet age or essential academic learning requirements when using a process based on the student's response to scientific research-based interventions consistent with WAC 392-172A-03060;

(B) The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, essential academic learning requirements, or intellectual development consistent with WAC 392-172A-03055 (2)(b); or

(C) The student meets eligibility through a severe discrepancy model and the procedures and data to support the determination;

(f) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

(g) If the student has participated in a process that assesses the student's response to scientific, research-based intervention:

(i) The instructional strategies used and the student-centered data collected in accordance with the district's response to intervention procedures; and

(ii) The documentation that the student's parents were notified about:

(A) State and school district policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the student's rate of learning; and

(C) The parents' right to request an evaluation.

(2) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

INDIVIDUALIZED EDUCATION PROGRAMS

NEW SECTION

WAC 392-172A-03090 Definition of individualized education program. (1) The term individualized education program or IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

(i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b)(i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and districtwide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) Aversive interventions, if any, required for the student.

(i) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

(j) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to train-

ing, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services including courses of study needed to assist the student in reaching those goals.

(k) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

NEW SECTION

WAC 392-172A-03095 IEP team membership. (1) School districts must ensure that the IEP team for each student eligible for special education includes:

(a) The parents of the student;

(b) Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment;

(c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(d) A representative of the public agency who:

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the school district.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(g) Whenever appropriate, the student.

(2)(a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

(b) If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.

(4) A school district may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the district representative, if the criteria in subsection (1)(d) of this section are satisfied.

(5)(a) A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

(6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

NEW SECTION

WAC 392-172A-03100 Parent participation. A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C of IDEA.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

(b) Identify any other agency that will be invited to send a representative.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

NEW SECTION

WAC 392-172A-03105 When IEPs must be in effect. (1) At the beginning of each school year, each school district must have an IEP in effect, for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that was in effect from the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous school in which the student was enrolled, pursuant to RCW 28A.225.335 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

NEW SECTION

WAC 392-172A-03110 Development, review, and revision of IEP. (1) In developing each student's IEP, the IEP team must consider:

(a) The strengths of the student;

(b) The concerns of the parents for enhancing the education of their student;

(c) The results of the initial or most recent evaluation of the student; and

(d) The academic, developmental, and functional needs of the student.

(2)(a) When considering special factors unique to a student, the IEP team must:

(i) Consider the use of positive behavioral interventions and supports, and other strategies, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and

(ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;

(iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

(iv) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(v) Consider whether the student needs assistive technology devices and services.

(b) A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:

(i) Appropriate positive behavioral interventions and supports and other strategies for the student; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.

(c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).

(d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section. In the case of a student whose behavior continues to impede the progress of the student or others despite the use of positive behavioral support strategies: Consider the need for aversive interventions only as a last resort, if positive behavior supports have been used in accordance with the student's IEP, the use of positive behavior supports has been documented to be ineffective, and the IEP team, consistent with WAC 392-172A-03120 through 392-172A-03135 determines that an aversive intervention plan is necessary for the student.

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education participate in district or statewide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

NEW SECTION

WAC 392-172A-03115 Educational placements. Consistent with WAC 392-172A-05000 (3)(a), each school district must ensure that the parents of each student eligible for special education are members of any group that makes decisions on the educational placement of the student.

AVERSIVE INTERVENTIONS

NEW SECTION

WAC 392-172A-03120 Aversive interventions definition and purpose. (1) The term "aversive interventions" means the systematic use of stimuli or other treatment which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. The term does not include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior which poses one of the following dangers:

(a) A clear and present danger of serious harm to the student or another person.

(b) A clear and present danger of serious harm to property.

(c) A clear and present danger of seriously disrupting the educational process.

(2) The purpose is to assure that students eligible for special education are safeguarded against the use and misuse of various forms of aversive interventions. Each school district shall take steps to assure that each employee, volunteer, contractor, and other agent of the district or other public agency responsible for the education, care, or custody of a special education student is aware of aversive intervention requirements and the conditions under which they may be used. No school district or other public agency and no educational service district shall authorize, permit, or condone the use of aversive interventions which violates WAC 392-172A-03120 through 392-172A-03135 by any employee, volunteer, contractor or other agent of the district or other public agency responsible for the education, care, or custody of a special education student. Aversive interventions, to the extent permitted, shall only be used as a last resort. Positive behavioral supports interventions shall be used by the school district and described in the individualized education program prior to the determination that the use of aversive intervention is a necessary part of the student's program.

NEW SECTION

WAC 392-172A-03125 Aversive intervention prohibitions. There are certain interventions that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their legality. The purpose of this section is to uniformly prohibit their use with students eligible for special education as follows:

(1) Electric current. No student may be stimulated by contact with electric current.

(2) Food services. No student who is willing to consume subsistence food or liquid when the food or liquid is customarily served may be denied or subjected to an unreasonable delay in the provision of the food or liquid.

(3)(a) Force and restraint in general. No force or restraint which is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law may be used. See RCW 9A.16.100 which cites the following uses of force or restraint as uses which are presumed to be unreasonable and therefore unlawful:

(i) Throwing, kicking, burning, or cutting a student.

(ii) Striking a student with a closed fist.

(iii) Shaking a student under age three.

(iv) Interfering with a student's breathing.

(v) Threatening a student with a deadly weapon.

(vi) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

(b) The statutory listing of worst case uses of force or restraint described in this subsection may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.

(4) Hygiene care. No student may be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(5) Isolation. No student may be excluded from his or her regular instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-03130.

(6) Medication. No student may be denied or subjected to an unreasonable delay in the provision of medication.

(7) Noise. No student may be forced to listen to noise or sound that the student finds painful.

(8) Noxious sprays. No student may be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(9) Physical restraints. No student may be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392-172A-03130.

(10) Taste treatment. No student may be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.

(11) Water treatment. No student's head may be partially or wholly submerged in water or any other liquid.

NEW SECTION

WAC 392-172A-03130 Aversive interventions—Conditions. Use of various forms of aversive interventions which are not prohibited by WAC 392-172A-03125 warrant close scrutiny. Accordingly, the use of aversive interventions involving bodily contact, isolation, or physical restraint not prohibited is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Bodily contact. The use of any form of aversive interventions which involves contacting the body of a student shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(2) Isolation. The use of aversive interventions which involves excluding a student from his or her regular instructional area and isolation of the student within a room or any other form of enclosure is subject to each of the following conditions:

(a) The isolation, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(b) The enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the enclosure or the student shall continuously remain within view of an adult responsible for supervising the student.

(3) Physical restraint. The use of aversive interventions which involves physically restraining or immobilizing a student by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object is subject to each of the following conditions:

(a) The restraint shall only be used when and to the extent it is reasonably necessary to protect the student, other persons, or property from serious harm.

(b) The restraint, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(c) The restraint shall not interfere with the student's breathing.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the restraint or the student shall continuously remain within view of an adult responsible for supervising the student.

NEW SECTION

WAC 392-172A-03135 Aversive interventions—Individualized education program requirements. (1) If the need for use of aversive interventions is determined appropriate by the IEP team, the individualized education program shall:

(a) Be consistent with the recommendations of the IEP team which includes a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(b) Specify the aversive interventions that may be used.

(c) State the reason the aversive interventions are judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(d) Describe the circumstances under which the aversive interventions may be used.

(e) Describe or specify the maximum duration of each isolation or restraint.

(f) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(g) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(h) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation, to occur no less than four times a school year.

(2) School districts shall document each use of an aversive intervention, circumstances under which it was used, and the length of time of use.

STUDENTS IN PRIVATE SCHOOLS

Students Eligible for Special Education Enrolled by Their Parents in Private Schools

NEW SECTION

WAC 392-172A-04000 Definition of parentally placed private school students. Parentally placed private school students means students eligible for special education services enrolled by their parents in private, including religious, elementary or secondary schools. It does not include students placed by a school district in a nonpublic agency for the provision of FAPE.

NEW SECTION

WAC 392-172A-04005 Child find for parentally placed private school students eligible for special education. (1) Each school district must locate, identify, and evaluate all students who may be eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district, in accordance with general child find procedures and subsections (2) through (5) of this section.

(2) The child find process must be designed to ensure:

(a) The equitable participation of parentally placed private school students; and

(b) An accurate count of those students.

(3) In carrying out the requirements of this section, the school district must undertake activities similar to the activities undertaken for the school district's public school students.

(4) The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the school district has met its proportional share obligation under WAC 392-172A-04015.

(5) The child find process must be completed in a time period comparable to that for students attending public schools in the school district.

(6) Each school district in which private, including religious, elementary schools and secondary schools are located must include parentally placed private school students who reside in another state but attend the private school located within the school district boundaries.

NEW SECTION

WAC 392-172A-04010 Provision of services for parentally placed private school students eligible for special education. (1) In addition to the provisions addressed in this section, parents who have placed their children in private school are entitled to enroll their children part-time in their resident district for any course, activity or ancillary service, not provided by the private school under chapter 392-134 WAC and pursuant to WAC 392-172A-01135. Parents who elect to enroll part-time in their resident district are served

through an IEP and are counted for federal and state special education reimbursement.

(2) To the extent consistent with the number and location of students eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district boundaries, and who are not part-time enrolled for special education services under chapter 392-134 WAC, districts must allow for the participation of those students by providing them with special education and related services, including direct services determined in accordance with WAC 392-172A-04035.

(3) In accordance with subsection (2) of this section and WAC 392-172A-04035 through 392-172A-04070, a services plan must be developed and implemented for each private school student eligible for special education who has been designated by the school district to receive special education and related services.

(4) Each school district must maintain in its records, and provide to the OSPI, the following information related to parentally placed private school students:

(a) The number of students evaluated;

(b) The number of students determined eligible for special education; and

(c) The number of students served through a services plan.

NEW SECTION

WAC 392-172A-04015 Expenditures. (1) To meet the requirement of WAC 392-172A-04010(2), each school district must spend the following on providing special education and related services, including direct services to parentally placed private students eligible for special education.

(a) For students eligible for special education aged three through twenty-one, an amount that is the same proportion of the school district's total subgrant under section 611(f) of the act as the number of private school students eligible for special education aged three through twenty-one who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through twenty-one.

(b)(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under section 619(g) of the act as the number of parentally placed private school students eligible for special education aged three through five who are enrolled by their parents in a private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through five.

(ii) As described in (b)(i) of this subsection, students aged three through five are considered to be parentally placed private school students enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school kindergarten level or above.

(c) If a school district has not expended for equitable services all of the funds described in (a) and (b) of this subsection by the end of the fiscal year for which Congress appropriated the funds, the school district must obligate the remaining funds for special education and related services to parentally placed private school students eligible for special education during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed private school students eligible for special education, the school district, after timely and meaningful consultation with representatives of private schools under WAC 392-172A-04020, must conduct a thorough and complete child find process to determine the number of parentally placed students eligible for special education attending private schools located in the school district.

(3)(a) After timely and meaningful consultation with representatives of parentally placed private school students eligible for special education, school districts must:

(i) Determine the number of parentally placed private school students eligible for special education attending private schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally placed private school students eligible for special education in the next subsequent fiscal year.

(4) State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed private school students eligible for special education.

NEW SECTION

WAC 392-172A-04020 Consultation. To ensure timely and meaningful consultation, a school district must consult with private school representatives and representatives of parents of parentally placed private school students eligible for special education during the design and development of special education and related services for the students regarding the following:

(1) The child find process, including:

(a) How parentally placed private school students suspected of having a disability can participate equitably; and

(b) How parents, teachers, and private school officials will be informed of the process.

(2) The determination of the proportionate share of federal funds available to serve parentally placed private school students eligible for special education including the determination of how the district calculated the proportionate share of those funds.

(3) The consultation process among the school district, private school officials, and representatives of parents of parentally placed private school students eligible for special education, including how the process will operate throughout the school year to ensure that parentally placed students eligible for special education identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom special education and related services will be provided for parentally placed private school students eligible for special education, including a discussion about:

(a) The types of services, including direct services and alternate service delivery mechanisms; and

(b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and

(c) How and when those decisions will be made.

(5) How, if the school district disagrees with the views of the private school officials on the provision of services or the types of services, the school district will provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

NEW SECTION

WAC 392-172A-04025 Written affirmation. (1) When timely and meaningful consultation has occurred, the school district must obtain a written affirmation signed by the representatives of participating private schools after timely and meaningful consultation.

(2) If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the OSPI.

NEW SECTION

WAC 392-172A-04030 Compliance with procedures for consultation. (1) A private school official has the right to submit a complaint to the OSPI, special education section that the school district:

(a) Did not engage in consultation that was meaningful and timely; or

(b) Did not give due consideration to the views of the private school official.

(2)(a) If the private school official wishes to submit a complaint, the official must provide to the OSPI special education section, the basis of the noncompliance by the school district with the applicable private school provisions in this part; and

(b) The school district must forward the appropriate documentation to OSPI.

(3) If the private school official is dissatisfied with the decision of the OSPI, the official may submit a complaint to the Secretary of the Department of Education by providing the information on noncompliance described in subsections (1) and (2) of this section and the OSPI must forward the appropriate documentation to the Secretary.

NEW SECTION

WAC 392-172A-04035 Determination of equitable services. (1) A parentally placed private school student does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled full- or part-time in a public school.

(2) Decisions about the services that will be provided to parentally placed private school students eligible for special education disabilities under WAC 392-172A-04010 through 392-172A-04070 must be made in accordance with subsection (4) of this section and the consultation process.

(3) The school district must make the final decisions with respect to the services to be provided to eligible parentally placed private school students eligible for special education.

(4) If a student eligible for special education is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a school district, the school district must:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the student; and

(b) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

NEW SECTION

WAC 392-172A-04040 Equitable services provided. (1) The services provided to parentally placed private school students eligible for special education must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school students eligible for special education do not have to meet the highly qualified special education teacher requirements.

(2) Parentally placed private school students eligible for special education may receive a different amount of services than students eligible for special education attending public schools.

(3) Each parentally placed private school student eligible for special education who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education.

(4) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.

(5) The provision of services must be provided:

(a) By employees of a school district or ESD; or

(b) Through contract by the school district with an individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed private school students eligible for special education, including materials and equipment, must be secular, neutral, and nonideological.

NEW SECTION

WAC 392-172A-04045 Location of services and transportation. (1) Services to parentally placed private school students eligible for special education may be provided on the premises of private, nonsectarian schools.

(2) If necessary for the student to benefit from or participate in the services provided, a parentally placed private

school student eligible for special education must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home, depending on the timing of the services.

(3) School districts are not required to provide transportation from the student's home to the private school.

(4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district has met its proportional share requirement.

NEW SECTION

WAC 392-172A-04050 Due process and state complaints regarding parentally placed students in a private school. (1) Due process procedures are not available for complaints that a school district has failed to meet the requirements regarding consultation, determination of need and provision of services, including the provision of services indicated on the student's services plan.

(2) Due process procedures may be used by a parent who is alleging that a school district has failed to meet child find requirements related to the parentally placed students in private schools.

(3) Any due process request regarding the child find requirements described in subsection (2) of this section must be filed with the school district in which the private school is located and a copy must be forwarded to the OSPI in accordance with the due process procedures in WAC 392-172A-05080 through 392-172A-05125.

(4) State complaints. Any complaint that OSPI or a school district has failed to meet the requirements in WAC 392-172A-04010 through 392-172A-04015 and 392-172A-04025 through 392-172A-04075 must be filed in accordance with the state complaint procedures described in WAC 392-172A-05025 through 392-172A-05040.

(5) A complaint filed by a private school official under WAC 392-172A-04030 must be filed with the OSPI in accordance with the procedures in that section.

NEW SECTION

WAC 392-172A-04055 Requirement that funds not benefit a private school. Public funds provided and property derived from those funds shall not benefit any private school or agency.

A school district must use funds provided under the act to meet the special education and related services needs of students enrolled in private schools, but not for:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

NEW SECTION

WAC 392-172A-04060 Use of personnel. (1) School district or other public agency personnel may be made available to nonsectarian private schools and agencies only to the extent necessary to provide services required by the special education student if those services are not normally provided by the private school.

(2) Each school district or other public agency providing services to students enrolled in nonsectarian private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school special education students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

NEW SECTION

WAC 392-172A-04065 Prohibition on the use of separate classes. A school district may not use federal funds available under section 611 or 619 of the act for classes that are organized separately on the basis of school enrollment or religion of the students if:

(1) The classes are at the same site; and

(2) The classes include students enrolled in public schools and students enrolled in private schools.

NEW SECTION

WAC 392-172A-04070 Property, equipment and supplies. (1) A school district must control and administer the funds used to provide special education and related services for students eligible for those services in private schools, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the act.

(2) Equipment and supplies used with students in a private school or agency may be placed on nonsectarian private school premises for the period of time necessary for the program. Equipment and supplies placed on private school premises will be used only for Part B purposes.

(3) Records shall be kept of equipment and supplies and an accounting made of the equipment and supplies which shall assure that the equipment is used solely for the purposes of the program. Equipment and supplies placed in private schools must be able to be removed from the private school without remodeling the private school facility.

(4) The equipment and supplies shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for Part B purposes.

(5) Funds shall not be used for repairs, minor remodeling, or to construct facilities for private schools or agencies.

NEW SECTION

WAC 392-172A-04075 Other service arrangements for students, including students placed in sectarian schools. (1) In addition to services to private school students who are unilaterally enrolled by their parents, private school students and home schooled students are entitled to enroll on a part-time basis in their resident district and receive special education and related services for which they are enrolled, pursuant to chapter 392-134 WAC.

(2) No services, material, or equipment of any nature shall be provided to any private school or agency subject to sectarian (i.e., religious) control or influence.

(3) No services, material, or equipment of any nature shall be provided to students on the site of any private school or agency subject to sectarian control or influence.

STUDENTS IN PRIVATE OR PUBLIC SCHOOLS PLACED OR REFERRED BY SCHOOL DISTRICTS

NEW SECTION

WAC 392-172A-04080 Applicability and authorization. (1) The provisions of WAC 392-172A-04080 through 392-172A-04095 apply only to students eligible for special education who have been placed in or referred to a nonpublic agency or another public agency or school district by a resident school district as a means of providing special education and related services.

(2) School districts are authorized to:

(a) Enter into interdistrict agreements with other school districts pursuant to chapter 392-135 WAC; or

(b) Contract with nonpublic agencies pursuant to this chapter and WAC 392-121-188 and public agencies to provide special education and related services to eligible students if the school district cannot provide an appropriate education for the student within the district.

NEW SECTION

WAC 392-172A-04085 Responsibility of the school district. (1) A school district who places a student eligible for special education with another public agency or approved nonpublic agency for special education and related services shall develop a written contract, interdistrict or interagency agreement which shall include, but not be limited to, the following elements:

(a) Names of the parties involved;

(b) The name(s) of the special education student(s) for whom the contract is drawn;

(c) Location and setting of the services to be provided;

(d) Description of services provided, program administration and supervision;

(e) Charges and reimbursement including billing and payment procedures;

(f) Total contract cost;

(g) Other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency, other public agency, or other school district is provided special education and related services:

(a) In conformance with an IEP that meets the requirements of this chapter;

(b) At no cost to the parents.

(3) The student shall be provided with a FAPE that meet all general and special education regulations that apply to the student, except that the certificated special education endorsed teachers providing special education services do not have to meet the highly qualified standards for core academic content areas as described in section 9101 of the ESEA.

(4) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that the nonpublic agency, or other public agency conduct evaluations or IEP meetings, the district will ensure that all applicable requirements of Part B of the act are met.

(5) The student has all of the rights of a student eligible for special education who is served within the school district.

NEW SECTION

WAC 392-172A-04090 Approval of nonpublic agencies. (1) A school district shall not award a contract to a nonpublic agency to provide special education to a student until the OSPI approves the nonpublic agency.

(2) The school district shall notify the special education section of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.

(3) The OSPI shall provide the school district and the nonpublic agency with the procedures and application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.

(4) Upon review of the completed application which includes the results of the on-site visit, the OSPI may conduct an independent on-site visit, if appropriate, and shall determine whether the application should be approved or disapproved.

(5) The OSPI shall make information regarding currently approved nonpublic agencies available to all school districts and to the public.

(6) School districts shall ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed according to the provisions of WAC 392-172A-04075 through 392-172A-04095.

(7) Nonpublic agencies located in other states must first be approved by the state education agency of the state in which the educational institution is located. Documentation of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the nonpublic agency shall meet the requirements for approval in this state under the provisions of this chapter.

NEW SECTION

WAC 392-172A-04095 Application requirements for process for nonpublic agencies. The application for initial approval and three-year renewal will include the following:

(1) The nonpublic agency is approved by the state board as a private school. If the program is located in a hospital or the educational program is within a treatment facility, the nonpublic agency will assure that the educational component of the facility has education and related services staff who meet certification requirements developed by the professional educators standards board, and has at least one certificated teacher with a special education endorsement.

(2) The facility meets applicable fire codes of the local or state fire marshal, including inspections and documentation of corrections of violation.

(3) The facility meets applicable health and safety standards.

(4) The facility can demonstrate through audits that it is financially stable, and has accounting systems that allow for separation of school district funds.

(5) The facility has procedures in place that address staff hiring and evaluation including:

(a) Checking of personal and professional references for employees;

(b) Criminal background checks in accordance with state rules for public school employees;

(c) Regular schedule of staff evaluations of the competencies that enable the staff to work with students.

(6) The facility has a policy of nondiscrimination.

(7) The facility meets state education rules for hours and days of instruction.

(8) The facility understands and has procedures in place to protect the procedural safeguards of the students eligible for special education and their families.

NEW SECTION

WAC 392-172A-04100 Notification of nonpublic agency program changes. (1) An approved nonpublic agency must notify any school districts with whom they contract and the OSPI of any major program changes that occur during the approval period, including adding additional services or changing the type of programs available to students. OSPI will review these program changes with affected districts to determine whether the nonpublic agency remains able to provide contracted services to public school students eligible for special education.

(2) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any conditions that would affect their ability to continue to provide contracted services to public school students eligible for special education.

(3) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any complaints it receives regarding services to students.

NEW SECTION

WAC 392-172A-04105 Suspension revocation or refusal to renew approval. OSPI may suspend, revoke or refuse to renew its approval of a nonpublication to contract with school districts for the provision of special education if the nonpublic agency:

(1) Fails to maintain the approval standards in WAC 392-172A-04090 through 392-172A-04100;

(2) Violates the rights of students eligible for special education; or

(3) Refuses to implement any corrective actions ordered by the OSPI.

NEW SECTION

WAC 392-172A-04110 State responsibility for nonpublic agency placements. In implementing the nonpublic agency provisions of WAC 392-172A-04080 through 392-172A-04105, the state shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a special education student; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

STUDENTS ELIGIBLE FOR SPECIAL EDUCATION SERVICES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

NEW SECTION

WAC 392-172A-04115 Placement of students when FAPE is at issue. (1) If a student eligible for special education has a FAPE available and the parents choose to place the student in a private school or facility, the school district is not required by this chapter to pay for the student's education, including special education and related services, at the private school or facility. However, the school district shall include that student in the population whose needs are addressed consistent with WAC 392-172A-04000 through 392-172A-04075.

(2) Disagreements between the parents and a school district regarding the availability of a program appropriate for the student and the question of financial reimbursement are subject to the due process procedures at WAC 392-172A-05080 through 392-172A-05125.

(3) If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

(4) The cost of reimbursement may be reduced or denied if:

(a)(i) At the most recent individualized education program meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the team that they were rejecting the placement proposed by a school district to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to a school district of the information described in (a)(i) of this subsection; or

(b) Prior to the parents' removal of the student from the public school, a school district informed the parents, through the notice requirements described in this chapter, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

(c) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Notwithstanding the notice requirement in subsection (4)(a)(i) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(a) The school district prevented the parent from providing the notice; or

(b) The parent had not received the procedural safeguards containing notice of the requirement to notify a school district of the information required in subsection (4)(a)(i) of this section.

(6) An administrative law judge or court may, in its discretion, determine that the cost of reimbursement will not be reduced or denied for failure to provide the notice in subsection (4)(a)(i) of this section if:

(a) The parents are not literate or cannot write in English; or

(b) Compliance with subsection (4)(a)(i) of this section would likely result in serious emotional harm to the student.

SAFEGUARDS

NEW SECTION

WAC 392-172A-05000 Opportunity to examine records—Parent participation in meetings. (1) The parents of a student eligible for special education must be afforded an opportunity to inspect and review all education records. Inspection and review of education records is provided consistent with WAC 392-172A-05180 through 392-172A-05245.

(2)(a) The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student.

(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(3)(a) Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

(4) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.

NEW SECTION

WAC 392-172A-05005 Independent educational evaluation. (1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the par-

ent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

NEW SECTION

WAC 392-172A-05010 Prior notice and contents. (1) Written notice that meets the requirements of subsection (2) of this section to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

(2) The notice required under this section must include:

(a) A description of the action proposed or refused by the agency;

(b) An explanation of why the agency proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;

(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and

(g) A description of other factors that are relevant to the agency's proposal or refusal.

(3)(a) The notice required under subsections (1) and (2) of this section must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

NEW SECTION

WAC 392-172A-05015 Procedural safeguards notice. (1) School districts must provide a copy of the procedural safeguards that are available to the parents of a student eligible for special education one time a school year, and:

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first state complaint and due process complaint in a school year;

(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and

(d) Upon request by a parent.

(2) A school district may place a current copy of the procedural safeguards notice on its internet web site if a web site exists.

(3) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this chapter that relate to:

(a) Independent educational evaluations;

(b) Prior written notice;

(c) Parental consent;

(d) Access to education records;

(e) An opportunity to present and resolve complaints through the due process hearing request and state complaint procedures, including:

(i) The time period in which to file a state complaint and due process hearing request;

(ii) The opportunity for the school district to resolve the due process hearing request; and

(iii) The difference between the due process hearing request and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decision timelines, and relevant procedures;

(f) The availability of mediation;

(g) The student's placement during the pendency of any due process hearing;

(h) Procedures for students who are subject to placement in an interim alternative educational setting;

(i) Requirements for unilateral placement by parents of students in private schools at public expense;

(j) Hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;

(k) Civil actions, including the time period in which to file those actions; and

(l) Attorneys' fees.

(4)(a) The procedural safeguards notice must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

NEW SECTION

WAC 392-172A-05020 Electronic mail. A parent of a student eligible for special education may elect to receive prior written notices, procedure safeguards notices and notices relating to due process hearing requests by an electronic mail communication, if the school district makes that option available.

STATE CITIZEN COMPLAINT PROCEDURES

NEW SECTION

WAC 392-172A-05025 Procedures for filing a complaint. (1) An organization or individual, including an organization or individual from another state, may file with the OSPI, special education section, a written, signed complaint that the OSPI, or a subgrantee of the OSPI, including but not limited to an ESD, school district is violating or has violated Part B of the Individuals with Disabilities Education Act or regulations implementing the act.

(2)(a) A written complaint filed with OSPI will include:

(i)(A) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or

(B) A statement that the school district is not implementing a mediation agreement or a resolution agreement;

(ii) The facts on which the statement is based;

(iii) The signature and contact information, including an address of the complainant; and

(iv) The name and address of the school district, or other agency subject to the complaint.

(b) If the allegations are with respect to a specific student the information must also include:

(i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student;

(ii) The name of the school the student attends and the name of the school district;

(iii) A description of the nature of the problem of the student, including the facts relating to the problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complainant must send a copy of the complaint to the agency serving the student at the same time the complainant files the complaint with OSPI. Complaints under this chapter are filed with the director of special education, OSPI.

(d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(e) The OSPI has developed a form for use by persons or organizations filing a complaint. Use of the form is not required, but the complaint must contain the elements addressed in (a) and (b) of this subsection.

NEW SECTION

WAC 392-172A-05030 Investigation of the complaint and decision. (1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC 392-172A-05015.

(2) The school district or other agency shall respond in writing to the OSPI, and include documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint.

(3) The response to the OSPI shall clearly state whether:

(a) The allegations contained in the complaint are denied and the basis for such denial; or

(b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(4) The OSPI shall provide the complainant a copy of the response to the complaint and provide the complainant an opportunity to reply to the response.

(5) The OSPI will also provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, open a new complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the public agency has or is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for the decision. The decision will be issued within sixty days of receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a local school district or other public agency is not achieved pursuant to subsection (8) of this section, the superintendent of public instruction shall initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

NEW SECTION

WAC 392-172A-05035 Citizen complaints and due process hearings. (1) If a written complaint is received that is also the subject of a due process hearing under this chapter or contains multiple issues, of which one or more are part of that hearing, the office of the superintendent of public instruction must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding; and

(b) The office of the superintendent of public instruction must inform the complainant to that effect.

(3) A complaint alleging a school district's failure to implement a due process decision must be resolved by the office of the superintendent of public instruction.

NEW SECTION

WAC 392-172A-05040 Complaints against OSPI. (1) Upon receipt of a complaint against the office superintendent of public instruction alleging a violation under this section, the superintendent will designate an investigator within ten days to investigate the complaint.

(2) Investigation by the superintendent of public instruction may include on-site investigations, interviews, and other documentation as appropriate.

(3) Upon completion of the investigation, the investigator shall provide the superintendent of public instruction with a written report on the results of the investigation and shall issue a written decision including findings of facts, conclusions and the reasons for the decision. The decision will be provided to the complainant as soon as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(4) If corrective actions are required, the decision will include the corrective measures deemed necessary to correct any violation. Any such corrective measures deemed necessary shall be instituted as soon as possible, but no later than the date for the corrective action, addressed in the decision.

NEW SECTION

WAC 392-172A-05045 Informing citizens about complaint procedures. The OSPI shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Widely disseminating copies of the state's procedures to parents and other interested individuals, including protection and advocacy agencies, parent training and information centers, independent living centers, and other appropriate entities;

(2) Posting information about the complaint procedures on the web site;

(3) Conducting in-service training sessions on the complaint process through educational service districts; and

(4) Including information about the complaint procedures at statewide conferences.

MEDIATION

NEW SECTION

WAC 392-172A-05060 Mediation purpose—Availability. (1) The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator.

(2) Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter.

(4) Mediation services are provided by the OSPI at no cost to either party, including the costs of meetings described in WAC 392-172A-05075 to access the statewide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case.

(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

NEW SECTION

WAC 392-172A-05065 Qualifications and selection of mediators. (1) Mediation shall be conducted by qualified and impartial mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) An individual who serves as a mediator:

(a) May not be an employee of any school district or other public or private agency that is providing education or related services to a student who is the subject of the mediation process; and

(b) Shall not have a personal or professional conflict of interest; and

(c) A person who otherwise qualifies as a mediator is not an employee of a school district or other public agency solely because he or she is paid by the agency to serve as a mediator.

(3)(a) The OSPI, through its contracted administrative agents, shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(b) Mediators will be selected on a random, rotational or other impartial basis.

NEW SECTION

WAC 392-172A-05070 Resolution of a dispute through mediation. (1) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(2) A written, signed mediation agreement is enforceable in a state court of competent jurisdiction or in a district court of the United States.

(3) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal or state court.

NEW SECTION

WAC 392-172A-05075 Meeting to encourage mediation. (1) A school district may establish procedures to offer parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(a) Who is under contract with appropriate alternative dispute resolution entity or a parent training and information center; and

(b) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A school district or other public agency may not deny or delay a parent's right to a due process hearing under this chapter if the parent fails to participate in the meeting described in this section.

(3) A school district shall submit its procedures for implementing this section to the OSPI for review and approval, including projected costs for carrying out the process.

DUE PROCESS HEARING PROCEDURES

NEW SECTION

WAC 392-172A-05080 Right to a due process hearing. (1) A parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation or educational placement, or the provision of FAPE to a student.

(2) The due process hearing request must allege a violation that occurred not more than two years before the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

(3)(a) Information about any free or low-cost legal and other relevant services available in the area is maintained on OSPI's web site and is provided by the office of administrative hearings to parents whenever a due process hearing request is filed by either the parent or the school district; and

(b) Districts must provide this information to parents whenever a parent requests the information.

NEW SECTION

WAC 392-172A-05085 Due process hearing request filing and response. (1)(a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must file the request, which must remain confidential, directly with the other party; and

(b) The party filing the due process hearing request must also mail or provide a copy of the due process hearing request directly to OSPI, Administrative Resources Section, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504.

(c) When a parent is filing a due process hearing request, the party to be served is the superintendent of the school district, or public agency responsible for the student.

(2) The due process hearing request required in subsection (1) of this section must include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student is attending, and the name of the district or public agency that is responsible for the student's special education program in the school;

(d) In the case of a homeless child or youth, available contact information for the student in addition to the information in (c) of this subsection;

(e) A description of the nature of the problem of the student related to the proposed or refused initiation or change, including facts relating to the problem; and

(f) A proposed resolution of the problem to the extent known and available to the party at the time.

(3) OSPI has developed a due process hearing request form to assist parents and school districts filing a due process hearing. Parents and school districts are not required to use this form, and may use the form, or another form or other document, so long as the form or document that is used, meets the requirements in subsection (2) of this section.

(4) A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (2) of this section.

(5)(a) The due process hearing request will be deemed sufficient unless the party receiving the due process hearing request notifies the administrative law judge and the other party in writing, within fifteen days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements in subsection (2) of this section.

(b) Within five days of receipt of notification that a due process hearing request is not sufficient, the administrative law judge must make a determination on the face of the due process hearing request of whether the request meets the requirements of subsection (2) of this section, and must immediately notify the parties in writing of that determination.

(6) A party may amend its due process hearing request only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution meeting held pursuant to the procedures in WAC 392-172A-05090; or

(b) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend not later than five days before the due process hearing begins.

If a party is allowed to amend the due process hearing request under (a) or (b) of this subsection, the timelines for the resolution meeting in WAC 392-172A-05090 (2)(a) and the time period to resolve in WAC 392-172A-05090 (2)(b) begin again with the filing of the amended due process hearing request.

(7)(a) If the school district has not sent a prior written notice under WAC 392-172A-05010 to the parent regarding the subject matter contained in a parent's due process hearing request, the school must send the parent a response, within ten days of receiving the due process hearing request, that includes:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;

(ii) A description of other options that the IEP team or evaluation group considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the district's proposed or refused action.

(b) A response by a school district under subsections (7) and (8) of this section shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.

(8) Except as provided in subsection (7)(a) of this section, the party receiving a due process hearing request must send the party a response that specifically addresses the issues raised in the due process hearing request within ten days of receiving the due process hearing request.

NEW SECTION

WAC 392-172A-05090 Resolution process. (1)(a) Within fifteen days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the receipt of the due process hearing request, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meet-

ing will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-05090, the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting specified in subsection (1) of this section within fifteen days of receiving notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant this section, a party may void the agreement within three business days of the agreement's execution.

NEW SECTION

WAC 392-172A-05095 Administrative law judges. (1) A due process hearing is conducted for OSPI by the office of administrative hearings.

(2) Administrative law judges that conduct the hearings:

(a) Must not be:

(i) An employee of OSPI or the school district that is involved in the education or care of the student; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(b) Must possess knowledge of, and the ability to understand, the provisions of the act, federal and state regulations pertaining to the act, and legal interpretations of the act by federal and state courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(3) An administrative law judge who otherwise qualifies to conduct a hearing under subsection (2) of this section is not an employee of the OSPI solely because he or she is paid using OSPI funds.

(4) OSPI maintains a list of the persons who serve as administrative law judges which includes a statement of the qualifications of each of those persons.

NEW SECTION

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 and 392-172A-05165.

(1) Any party to a due process hearing has the right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160;

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165, each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) A parent may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section.

(6) To the extent not modified by the hearing procedures addressed in this section and the timelines and procedures for civil actions addressed in WAC 392-172A-05115 the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

NEW SECTION

WAC 392-172A-05105 Hearing decisions. (1) An administrative law judge's determination of whether a student received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, an administrative law judge may find that a student did not receive a FAPE only if the procedural inadequacies:

(a) Impeded the student's right to a FAPE;

(b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(c) Caused a deprivation of educational benefit.

(3) Nothing in subsections (1) and (2) of this section shall be construed to preclude an administrative law judge from ordering a school district to comply with the procedural requirements contained in this chapter.

(4) The state deletes personally identifiable information contained in due process hearing decisions, transmits those decisions to the state advisory panel and makes decisions available to the public.

NEW SECTION

WAC 392-172A-05110 Timelines and convenience of hearings. (1) Not later than forty-five days after the expiration of the thirty day resolution period, or the adjusted time periods described in WAC 392-172A-05090(3):

(a) A final decision shall be reached in the hearing; and

(b) A copy of the decision shall be mailed to each of the parties.

(2) An administrative law judge may grant specific extensions of time beyond the period in subsection (1) of this section at the request of either party.

(3) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved.

NEW SECTION

WAC 392-172A-05115 Civil action. (1) Any party aggrieved by the findings and decision made under WAC 392-172A-05105 through 392-172A-05110 or 392-172A-05165 has the right to bring a civil action with respect to the due process hearing request. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(2) The party bringing the action shall have ninety days from the date of the decision of the administrative law judge to file a civil action in federal or state court.

(3) In any action brought under subsection (1) of this section, the court:

(a) Receives the records of the administrative proceedings;

(b) Hears additional evidence at the request of a party; and

(c) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(4) The district courts of the United States have jurisdiction of actions brought under section 615 of the act without regard to the amount in controversy.

(5) Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the act, the due process procedures under WAC 392-172A-05085 and 392-172A-05165 must be exhausted to the same extent as would be required had the action been brought under section 615 of the act.

NEW SECTION

WAC 392-172A-05120 Attorneys' fees. (1) In any action or proceeding brought under 20 U.S.C. Sec. 1415 of the act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

(a) The prevailing party who is the parent of a student eligible or referred for special education;

(b) To a prevailing party who is a school district, or OSPI, against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing school district or OSPI against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2)(a) Funds under Part B of the act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 20 U.S.C. Sec. 1415 and 34 CFR Secs. 300.500 through 300.599.

(b) Subsection (2)(a) of this section does not preclude a school district or OSPI from using funds under Part B of the act for conducting an action or proceeding under 20 U.S.C. Sec. 1415.

(3)(a) Fees awarded under subsection (1) of this section must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. Sec. 1415 for services performed after a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(i) A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or

(ii) An administrative hearing or judicial action for purposes of this section.

(4) Notwithstanding subsection (3)(b) of this section an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(5) Except as provided in subsection (5) of this section, the court will reduce, accordingly, the amount of the attorneys' fees awarded under this section if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with WAC 392-172A-06085(2).

(6) The provisions of subsection (4) of this section do not apply in any action or proceeding if the court finds that the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation under the provisions of 20 U.S.C. Sec. 1415.

NEW SECTION

WAC 392-172A-05125 Student's status during proceedings. (1) Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise.

(2) If the hearing request involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the hearing request involves an application for initial Part B services for a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the student is found eligible for special education and related services and the parent consents to the initial provision of special education and related services, then the school district must provide those special education and related services that are not in dispute between the parent and the school district.

(4) If the administrative law judge agrees with the student's parents that a change of placement is appropriate through the final decision or during the pendency of the due process hearing, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

SURROGATE PARENTS

NEW SECTION

WAC 392-172A-05130 Surrogate parents. (1) School districts must ensure that the rights of a student are protected when:

(a) No parent as defined in WAC 392-172A-01125 can be identified;

(b) The school district, after reasonable efforts, cannot locate a parent;

(c) The student is a ward of the state; or

(d) The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.

(2) School districts must develop procedures for assignment of an individual to act as a surrogate for the parents. This must include a method:

(a) For determining whether a student needs a surrogate parent;

(b) For assigning a surrogate parent to the student; and

(c) Ensuring that an assignment of a surrogate parent is provided within thirty days of the district's determination that a surrogate parent is required.

(3) If a student is a ward of the state, the judge overseeing the student's case, may appoint a surrogate parent, provided that the surrogate meets the requirements in subsections (4)(a) and (5) of this section.

(4) School districts must ensure that a person selected as a surrogate parent:

(a) Is not an employee of the OSPI, the school district, or any other agency that is involved in the education or care of the student;

(b) Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

(c) Has knowledge and skills that ensure adequate representation of the student.

(5) A person otherwise qualified to be a surrogate parent under subsection (4) of this section is not an employee of the OSPI, school district or other agency solely because he or she is paid by the agency to serve as a surrogate parent.

(6) In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subsection (4)(a) of this section until a surrogate parent can be appointed that meets all of the requirements of subsection (4) of this section.

(7) The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement and the provision of FAPE to the student.

TRANSFER OF RIGHTS AT AGE OF MAJORITY

NEW SECTION

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) When a student eligible for special education reaches the age of eighteen or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020, unless the student is declared incapacitated as to person under chapter 11.88 RCW, the following shall occur:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

DISCIPLINE PROCEDURES

NEW SECTION

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through 392-172A-05155 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145. Each school district serving special education students shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

NEW SECTION

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct.

(2)(a) School personnel may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155.

(b) After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under subsection (4) of this section.

(3) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to subsection (5) of this section, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with subsection (4) of this section.

(4) A student who is removed from the student's current placement pursuant to subsection (3) or (5) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(c) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.

(d) A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

(e) After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(f) If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate services under (a) of this subsection.

(5)(a) Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(b) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in (a)(i) or (ii) of this subsection was met.

(c) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

(6) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the IEP team must either:

(a) Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(c) Except as provided in subsection (7) of this section, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

(9) Definitions. For purposes of this section, the following definitions apply:

(a) Controlled substance means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(b) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.

(c) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

(d) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.

NEW SECTION

WAC 392-172A-05150 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under WAC 392-172A-07105 (3), (4)(e) and (7).

NEW SECTION

WAC 392-172A-05155 Change of placement because of disciplinary removals. For purposes of removals of a student eligible for special education from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

(1) The removal is for more than ten consecutive school days; or

(2) The student has been subjected to a series of removals that constitute a pattern:

(a) Because the series of removals total more than ten school days in a school year;

(b) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

(c) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

(3) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(4) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

NEW SECTION

WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations. (1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05145(5), or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge deter-

mines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b)(i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process hearing request.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

NEW SECTION

WAC 392-172A-05165 Placement during an appeal through a due process hearing. When either the parent or the school district requests a due process hearing, the student must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in WAC 392-172A-05145 (3) or (7), whichever occurs first, unless the parent and the school district agree otherwise.

NEW SECTION

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4)(a) If a school district does not have knowledge that a student is eligible for special education prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the requirements of Section 612 (a)(1)(A) of the act.

NEW SECTION

WAC 392-172A-05175 Referral to and action by law enforcement and judicial authorities. (1) Nothing in this chapter prohibits a school district or other agency from reporting a crime committed by a student to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student eligible for special education.

(2) An agency reporting a crime committed by a student eligible for special education must ensure that copies of the special education and disciplinary records of the student are

transmitted for consideration by the appropriate authorities to whom the agency reports the crime, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

CONFIDENTIALITY OF STUDENT INFORMATION AND EDUCATIONAL RECORDS

NEW SECTION

WAC 392-172A-05180 Definitions—Destruction of records, educational records, participating agency. As used in WAC 392-172A-07150 through 392-172A-07215:

(1) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained in implementing this chapter, and includes the OSPI, school districts and other public agencies.

NEW SECTION

WAC 392-172A-05185 Notice to parents. (1) Parents of special education students have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172A-05180 through 392-172A-05240, the Family Educational Rights and Privacy Act of 1974, as amended, state laws contained in chapter 28A.100 RCW, et seq., regulations implementing state law, and Part B of IDEA.

(2) State forms, procedural safeguards and parent handbooks regarding special education are available in Spanish, Vietnamese, Russian, Cambodian, and Korean, and alternate formats on request.

(3) Personally identifiable information about students for use by the OSPI, special education section, may be contained in state complaints, due process hearing requests, monitoring hearing requests and decisions, safety net applications, and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(4) School districts are responsible for child find activities for students who may be eligible for special education. If the state were to conduct any major identification, location, or evaluation activity, the state would publish notices in newspapers with circulation adequate to notify parents throughout the state of the activity, notify school districts and post information on its web site.

NEW SECTION

WAC 392-172A-05190 Access rights. (1) Each participating agency shall permit parents of students eligible for special education to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. The school district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) The right to inspect and review educational records under this section includes:

(a) The right to a response from the school district to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or adult student inspect and review records.

(3) A participating agency may presume that a parent has authority to inspect and review records relating to his or her student unless the school district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

NEW SECTION

WAC 392-172A-05195 Record of access. Each school district or other public agency shall keep a record of parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, and authorized employees with a legitimate educational interest in the records.

NEW SECTION

WAC 392-172A-05200 Records on more than one student. If any educational record includes information on more than one student, the parent of those students shall have the right to inspect and review only the information relating to their child or themselves, or to be informed of that specific information.

NEW SECTION

WAC 392-172A-05205 List of records. Each school district or other public agency shall provide parents and adult students on request a list of the types and locations of educational records collected, maintained, or used by the agency.

NEW SECTION

WAC 392-172A-05210 Fees. (1) A participating agency may charge a fee for copies of records which are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(2) A participating agency may not charge a fee to search for or to retrieve information under this chapter.

NEW SECTION

WAC 392-172A-05215 Amendment of records and hearing rights. (1) A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information.

(2) The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with WAC 392-172A-07190.

(4) The school district, on request, shall provide the parent an opportunity for a hearing to challenge information, in the educational records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall amend the information accordingly and so inform the parent in writing.

(6) If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the agency shall inform the parents of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district in the records it maintains on the student.

(7) Any explanation placed in the records of the student in compliance with this section shall:

(a) Be maintained by the school district as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and

(b) Be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

NEW SECTION

WAC 392-172A-05220 Hearing on a request to amend records. A hearing initiated pursuant to WAC 392-172A-07185 to challenge information in educational records shall be conducted according to procedures developed by the school district or other public agency, and in conformance with the procedures in 34 CFR 99.22 that include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the school district has received the request;

(2) The parent shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the school district, who does not have a direct interest in the outcome of the hearing;

(4) The parent shall be afforded a full and fair opportunity to present evidence relevant to the amendment request and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The school district shall provide a written decision to the parent within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

NEW SECTION

WAC 392-172A-05225 Consent for release of records. (1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsection (2)(a) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR Part 99.

(2)(a) Except as provided in this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(b) Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

(3) If a student is enrolled, or is going to enroll, in a private school that is not located in the school district of the student's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the school district where the private school is located and officials in the school district of the student's residence, unless the parent is part-time enrolling the student in the resident district pursuant to chapter 392-134 WAC.

NEW SECTION

WAC 392-172A-05230 Safeguards. (1) Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency shall be designated as the individual responsible for assuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding the procedures on protection of the confidentiality of personally identifiable information contained in this chapter,

state education law, the regulations implementing the Family Educational Rights and Privacy Act (34 CFR Part 99), and the school district's procedures.

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

NEW SECTION

WAC 392-172A-05235 Destruction of educational records. (1) Each school district shall inform parents and adult students when personally identifiable information collected, maintained, or used in compliance with this chapter is no longer needed to provide educational services to the student, or is no longer required to be retained under state or federal law. State procedures for school district records retention are published by the secretary of state, division of archives and records management, and specify the length of time that education records must be retained.

(2) The information shall thereafter be destroyed at the request of the parent(s) or adult student. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

NEW SECTION

WAC 392-172A-05240 Student rights to educational records. If the rights accorded to parents under this chapter are transferred to a student who reaches the age of eighteen, or is determined to be emancipated sooner, consistent with WAC 392-172A-05135, the rights regarding educational records are also transferred to the student. However, the school district must continue to provide any notice required under section 615 of the act to the student and the parents.

NEW SECTION

WAC 392-172A-05245 District procedures for confidential information. (1) School districts must ensure that their policies and procedures for protection of confidential information comply with WAC 392-172A-05180 through 392-172A-05240.

(2) OSPI reviews compliance through targeted monitoring activities, and state complaints.

(3) If school districts do not have procedures in place that comply with subsection (1) of this section, OSPI will require the school district to correct noncompliance through corrective actions that include but are not limited to:

(a) Review and revision of district procedures; and

(b) Technical assistance.

(4) To the extent that any violations that exist under this section are also violations under 34 CFR Part 99, complaints regarding a participating agency's failure to comply may be addressed to the Department of Education, Family Policy Compliance Office.

SCHOOL DISTRICT AND OTHER PUBLIC AGENCY REQUIREMENTS FOR PART B FUNDS

NEW SECTION

WAC 392-172A-06000 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the superintendent of public instruction, and conduct its special education and related services program in compliance with the requirements of this chapter. The request shall be made through an application that includes, but is not limited to the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 CFR 300.201 through .213 relating to:

(a) Development of policies and procedures consistent with this chapter and Part B of the act;

(b) The provision of FAPE to students;

(c) Child find requirements for students; including evaluation;

(d) Development of an IEP;

(e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;

(f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;

(g) Confidentiality of records and information;

(h) Transition of children from Part C to Part B services;

(i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;

(j) Use of funds;

(k) Personnel preparation;

(l) Availability of documents relating to the eligibility of the school district;

(m) Provision to OSPI of all necessary information and data for the state's performance goals;

(n) Provision of instructional materials to blind persons or persons with print disabilities;

(o) Compliance with corrective actions as a result of monitoring, or dispute resolution processes; and

(p) A goal and detailed timetable for providing full educational opportunity to all special education students.

(2) Identification of the local district or other public agency designee responsible for child identification activities and confidentiality of information.

(3) Information related to participation of students enrolled in private school programs using a proportional share of Part B funds.

(4) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

(5) A description of the use of funds received under Part B of the Individuals with Disabilities Education Act.

(6) Any other information requested by the superintendent of public instruction which is necessary for the management of the special education program.

NEW SECTION

WAC 392-172A-06005 Consistency with state policies. The school district or other public agency, in providing for the education of students eligible for special education must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established in this chapter, that address the actions outlined in WAC 392-172A-06000 (1)(b) through (p).

NEW SECTION

WAC 392-172A-06010 School district use of funds. (1) Part B funds provided to school districts:

(a) Must be expended in accordance with the applicable provisions of this chapter;

(b) Must be used only to pay the excess costs of providing special education and related services to special education students, consistent with this chapter; and

(c) Must be used to supplement state, local and other federal funds and not to supplant those funds.

(2) The excess cost requirement prevents a school district from using funds provided under Part B of the act to pay for all of the costs directly attributable to the education of a student eligible for special education.

(3)(a) A school district meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students eligible for special education before funds under Part B of the act are used.

(b) The excess cost amount is determined in accordance with the definition of excess costs in WAC 392-172A-01075. That amount may not include capital outlay or debt service.

(4) If two or more school districts jointly establish eligibility in accordance with WAC 392-172A-06075 and 392-172A-06080, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those school districts for elementary or secondary school students, as the case may be.

NEW SECTION

WAC 392-172A-06015 Maintenance of effort. (1) Except as provided under WAC 392-172A-06020 and 392-172A-06025, funds provided to school districts or other public agencies under Part B of the IDEA may not be used to reduce the level of expenditures for the education of students eligible for special education made by it from local funds below the level of those expenditures for the preceding fiscal year.

(2) Except as provided in subsection (3) of this section, the OSPI determines that a school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets, for the education of special education students, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:

(a) Local funds only.

(b) The combination of state and local funds.

(3) A district that relies on subsection (2)(a) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of special education students in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997, or later, if the most recent fiscal year for which information is available and the standard in subsection (2)(a) of this section was used to establish its compliance with this section.

(4) The OSPI may not consider any expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the district is required to account to the federal government directly or through the OSPI in determining a district's compliance with the requirement in subsection (1) of this section.

NEW SECTION

WAC 392-172A-06020 Exception to maintenance of effort. A school district or other public agency may reduce the level of expenditures made by it under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

(2) A decrease in the enrollment of students eligible for special education;

(3) The termination of the obligation of the district or agency, consistent with this chapter, to provide a program of special education to a particular student that is an exceptionally costly program as determined by the state, because the student:

(a) Has left the jurisdiction of the district or agency;

(b) Has reached the age at which the obligation of the district or agency to provide a free appropriate public education to the student has terminated; or

(c) No longer needs the program of special education.

(4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.

(5) The reimbursement of the cost by the safety net fund operated by the state oversight committee.

NEW SECTION

WAC 392-172A-06025 Adjustment to local fiscal efforts in certain fiscal years. (1) Notwithstanding WAC 392-172A-06015 (1)(a) and (2) and 392-172A-06020(1), and except as provided in subsection (4) of this section, for any fiscal year for which the allocation received by a school district exceeds the amount the school district received for the previous fiscal year, the school district may reduce the level of expenditures otherwise required by WAC 392-172A-06015(1) by not more than fifty percent of the amount of that excess.

(2) If a school district exercises the authority under subsection (1) of this section, the school district must use an

amount of local funds equal to the reduction in expenditures under subsection (1) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the school district is using funds under the ESEA for those activities.

(3) Notwithstanding subsection (1) of this section, if OSPI determines that a school district is unable to establish and maintain programs of FAPE that meet the requirements of this chapter and Part B of the act, the OSPI must prohibit the school district from reducing the level of expenditures under subsection (1) of this section for that fiscal year.

(4) The amount of funds expended by a school district for early intervening services under WAC 392-172A-06085 shall count toward the maximum amount of expenditures that the school district may reduce under subsection (1) of this section.

NEW SECTION

WAC 392-172A-06030 School-wide programs under Title 1 of the ESEA. (1) A school district or other agency may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any school-wide program may not exceed:

(a) The amount received by the district or agency under Part B for that fiscal year; divided by the number of special education students in the jurisdiction; multiplied by

(b) The number of special education students participating in the school-wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172A-05010 (1)(a).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of calculating excess cost and supplanting WAC 392-172A-05010 (1)(b) and (c).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that special education students in school-wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to special education students under the IDEA.

NEW SECTION

WAC 392-172A-06035 Permissive use of funds. (1) Funds provided to a school district under Part B of the act may be used for the following activities:

(a) For the costs of special education and related services, and supplementary aids and services, provided in a general education class or other education-related setting to a special education student in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.

(b) To develop and implement coordinated, early intervening educational services in accordance with WAC 392-172A-06085.

(c) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

(2) A school district may use funds received under Part B of the act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students eligible for special education, that is needed for the implementation of those case management activities.

NEW SECTION

WAC 392-172A-06040 Purchase of instructional materials. OSPI has elected to coordinate with the National Instructional Materials Access Center (NIMAC). School districts have the option of coordinating with NIMAC.

(1) Not later than December 3, 2006, a school district that chooses to coordinate with NIMAC, when purchasing print instructional materials, must acquire those instructional materials in accordance with subsection (2) of this section.

(2) If a school district chooses to coordinate with the NIMAC, as of December 3, 2006, it must:

(a) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(b) Make all reasonable attempts to provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(c) In carrying out this section, the school district, to the maximum extent possible, must work collaboratively with the Washington Assistive Technology Act program, and the special education technology center.

(3) For the purposes of this section:

(a) Blind persons or other persons with print disabilities means students served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a;

(b) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the act;

(c) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674 (e)(3)(B) of the act;

(d) Specialized formats has the meaning given the term in section 674 (e)(3)(D) of the act.

(4) The definitions in subsection (3) of this section apply to each school district, whether or not the school district chooses to coordinate with the NIMAC.

(5) Rights of a school district. Nothing in this section shall be construed to require a school district to coordinate with the NIMAC.

(6) If a school district chooses not to coordinate with the NIMAC, the school district must provide an assurance to the OSPI that the school district will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(7) Nothing in this section relieves a school district of its responsibility to ensure that students eligible for special education who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

NEW SECTION

WAC 392-172A-06045 School district information for OSPI. (1) The school district must provide OSPI with information that is necessary to enable OSPI to carry out its duties under Part B of the act and state law, including, but not limited to child count, least restrictive environment, suspension and expulsion rates, disproportionality, and other information relating to the performance of students eligible for special education participating in programs carried out under Part B of the act.

(2) The information will be provided OSPI in the form and by the timelines specified for a particular report.

NEW SECTION

WAC 392-172A-06050 Public information. The school district must make available to parents of students eligible for special education and to the general public all documents relating to the eligibility of the agency under Part B of the act.

NEW SECTION

WAC 392-172A-06055 Records regarding migratory students eligible for special education. The LEA must cooperate in the secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory students eligible for special education for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

NEW SECTION

WAC 392-172A-06060 Exception for prior policies and procedures. (1) If a school district has on file with the OSPI policies and procedures that demonstrate that the school district meets the requirements under WAC 392-172A-05000, including any policies and procedures filed under Part B of the act as in effect before December 3, 2004, the OSPI must consider the school district to have met that requirement for purposes of receiving assistance under Part B of the act.

(2) Subject to subsection (3) of this section, policies and procedures submitted by a school district in accordance with this subpart remain in effect until the school district submits to the OSPI the modifications that the school district determines are necessary.

(3) The OSPI may require a school district to modify its policies and procedures, but only to the extent necessary to ensure the school district's compliance with Part B of the act or state law, if:

(a) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the act or federal or state regulations developed to carry out the act, are amended;

(b) There is a new interpretation of an applicable provision of the act by federal or state courts; or

(c) There is an official finding of noncompliance with federal or state law or regulations.

NEW SECTION

WAC 392-172A-06065 Notification of a school district in case of ineligibility. (1) In the event the superintendent of public instruction or designee determines that a school district is not eligible under Part B of the act, or is not complying with corrective actions as a result of monitoring, state complaints, or due process decisions and the superintendent intends to withhold or recover funds in whole or in part, the school district or other public agency shall be provided:

(a) Written notice of intent to withhold or recover funds and the reasons supporting its notice;

(b) The school district's opportunity for a hearing before the superintendent of public instruction or designee prior to a denial of the request.

(2) The superintendent of public instruction shall provide an opportunity for a hearing before the OSPI disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of receiving notice of the action of the superintendent of public instruction.

(b) Within thirty days after it receives a request, the superintendent of public instruction shall hold a hearing to review its action. At the hearing, the district shall have the opportunity to provide the superintendent's designee with documentary evidence demonstrating that the superintendent erred in reaching its determination.

(c) The superintendent shall consider any new evidence provided and respond in writing to the school district within thirty days, by affirming the initial determination, rescinding its initial determination, or issuing a revised determination.

(d) If the district remains unsatisfied with the superintendent's determination, it may appeal the agency's decision by filing an appeal with the office of administrative hearings within thirty days of receiving OSPI's final determination. Procedures for filing an appeal of a decision under this section shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW and chapter 10.08 WAC.

NEW SECTION

WAC 392-172A-06070 School district compliance. (1) If the OSPI, after reasonable notice and an opportunity for a hearing, finds that a school district determined to be eligible under this subpart is failing to comply with any requirement described in WAC 392-172A-06000 through 392-172A-06060, the OSPI must reduce or must not provide any further payments to the school district until the OSPI is satisfied that the school district is complying with that requirement.

(2) Any school district or other public agency in receipt of a notice of intent to withhold or recover funds of the school district shall, by means of a public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public, within its jurisdiction.

(3) In carrying out its responsibilities under this section, OSPI must consider any due process hearing decision resulting in a decision that is adverse to the school district involved in the decision.

NEW SECTION

WAC 392-172A-06075 Collaborative requests. The superintendent of public instruction may require districts to submit a collaborative request for payments under Part B of the Individuals with Disabilities Education Act if it is determined that a single district or other public agency would be disapproved because the district or other public agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of special education students. Districts that apply for Part B funds in a collaborative request must meet the same minimum requirements as a single district or other public agency applicant. The request must be signed by the superintendent of each participating school district or other public agency. The districts are jointly responsible for implementing programs receiving payments under Part B of the Individuals with Disabilities Education Act. The total amount of funds made available to the affected school districts or other public agencies shall be equal to the sum each would have received separately.

NEW SECTION

WAC 392-172A-06080 Requirements for establishing eligibility. School districts that establish joint eligibility under this section must:

(1) Adopt policies and procedures that are consistent with the state's policies and procedures consistent with WAC 392-172A-06005; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the act.

NEW SECTION

WAC 392-172A-06085 Early intervening services. (1) A school district may not use more than fifteen percent of the amount the school district receives under Part B of the act for any fiscal year, less any amount reduced by the school district pursuant to WAC 392-172A-06015 if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures. Those services are for students in kindergarten through grade twelve, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated, early intervening services under this section, a school district may carry out activities that include:

(a) Professional development, which may be provided by entities other than the school district, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(b) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the act or to delay appropriate evaluation of a student suspected of having a disability.

(4) Each school district that develops and maintains coordinated, early intervening services under this section must annually report to the OSPI on:

(a) The number of students served under this section who received early intervening services; and

(b) The number of students served under this section who received early intervening services and subsequently receive special education and related services under Part B of the act during the preceding two year period.

(5) Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

NEW SECTION

WAC 392-172A-06090 Direct services by the OSPI. (1) OSPI must use the payments that would otherwise have been available to a school district to provide special education and related services directly to students eligible for special education in the area served by that school district, if the OSPI determines that the school district:

(a) Has not provided the information needed to establish the eligibility of the school district, or elected not to apply for its Part B allotment, under Part B of the act;

(b) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(c) Is unable or unwilling to be consolidated with one or more school districts in order to establish and maintain the programs; or

(d) Has one or more students eligible for special education who can best be served by a regional or state program or

service delivery system designed to meet the needs of these students.

(2)(a) In meeting the requirements in subsection (1) of this section, the OSPI may provide special education and related services directly, by contract, or through other arrangements.

(b) The excess cost requirements of WAC 392-172A-01075 do not apply to the OSPI.

(3) The OSPI may provide special education and related services in the manner and at the location as the OSPI considers appropriate. The education and services must be provided in accordance with this chapter.

NEW SECTION

WAC 392-172A-06095 State agency eligibility. Any state agency that desires to receive a subgrant for any fiscal year for Part B funding must demonstrate to the satisfaction of the OSPI that:

(1) All children with disabilities who are participating in programs and projects funded under Part B of the act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(2) The agency meets the other conditions of this subpart that apply to school districts.

STATE PROCEDURES—MONITORING—ENFORCEMENT AND STATE PROGRAM INFORMATION

NEW SECTION

WAC 392-172A-07000 Methods of ensuring services. (1) OSPI must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in this section and the OSPI, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under (c) of this subsection. The agreement or mechanism shall contain:

(a) An identification of, or a method of defining, the financial responsibility of each agency for providing services to ensure FAPE to students eligible for special education. The financial responsibility of each noneducational public agency, including the state medicaid agency and other public insurers of students eligible for special education, must precede the financial responsibility of the school district.

(b) The conditions, terms, and procedures under which a school district must be reimbursed by other agencies.

(c) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(d) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subsection (2)(a) of this section.

(2)(a) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subsection (1) of this section, to provide or pay for any services that are also considered special education or related services such as, but not limited to, assistive technology devices and services, related services, whether provided as specially designed instruction or related services; supplementary aids and services, and transition services that are necessary for ensuring FAPE to students eligible for special education, the noneducational public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subsection (1) of this section.

(b) A noneducational public agency described in subsections (1)(a) and (2) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(c) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in (a) of this subsection, the school district developing the student's IEP must provide or pay for these services to the student in a timely manner. The school district is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in subsection (1) of this section.

(3) The requirements of subsection (1) of this section may be met through:

(a) State statute or regulation;

(b) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(c) Other appropriate written methods determined by the superintendent of the office of public instruction.

NEW SECTION

WAC 392-172A-07005 Students eligible for special education who are covered by public benefits or insurance or private insurance. (1) A school district may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student, the school district:

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the act;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parents otherwise would be required to pay;

(c) May not use a child's benefits under a public benefits or insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(d) Must obtain parental consent, each time that access to public benefits or insurance is sought; and must notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) With regard to services required to provide FAPE to an eligible student under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must:

(a) Obtain parental consent; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(4)(a) If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance such as deductible or co-pay amounts.

(5) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(6) If a public agency spends reimbursements from federal funds such as Medicaid, for services under this part, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions.

(7) Nothing in this part should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, 42 U.S.C. Secs. 1396 through 1396v and 42 U.S.C. Secs. 1397aa through 1397jj, or any other public benefits or insurance program.

MONITORING

NEW SECTION

WAC 392-172A-07010 Monitoring. (1) The OSPI shall monitor selected local school districts special education programs, so that all districts are monitored at least once every six years. The focus of monitoring is to:

(a) Improve educational results and functional outcomes for all students eligible for special education;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving educational results for students eligible for special education;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq. in order to validate compliance with this chapter;

(d) Validate information included in school district or other public agency requests for federal funds; and

(e) Measure district performance on relative targets and priorities from state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

(a) Collection of previsit data;

(b) Conduct of on-site visits;

(c) Comparison of a sampling of evaluation reports and individualized education programs with the services provided; and

(d) Review and analysis of such quantifiable and qualitative indicators as are needed to measure performance in the following areas:

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

(iii) Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.

(3) As part of the monitoring process, a monitoring report shall be submitted to the school district. The monitoring report shall include, but not be limited to:

(a) Findings of noncompliance, if any;

(b) Required student specific corrective actions; and

(c) Areas that will require a corrective action plan and/or improvement plan to address any systemic issues determined through the monitoring.

(4) The school district shall have thirty calendar days after the date of its receipt of the monitoring report to provide the OSPI with supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report. In the event that the school district submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the OSPI shall determine whether or not any revisions are necessary, the extent to which the proposed action is acceptable and will issue a final monitoring report within thirty calendar days after receipt of the supplemental response.

(5) The school district will have ninety calendar days after the date of its receipt of the final monitoring report to provide the OSPI with a proposed corrective action/improvement plan, if required, which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remediate any areas of noncompliance.

(6) If the school district does not comply with a corrective action plan approved pursuant to subsections (4) and (5) of this section, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action(s);

(ii) Expedite the school district's response to the final monitoring report; and

(iii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withholding, in whole or part, a specified amount of state and/or federal special education funds, in compliance.

(c) Requesting assistance from the state auditors office to initiate an audit.

(7) When monitoring districts under this section or when enforcing other provisions of this subpart relating to the district's obligations to provide OSPI with data under WAC 392-172A-06000 through 392-172A-06060:

(a) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:

Advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, Office of Special Education Programs, other offices of the Department of Education, other federal agencies, technical assistance providers approved by the Department of Education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(i) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(b) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:

(i) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(ii) Withhold, in whole or in part, any further payments to the district under Part B of the act.

(c) Notwithstanding (a) or (b) of this subsection, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under (a) or (b) of this subsection.

PERFORMANCE GOALS AND INDICATORS—STATE PERFORMANCE PLANS AND ANNUAL PERFORMANCE REPORTS

NEW SECTION

WAC 392-172A-07015 Performance goals and indicators. (1) The OSPI has established goals for the performance of special education students that promote the purposes of the Individuals with Disabilities Education Act, are consistent, to the maximum extent appropriate, with the state's four learning goals and essential academic learning requirements for all students, and are the same as the state's objectives for progress by students in its definition of adequate yearly progress, including the state's objectives for progress by students eligible for special education, under section 1111(b)(2)(C) of the ESEA,20 U.S.C. Sec. 6311. The performance goals are identified in the state's performance plan, which is based upon district data provided to OSPI.

(2) In addition, the OSPI has established performance indicators that are used to assess the state's and school district's progress toward achieving those goals that at a minimum address the performance of eligible students on assessments, dropout rates, transition, and graduation rates.

(3) The state reports annually to the department of education and to the public through its annual performance report on the progress of the state, and of students eligible for special education in the state, toward meeting the goals established under subsection (1) of this section.

NEW SECTION

WAC 392-172A-07020 State performance plans and data collection. (1) The OSPI has established a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the act, and describes how the state will improve such implementation. The plan is reviewed every six years, with any amendments provided to the department of education.

(2)(a) As part of the state performance plan, the OSPI has established measurable and rigorous targets for indicators established by the department of education under the priority areas of general supervision including child find, effective monitoring, use of resolution meetings, mediation, and a system of transition services.

(b) The OSPI must collect valid and reliable information from the districts, monitoring, and state data, as needed to report annually to the department of education on their indicators.

(c) Data collected on specific indicators through state monitoring or sampling are collected on those indicators for

each school district at least once during the six year period of the state performance plans.

(3) Nothing in Part B of the act shall be construed to authorize the development of a statewide or nationwide data base of personally identifiable information on individuals involved in studies or other collections of data under Part B of the act.

NEW SECTION

WAC 392-172A-07025 State use of targets and reporting. (1) The OSPI uses the targets established in the state's performance plan and the priority areas to analyze the performance of each school district.

(2)(a) The OSPI reports annually to the public on the performance of each school district located in the targets in the state's performance plan; and makes the state's performance plan available through public means, including posting on the web site of the OSPI, distribution to the media, and distribution through public agencies, subject to subsection (4) of this section.

(b) If the OSPI collects performance data through monitoring or sampling, the OSPI includes the most recently available performance data on each school district and the date the data were obtained.

(3) The OSPI must report annually to the department of education on the performance of the state under its performance plan.

(4) The OSPI does not report any information to the public or to the department of education on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

NEW SECTION

WAC 392-172A-07030 State enforcement. If the OSPI determines that a school district is not meeting the requirements of Part B of the act, including the targets in the state's performance plan, OSPI must prohibit the school district from reducing the school district's maintenance of effort under WAC 392-172A-06015 for any fiscal year, in addition to any other authority it has to monitor and enforce the requirements of Part B of the act.

CHILD COUNT, DISPROPORTIONALITY, SUSPENSION AND EXPULSION

NEW SECTION

WAC 392-172A-07035 Child count. The OSPI reports to the secretary of the department of education no later than February 1 of each year the number of special education students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' reports to OSPI which are due by December 1 of each year.

(1) Information required in the report includes:

(a) The number of special education students receiving special education and related services on December 1 of that school year;

(b) The number of special education students aged three through five who are receiving free, appropriate public education;

(c) The number of those special education students aged six through seventeen and eighteen through twenty-one within each disability category, as defined in the definition of "special education students"; and

(d) The number of those special education students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count: December 1.

(3) A student may not be reported under more than one disability category.

(4) If a special education student has more than one disability, the student is reported as follows:

(a) A student with deaf-blindness and not reported as having a developmental delay must be reported under the category "deaf-blindness."

(b) A student who has more than one disability (other than deaf-blindness or developmental delay) must be reported under the category "multiple disabilities."

(5) The office of the superintendent of public instruction shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question. School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.

(6) The OSPI will include in its report special education students who are enrolled in a school or program that is operated or supported by a public agency, and that:

(a) Provides them with both special education and related services; or

(b) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(7) The superintendent may not include special education students in its reports who:

(a) Are not enrolled in a school or program operated or supported by a public agency;

(b) Are not provided special education that meets state standards;

(c) Are not provided with a related service that they need to assist them in benefiting from special education;

(d) Are counted by the state's lead agency for Part C services; or

(e) Are receiving special education funded solely by the federal government including students served by the U.S. Departments of the Interior or Education.

SUSPENSION AND EXPULSION AND DISPROPORTIONALITY

NEW SECTION

WAC 392-172A-07040 Disproportionality. (1) The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity is occurring in the state with respect to:

(a) The identification of students as special education students, including the identification of students as special education students in accordance with a particular impairment described in this chapter;

(b) The placement in particular educational settings of these students; and

(c) The incidence duration and type of disciplinary actions including suspension and expulsions.

(2) Disproportionality is determined by a ratio of the risk that a student from a particular racial or ethnic group is identified as eligible for special education, placed in a particular eligibility category, placed in a particular setting, or is disciplined, compared to the risk factor for all other students.

(3) Significant disproportionality means:

(a) The overall percentage of students eligible for special education in the district is greater than the statewide average plus one percent;

(b) The weighted risk ratio as calculated by the state is greater than 3.0 in one or more racial or ethnic groups by disability category; and

(c) Placement of one or more racial or ethnic groups on the least restrictive environment tables published by the OSPI annually is greater than the statewide average plus one percent, to the extent the representation is the result of inappropriate identification.

(4)(a) In the case of a determination of significant disproportionality with respect to the identification of a student as a special education student, or the placement in particular educational settings of these students, the superintendent of public instruction shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the act;

(b) Require any school district identified under subsection (1) of this section to reserve the maximum amount of funds under WAC 392-172A-06085 to provide comprehensive coordinated early intervening services to serve students in the school district, particularly, but not exclusively, students in those groups that were significantly over identified; and

(c) Require the school district to publicly report on the revision of policies, practices, and procedures described under (b) of this subsection.

NEW SECTION

WAC 392-172A-07045 Suspension and expulsion rates for students eligible for special education. (1) Annually, school districts shall report to the state on the rates of long-term suspensions and expulsions of students eligible for special education and nondisabled students for the preceding school year. The state shall examine this data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring:

(a) Among school districts or other public agencies; or

(b) Between nondisabled students and special education students within school districts or other public agencies.

(2) If discrepancies are occurring, the state shall review and if appropriate, require revisions in state, school district or other public agency policies, procedures, and practices to ensure compliance with the act.

(3) Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:

(a) The development and implementation of individualized education programs;

(b) The use of positive behavioral interventions and supports; and

(c) Procedural safeguards.

NEW SECTION

WAC 392-172A-07050 State use of funds. OSPI reserves funds for state-level activities, including state administration and other state-level activities, in accordance with the provisions of 34 CFR Sec. 300.704. OSPI makes distributions of unreserved or unused grant funds, that it receives pursuant to section 611 of the act, to school districts allocated through subgrants in accordance with the provisions of 34 CFR Sec. 300.705.

NEW SECTION

WAC 392-172A-07055 State safety net fund for high need students. (1) The state has established a special education safety net fund for students eligible for special education. The rules for applying for reimbursement for the fund are contained in WAC 392-14-600 through 392-14-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse high need, low incidence, catastrophic, or extraordinary aid for applicants with eligible high need special education students whose cost is greater than three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education under the state Medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated

with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education.

STATE ADVISORY COUNCIL

NEW SECTION

WAC 392-172A-07060 State advisory council. (1) The special education state advisory council is established in order to help facilitate the provision of special education and related services to meet the unique needs of special education students.

(2) The membership of the council is appointed by the superintendent of the office of public instruction and shall include at least one representative of each of the following groups or entities:

(a) Parents of children, aged birth to twenty-six, with disabilities;

(b) Individuals with disabilities;

(c) Teachers;

(d) Institutions of higher education that prepare special education and related services personnel;

(e) Superintendents and principals, including officials who carry out activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act;

(f) Local administrators of special education programs;

(g) State agencies involved in the financing or delivery of related services to special education students;

(h) Private schools;

(i) Not less than one vocational, community, or business organization concerned with the provision of transition services to students eligible for special education;

(j) State agency employee responsible for services to children in foster care;

(k) State juvenile and adult corrections agencies;

(l) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

A majority of the members of the advisory council shall be individuals with disabilities or parents of special education students.

(3) The council's purposes are to:

(a) Advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of special education students;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of special education students;

(c) Advise the state in developing evaluations and reporting such information as may assist the state in its data requirements under section 618 of the act;

(d) Advise the state in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Education Act; and

(e) Advise the state in developing and implementing policies relating to the coordination of services for special education students.

(4) The council shall follow the procedures in this subsection.

(a) The advisory council shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory council shall submit an annual report of council activities and suggestions to the superintendent of public instruction. This report must be made available to the public in a manner consistent with other public reporting requirements of this chapter.

(c) Official minutes will be kept on all council meetings and shall be made available to the public on request to the OSPI.

NEW SECTION

WAC 392-172A-07065 Records related to grant funds. (1) The superintendent of public instruction and districts shall keep records that show:

(a) The amount of funds under the grant;

(b) How the funds were used;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(2) Records shall be maintained to show program compliance, including records related to the location, evaluation and placement of special education students and the development and implementation of individualized education programs. Program and fiscal information records shall be available to authorized representatives of the OSPI for the purpose of compliance monitoring.

(3) Records shall be retained for six years after completion of the activities for which grant funds were used.

NEW SECTION

WAC 392-172A-07070 Public participation. The state provides opportunities for public hearings, including adequate notice of the hearings and opportunity for written and oral comment prior to the adoption of any policies and procedures needed to comply with Part B of the act, or the submission of a state plan.

WSR 07-08-087
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
(By the Code Reviser's Office)
[Filed April 3, 2007, 8:07 a.m.]

WAC 220-20-010, proposed by the department of fish and wildlife in WSR 06-19-061 appearing in issue 06-19 of the State Register, which was distributed on October 4, 2006, is withdrawn by the code reviser's office under RCW 34.05.335 (3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-08-090
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
(Board of Boiler Rules)
[Filed April 3, 2007, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-160.

Title of Rule and Other Identifying Information: Board of boiler rules—Substantive (chapter 296-104 WAC).

Hearing Location(s): Department of Labor and Industries, 950 Broadway, Suite 200, Tacoma, WA, on May 9, 2007, at 10:00 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 5:00 p.m. on May 9, 2007.

Assistance for Persons with Disabilities: Contact Sally Elliott by April 15, 2007, yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules is proposing a 3.38% (rounded down to the nearest tenth of a dollar) general fee increase. The 3.38% rate is the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2007. The general fee increase is necessary to help offset inflation and to maintain the financial health and operational effectiveness of the program. The board also recommended making clarifying changes to how rules are interpreted and revised.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Statute Being Implemented: Chapter 70.79 RCW.

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

Name of Proponent: Board of boiler rules, governmental.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, Washington, (360) 902-5270; Implementation and Enforcement: Linda Williamson, Tumwater, Washington, (360) 902-5270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The board of boiler rules has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed rules will not place a more than minor impact on any business or contractor and/or they are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements. The fees are exempt from the small business economic impact statement under RCW 34.05.328 (5)(b)(vi).

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule for clarification (see RCW 19.85.025 referencing RCW 34.05.-310(4) and 34.05.328 (5)(b)(vi)).

April 3, 2007
Craig Hopkins, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 05-22-092, filed 11/1/05, effective 1/1/06)

WAC 296-104-018 Administration—How are rules interpreted and revised? Stakeholders may request clarifications and interpretations of these rules by contacting the chief inspector. Interpretations will be brought to the board if the inquirer is aggrieved by the interpretation of the chief inspector (RCW 70.79.360). The board will consider written requests for interpretations and revisions to these definitions, rules, and regulations. Inquiries shall be limited to requests for interpretation of the rules or to proposed revisions to the existing rules and shall be submitted to the department of labor and industries forty-five days prior to the board of boiler rules meeting date. The requests shall be in writing upon the form furnished by the chief inspector located on the boiler program web site. Requests not using the form must be in the following format:

(1) Scope. Identify a single rule or closely related rules that are in dispute.

(2) Background. State the purpose of the inquiry, which should be either to obtain an interpretation or to propose a revision to existing rules. Provide concise information needed for the board's understanding of the inquiry, including references to the WAC section as well as other code and/or standards paragraphs.

(3) Inquiry structure. Provide statements in a condensed and precise question format and, where appropriate, compose in such a way that "yes" or "no" (perhaps with provisos) would be an acceptable reply.

(4) Proposed reply. State what it is believed the rule requires. If in the inquirer's opinion a revision to the definitions, rules, and regulations is needed, recommended wording should be provided.

Inquiries shall be submitted by mail to:
Board of Boiler Rules
% Chief Inspector
Department of Labor & Industries
Boiler Section
P.O. Box 44410
Olympia, WA 98504-4410

or

Inquiries shall be submitted by delivery to:
Board of Boiler Rules
% Chief Inspector
Department of Labor & Industries
Boiler Section
7273 Linderson Way SW
Tumwater, WA 98501

or

Inquiries shall be submitted electronically to:
Board of Boiler Rules
% Chief Inspector
BoilerBoardInquires@lni.wa.gov

AMENDATORY SECTION (Amending WSR 06-12-032, filed 5/31/06, effective 7/1/06)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

Heating boilers:	Internal	External
Cast iron—All sizes	$((~~32.00~~)) 33.00	$((~~25.60~~)) 25.80
All other boilers less than 500 sq. ft.	$((~~38.60~~)) 39.60	$((~~25.60~~)) 25.80
500 sq. ft. to 2500 sq. ft.	$((~~63.70~~)) 65.80	$((~~32.00~~)) 33.00
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	$((~~25.60~~)) 25.80	$((~~12.60~~)) 13.00
Power boilers:	Internal	External
Less than 100 sq. ft.	$((~~32.00~~)) 33.00	$((~~25.60~~)) 25.80
100 sq. ft. to less than 500 sq. ft.	$((~~38.60~~)) 39.90	$((~~25.60~~)) 25.80
500 sq. ft. to 2500 sq. ft.	$((~~63.70~~)) 65.80	$((~~32.00~~)) 33.00
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	$((~~25.60~~)) 25.80	$((~~12.60~~)) 13.00
Pressure vessels:		
Automatic utility hot water supply heaters per RCW 70.79.090		$((~~6.00~~)) 6.20

All other pressure vessels:

Square feet shall be determined by multiplying the length of the shell by its diameter.

	Internal	External
Less than 15 sq. ft.	$((~~25.60~~)) 25.80	$((~~19.10~~)) 19.70
15 sq. ft. to less than 50 sq. ft.	$((~~38.00~~)) 39.20	$((~~19.10~~)) 19.70
50 sq. ft. to 100 sq. ft.	$((~~44.20~~)) 45.60	$((~~25.60~~)) 25.80
For each additional 100 sq. ft. or any portion thereof	$((~~44.20~~)) 45.60	$((~~12.60~~)) 13.00

Certificate of inspection fees: For objects inspected, the certificate of inspection fee is $((~~19.10~~)) 19.70 per object.

Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee) $50.00

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours	$((~~38.60~~)) 39.90
For each hour or part of an hour in excess of 8 hours	$((~~57.70~~)) 59.60

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours	$((~~57.70~~)) 59.60
For each hour or part of an hour in excess of 8 hours	$((~~90.10~~)) 93.10

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

For each hour or part of an hour up to 8 hours	$((~~38.60~~)) 39.90
For each hour or part of an hour in excess of 8 hours	$((~~57.70~~)) 59.60

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours	$((~~57.70~~)) 59.60
For each hour or part of an hour in excess of 8 hours	$((~~90.10~~)) 93.10

Examination fee: A fee of $((~~71.30~~)) 73.70 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: An initial fee of $25 and an annual renewal fee of $10 along with an annual work card fee of $15.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board ((~~for a Washington state special certificate~~)), a fee of $((~~358.00~~)) 370.10 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 07-08-093
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 3, 2007, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-052.

Title of Rule and Other Identifying Information: Chapter 180-38 WAC, Pupils—Immunization requirement and life-threatening health condition transfer to chapter 392-380 WAC.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), 600 Washington Street, Third Floor Conference Room, Olympia, WA 98504-7200, on May 10, 2007, at 9 a.m.

Date of Intended Adoption: May 11, 2007.

Submit Written Comments to: Martin Mueller, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Martin.Mueller@k12.wa.us, fax (360) 664-3575, by May 8, 2007.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by May 8, 2007, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Language from chapter 180-38 WAC is being adopted as new language in chapter 392-380 WAC as required by the transfer of duties from the state board of education to the superintendent of public instruction under E2SHB 3098.

Statutory Authority for Adoption: RCW 28A.210.160.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Martin Mueller, OSPI, 600 Washington Street S.E., Olympia, (360) 725-6175.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

April 3, 2007
Terry Bergeson
Superintendent of
Public Instruction

Chapter 392-380 WAC

PUBLIC SCHOOL PUPILS—IMMUNIZATION REQUIREMENT AND LIFE-THREATENING HEALTH CONDITION

NEW SECTION

WAC 392-380-005 Purpose and authority. (1) The purpose of this chapter is to establish the procedural and substantive due process requirements governing the exclusion of students from public schools for failure to comply with the immunization requirement of the state of Washington or failure to present a medication or treatment order for a life-threatening health condition.

(2) The authority for this chapter is RCW 28A.210.160.

NEW SECTION

WAC 392-380-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(6).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(1).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(2).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC 246-100-166(5)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the school, on a form prescribed by the department of health, which complies with RCW 28A.210.090.

(6) "Life-threatening condition" shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260 (2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

(9) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance:

(a) Due to failure to submit a schedule of immunization, or a certificate of exemption; or

(b) In the case of a life-threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(10) "School day" shall mean the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school.

(11) "Parent" shall mean parent, legal guardian, or other adult *in loco parentis*.

NEW SECTION

WAC 392-380-045 School attendance conditioned upon presentation of proofs. (1) The initial attendance of every student at every public school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent, guardian or other adult *in loco parentis*.

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

NEW SECTION

WAC 392-380-050 Written notice prior to exclusions from school. (1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 392-380-045.

(2) The written notice for public school students shall:

(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.

(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.

(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.

(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.

(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.

NEW SECTION

WAC 392-380-080 Prehearing and hearing process. (1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.

(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter 392-400 WAC.

WSR 07-08-095
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed April 3, 2007, 12:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-080 and 06-21-081.

Title of Rule and Other Identifying Information: WAC 388-15-009 What is child abuse or neglect? and 388-15-049 When must the department notify the alleged perpetrator of allegations of child abuse or neglect?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. 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, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.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 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To meet the requirements from ESSB 5922 (chapter 512, Laws of 2005).

Reasons Supporting Proposal: The new language is essential for children's administration to implement the legislature's intent in ESSB 5922, chapter 512, Laws of 2005. The new language is essential for determining what constitutes child abuse under the stature [statute], and is necessary for the protection of health, safety and welfare of children.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050.

Statute Being Implemented: Chapter 26.44 RCW, RCW 74.13.031, chapter 512, Laws of 2005.

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: Tina Stern, Children's Administration, P.O. Box 45710, Olympia, WA (360) 902-0863; Implementation and Enforcement: Leah Stajduhar, Children's Administration, P.O. Box 45710, Olympia, WA, (360) 902-7539.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule changes are dictated by statute. An economic analysis was not required under RCW 19.85.025(3), 34.05.328 (5)(b) and (c) as the proposed rule changes are adopted by reference without material change from ESSB 5922, chapter 512, Laws of 2005.

A cost-benefit analysis is not required under RCW 34.05.328. These rule changes are dictated by statute. The rules incorporate ESSB 5922, chapter 512, Laws of 2005 and are not considered significant rule changes under RCW 34.05.328.

March 29, 2007
Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-009 What is child abuse or neglect? Child abuse or neglect means the injury, sexual abuse, or sexual exploitation((~~, negligent treatment, or maltreatment~~)) of a child by any person under circumstances which indicate that the child's health, welfare, ((~~and~~)) or safety is harmed, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(1) Physical abuse means the nonaccidental infliction of physical injury or physical mistreatment on a child. Physical abuse includes, but is not limited to, such actions as:

(a) Throwing, kicking, burning, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child under age three;

(d) Interfering with a child's breathing;

(e) Threatening a child with a deadly weapon;

(f) Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks or which is injurious to the child's health, welfare ((~~and~~)) or safety.

(2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to, such actions as allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in:

(a) Prostitution;

(b) Sexually explicit, obscene or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; or

(c) Sexually explicit, obscene or pornographic activity as part of a live performance, or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, ((~~and~~)) or safety. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances which create a clear and present danger to the child's health, welfare, ((~~and~~)) or safety. Negligent treatment or maltreatment includes, but is not limited, to:

(a) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, ((~~and~~)) or safety. Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves;

(b) Actions, failures to act, or omissions that result in injury to or which create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child; or

(c) The cumulative effects of ((~~consistent~~)) a pattern of conduct, behavior or inaction ((~~or behavior~~)) by a parent or guardian in providing for the physical, emotional and developmental needs of a child's, or the effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, and duties, when the result is to cause injury or create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

AMENDATORY SECTION (Amending WSR 02-15-098 and 02-17-045, filed 7/16/02 and 8/14/02, effective 2/10/03)

WAC 388-15-049 When must the department notify the ((~~alleged perpetrator~~)) parent, guardian or legal custodian of allegations of child abuse or neglect made against them? ((~~CPS~~)) The department must ((~~attempt to~~)) notify the ((~~alleged perpetrator~~)) parent, guardian or legal custodian of a child of the allegations of child abuse or neglect ((~~at the earliest point in the investigation that will not jeopardize the safety and protection of the child or the investigation process~~)) made against that person at the initial point of contact with that person, in a manner consistent with the laws maintaining the confidentiality of the persons making the allegations. Investigations of child abuse and neglect should be conducted in a manner that will not jeopardize the safety or protection of the child or the integrity of the investigation process.

WSR 07-08-099
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed April 3, 2007, 4:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-079.

Title of Rule and Other Identifying Information: The geologist licensing board is proposing changes to WAC 308-15-075 When do I need to use my stamp/seal? and 308-15-020 Definitions.

The board is proposing adding WAC 308-15-160 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions, 308-15-105 Brief adjudicative proceedings, and 308-15-107 Records required for the brief adjudicative proceeding.

The board is proposing the repeal of WAC 308-15-100 What is a brief adjudicative proceeding (BAP)? and 308-15-101 When can a brief adjudicative proceeding (BAP) be requested?

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on May 16, 2007, at 3:15 p.m.

Date of Intended Adoption: June 5, 2007.

Submit Written Comments to: Lorin Doyle, Program Manager, P.O. Box 9045, Olympia, WA 98501-9045, e-mail geologist@dol.wa.gov, fax (360) 664-1465, by May 4, 2007.

Assistance for Persons with Disabilities: Contact Elizabeth Stancil by May 4, 2007, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add clarity to rule language and to reflect a current course of the profession.

Reasons Supporting Proposal: To add clarity to rule language and to reflect a current course of the profession.

Statutory Authority for Adoption: RCW 18.220.040.

Statute Being Implemented: RCW 18.220.040.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Brett W. Lorentson, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1576; Implementation: Lorin Doyle, 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1387; and Enforcement: Joe Vincent Jr., 405 Black Lake Boulevard S.W., Olympia, WA 98501-9045, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not disproportionately affect small business.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies that must comply with this statute.

April 3, 2007
Shelly L. Hagen
Deputy Assistant Director

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-020 Definitions. (1) **"Board"** means the Washington state geologist licensing board.

(2) **"Department"** means the Washington state department of licensing.

(3) **"Geologic interpretation," as applied to the practice of geology and its specialties,** is the iterative process by which geologists, using generally accepted geologic principles, determine geologic history, origin and process from

observation and testing of rock, soil and water characteristics, contents, distribution, orientation, lateral and vertical continuity; and resulting landforms.

(4) **"Geological work of a character satisfactory to the board"** means that the applicant's qualifying work history consists of professional experience in the practice of geology. Professional geological work is work performed at a professional level that requires the application of professional knowledge, principles and methods to geological problems through the exercise of individual initiative and judgment in investigating, measuring, interpreting and reporting on the physical phenomena of the earth. Implicit in this definition are the recognition of professional responsibility and integrity and the acknowledgment of minimal supervision. Professional geological work specifically does not include routine activities by themselves such as drafting, sampling, sample preparation, routine laboratory work, or core logging, where the elements of initiative, scientific judgment and decision making are lacking, nor does it include activities which do not use scientific methods to process and interpret geologic data. It also does not include engineering or other physical sciences where geological investigation, analysis and interpretation are minimal or lacking. Professional specialty experience is considered to meet this definition.

(5) **"Geologist web site"** means the internet web site maintained by the department of licensing.

(6) **"National Association of State Boards of Geology"** or **"ASBOG"** means the organization responsible for developing, publishing and grading National Geologist Licensing Examinations.

(7) **"Professional specialty practice of a character satisfactory to the board"** means that the applicant has qualifying work history pertinent to the specialty that meets the standards for professional geologic work defined above. Elements, typical applications, types of projects, for the engineering geologist and hydrogeologist specialties are outlined in WAC 308-15-053.

(8) **"Reciprocity"** means the issuance of a license without examination as a geologist or specialty geologist to a person who holds a license or certificate of qualifications issued by proper authority of any state, territory, or possession of the United States, District of Columbia, or any foreign country, if the applicant meets the requirements outlined in WAC 308-15-040 for a geologist license, in WAC 308-15-055 for an engineering geologist license, and in WAC 308-15-057 for a hydrogeologist license.

(9) **"Year of professional practice"** means at least 1600 hours of work in the practice during a year. Examples of a "year of professional practice" include 200 eight-hour days or 160 ten-hour days during a year. Part-time work will be counted on a prorated basis.

(10) **"Year of professional specialty practice"** means at least 1600 hours of work in a specialty during a calendar year, per examples given in subsection (9) of this section.

(11) "Geologist in training" means an individual who has met all the educational requirements outlined in WAC 308-15-040(2), and has passed the ASBOG Fundamentals of Geology examination, but does not meet the experience requirements outline in WAC 308-15-040(3).

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-075 When do I need to use my stamp/seal? (1) You must stamp/seal, sign, and date every final geology or specialty geology report, letter report, or document that is prepared by you or prepared under your supervision or direction and submitted to other parties.

(a) All figures, maps, and plates bound within final reports or documents do not need to be individually stamped/sealed, signed and dated. Unbound final figures, maps, and plates must be individually stamped/sealed, signed and dated.

(b) ((~~Preliminary or~~)) Draft geology or specialty geology work does not have to be stamped/sealed, but the documents and all associated figures, maps, and plates must be clearly marked as ((~~preliminary or~~)) draft.

(2) You must stamp/seal, sign, and date every final geology or specialty geology design and specification that is prepared by you or prepared under your supervision or direction. ((~~Preliminary or~~)) Draft geology or specialty geology design and specification drawings do not have to be stamped/sealed, but each design and specification must be clearly marked as ((~~preliminary or~~)) draft.

(3) If you stamp/seal, sign and date work performed by someone other than yourself, you are responsible to the same extent as if you prepared the report, design or specification.

NEW SECTION

WAC 308-15-105 Brief adjudicative proceedings. (1) The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.220 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of geologists. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

(f) Whether an applicant or licensee failed to cooperate in an investigation by the board;

(g) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

(h) Whether an applicant or licensee has defaulted on educational loans;

(i) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

(j) Whether a person has engaged in false, deceptive, or misleading advertising; or

(k) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

NEW SECTION

WAC 308-15-107 Records required for the brief adjudicative proceeding. The records for the brief adjudicative proceeding shall include:

(1) Renewal or reinstatement of a license:

(a) All correspondence between the applicant and the board about the renewal or reinstatement;

(b) Copies of renewal notice(s) sent by the department of licensing to the licensee;

(c) All documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.

(2) Applicants for certification/licensing:

(a) Original complete application with all attachments as submitted by applicant;

(b) Copies of all supplementary information related to application review by staff or board member;

(c) All documents relied upon in reaching the determination of ineligibility;

(d) All correspondence between the applicant and the board about the application or the appeal.

(3) Default of student loan payments:

(a) Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;

(b) Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;

(c) All documents received by the board from or on behalf of the licensee relating to rebutting such identification;

(d) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed student loan or service-conditional scholarship; or

(e) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

(4) Determination of compliance with previously issued board order:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

NEW SECTION

WAC 308-15-160 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions. (1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee, or member of an entity, or individual that is engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(5) The following are examples of possible scenarios related to board member rules of conduct. Activities incompatible with public duties; financial interests in transactions.

(a) **Example 1:**

The geologist licensing board disciplines licensed geologists in Washington. The board is conducting an investigation involving the services provided by a licensed geologist. One of the members of the board is currently serving as a subcontractor to that geologist on a large project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed geologist services.

(b) **Example 2:**

The geologist licensing board makes licensing decisions on applications for licensure. An applicant for licensure owns a geotechnical consulting business which employs licensed geologists, including one of the board members. The board member employed by the business must recuse himself from any board investigation, discussion, deliberation and vote with respect to his employer's application for licensure.

(c) **Example 3:**

The geologist licensing board makes licensing decisions on applications from geologists registered in other states or territories of the United States, the District of Columbia, or other countries. The board can grant licensure if an individual's qualifications and experience are equivalent to the qualifications and experience required of a person licensed under Washington law. An out-of-state applicant is employed as a geologist by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the geologist for the project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state geologist's qualifications and experience.

(6) Recusal disclosure. If recusal occurs pursuant to subsection (1) of this section, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-15-100	What is a brief adjudicative proceeding (BAP)?
WAC 308-15-101	When can a brief adjudicative proceeding (BAP) be requested?

WSR 07-08-100
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 06-10—Filed April 3, 2007, 4:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-12-122.

Title of Rule and Other Identifying Information: Chapter 173-340 WAC, Model Toxics Control Act cleanup regulation, the rule revisions will update and clarify the policies and procedures for establishing and evaluating compliance with cleanup levels and remediation levels for mixtures of polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans (dioxins/furans), polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs).

Hearing Location(s): St. Benedict School Cafeteria, 4811 Wallingford Avenue North, Seattle, WA 78103 [98103], on May 10, 2007, workshop begins at 5:30 p.m., hearing immediately following; at the Clallam County Courthouse, 223 East 4th Street, Port Angeles, on May 14, 2007, workshop begins at 5:30 p.m., hearing immediately following; and at the Department of Ecology Eastern Regional Office, Second Floor Conference Room, 4601 North Monroe Street, Spokane, WA 99205, on May 17, 2007, workshop begins at 5:30 p.m., hearing immediately following.

Date of Intended Adoption: June 30, 2007.

Submit Written Comments to: Pete Kmet, P.E., Department of Ecology, Toxics Cleanup Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail pkmet461@ecy.wa.gov, fax (360) 407-7154, post mark by May 25, 2007.

Assistance for Persons with Disabilities: Contact Ann McNeely by April 23, 2007, (360) 407-7205.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is proposing these rule changes in order to update the policies and procedures for establishing cleanup levels for mixtures of dioxins and furans, polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs).

- Risk Policies Applicable to Certain Mixtures: Ecology is proposing changes to require that cleanup levels for mixtures of dioxins and furans, PAHs and PCBs must each be based on a cancer risk of one-in-a-million.
- Toxic Equivalency Factors Used to Characterize Mixtures: Ecology is proposing to amend the rule to incorporate the most recent toxicity equivalency factors (TEFs) for dioxins/furans and PCBs recommended by the World Health Organization and updated potency equivalency factors (PEFs) for carcinogenic PAHs adopted by the California Environmental Protection Agency.
- Methods for Calculating Soil Cleanup Levels: Ecology is proposing a method for considering the relative bioavailability of soil-bound dioxins and furans when establishing soil cleanup levels.
- Evaluating Cross-Media Impacts: Ecology is proposing to require that cleanup proponents consider the physical-chemical properties of individual PAH compounds or dioxin-congeners when evaluating cross-media impacts.

Reasons Supporting Proposal: Ecology is proposing these rule changes for the following reasons:

- Ensure a consistent and predictable level of protection for Washington communities;
- Ensure that the most current scientific information is used to establish cleanup levels; and
- Minimize administrative cost and project delays.

Statutory Authority for Adoption: RCW 70.105D.030 (2).

Statute Being Implemented: Chapter 70.105D RCW.

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

Name of Proponent: Department of ecology, toxics cleanup program, governmental.

Name of Agency Personnel Responsible for Drafting: Dave Bradley, Department of Ecology, Headquarters, (360) 407-6907; Implementation and Enforcement: Jim Pendowski, Department of Ecology, Headquarters, (360) 407-7177.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business is defined as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses and that has fifty or fewer employees" (RCW 19.85.020). Based on an analysis of actual cleanup levels, and experience administering the existing MTCA rule, ecology has concluded that small businesses are not likely to be affected by the proposed rule. The rationale for this conclusion can be found in the preliminary cost-benefit analysis.

Summary of Impacts on Small Businesses

The proposed rule alters cleanup level parameters that apply to some cPAH, dioxin/furan, and PCB-contaminated sites. However, ecology has determined that the proposed rule only affects a limited subset of contaminated sites. Analysis of the potential costs and benefits of the proposed rule (ecology, 2007) indicates that only pulp and paper mills may incur costs of increased cleanup. Ecology determined that mills might incur increased costs based on a review of the current list of cleanup sites in Washington and on experience implementing the current MTCA rule.

Ecology's cleanup database includes a number of cPAH-contaminated sites that are owned or operated by small businesses. However, ecology has concluded that the proposed rule will not cause significant changes to cleanup standards for cPAH because the use of the TEF methodology is optional. In other words, small businesses (as well as larger businesses) will have the option of using the current rule to establish soil cleanup levels for cPAH.

Analysis of dioxin/furan-contaminated sites indicates that while benefits are likely for all sites under the proposed rule, only pulp and paper mill incur expected costs. Pulp and paper mills in Washington state are components of large corporations employing between 970 and 57,000 people in 2005 (ecology, 2007). None of the mills, then, is a small business (i.e., an entity that is owned and operated independently from all other businesses, and has fifty or fewer employees).

Based on cleanup levels calculated for the analysis of costs and benefits, ecology concluded that applicable cleanup levels for PCBs in soil do not change. There are, therefore, no PCB-contaminated sites of any size affected by the proposed rule.

Analysis of the potentially affected sites indicates overall that none of the sites that incur costs of increased cleanup is a small business. Therefore, it is not possible for ecology to evaluate the relative impact for small business or to do the required content for a small business economic impact statement in RCW 19.85.040, or to reduce the costs to small business under RCW 19.85.030.

A copy of the statement may be obtained by contacting Ann McNeely, 300 Desmond Drive, Lacey, WA 98504, phone (360) 407-7205, fax (360) 407-7154, e-mail amcn461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ann McNeely, 300 Desmond Drive, Lacey, WA 98504, phone (360) 407-7205, fax (360) 407-7154, e-mail amcn461@ecy.wa.gov.

April 2, 2007
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 8/15/01)

WAC 173-340-708 Human health risk assessment procedures. (1) **Purpose.** This section defines the risk assessment framework that shall be used to establish cleanup levels, and remediation levels using a quantitative risk assessment, under this chapter. As used in this section, cleanup levels and remediation levels means the human health risk assessment component of these levels. This chapter defines certain default values and methods to be used in calculating cleanup levels and remediation levels. This section allows varying from these default values and methods under certain circumstances. When deciding whether to approve alternate values and methods the department shall ensure that the use of alternative values and methods will not significantly delay site cleanups.

(2) **Selection of indicator hazardous substances.**

When defining cleanup requirements at a site that is contaminated with a large number of hazardous substances, the department may eliminate from consideration those hazardous substances that contribute a small percentage of the overall threat to human health and the environment. The remaining hazardous substances shall serve as indicator hazardous substances for purposes of defining site cleanup requirements. See WAC 173-340-703 for additional information on establishing indicator hazardous substances.

(3) **Reasonable maximum exposure.**

(a) Cleanup levels and remediation levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions, as specified further in this chapter.

(b) The reasonable maximum exposure is defined as the highest exposure that is reasonably expected to occur at a site

under current and potential future site use. WAC 173-340-720 through 173-340-760 define the reasonable maximum exposures for ground water, surface water, soil, and air. These reasonable maximum exposures will apply to most sites where individuals or groups of individuals are or could be exposed to hazardous substances. For example, the reasonable maximum exposure for most ground water is defined as exposure to hazardous substances in drinking water and other domestic uses.

(c) Persons performing cleanup actions under this chapter may use the evaluation criteria in WAC 173-340-720 through 173-340-760, where allowed in those sections, to demonstrate that the reasonable maximum exposure scenarios specified in those sections are not appropriate for cleanup levels for a particular site. For example, the criteria in WAC 173-340-720(2) could be used to demonstrate that the reasonable maximum exposure for ground water beneath a site does not need to be based on drinking water use. The use of an alternate exposure scenario shall be documented by the person performing the cleanup action. Documentation for the use of alternate exposure scenarios under this provision shall be based on the results of investigations performed in accordance with WAC 173-340-350.

(d) Persons performing cleanup actions under this chapter may also use alternate reasonable maximum exposure scenarios to help assess the protectiveness to human health of a cleanup action alternative that incorporates remediation levels and uses engineered controls and/or institutional controls to limit exposure to the contamination remaining on the site.

(i) An alternate reasonable maximum exposure scenario shall reflect the highest exposure that is reasonably expected to occur under current and potential future site conditions considering, among other appropriate factors, the potential for institutional controls to fail and the extent of the time period of failure under these scenarios and the land uses at the site.

(ii) Land uses other than residential and industrial, such as agricultural, recreational, and commercial, shall not be used as the basis for a reasonable maximum exposure scenario for the purpose of establishing a cleanup level. However, these land uses may be used as a basis for an alternate reasonable maximum exposure scenario for the purpose of assessing the protectiveness of a remedy. For example, if a cap (with appropriate institutional controls) is the proposed cleanup action at a commercial site, the reasonable maximum exposure scenario for assessing the protectiveness of the cap with regard to direct soil contact could be changed from a child living on the site to a construction or maintenance worker and child trespasser scenario.

(iii) The department expects that in evaluating the protectiveness of a remedy with regard to the soil direct contact pathway, many types of commercial sites may, where appropriate, qualify for alternative exposure scenarios under this provision since contaminated soil at these sites is typically characterized by a cover of buildings, pavement, and landscaped areas. Examples of these types of sites include:

(A) Commercial properties in a location removed from single family homes, duplexes or subdivided individual lots;

(B) Private and public recreational facilities where access to these facilities is physically controlled (e.g., a private golf course to which access is restricted by fencing);

(C) Urban residential sites (e.g., upper-story residential units over ground floor commercial businesses);

(D) Offices, restaurants, and other facilities primarily devoted to support administrative functions of a commercial/industrial nature (e.g., an employee credit union or cafeteria in a large office or industrial complex).

(e) A conceptual site model may be used to identify when individuals or groups of individuals may be exposed to hazardous substances through more than one exposure pathway. For example, a person may be exposed to hazardous substances from a site by drinking contaminated ground water, eating contaminated fish, and breathing contaminated air. At sites where the same individuals or groups of individuals are or could be consistently exposed through more than one pathway, the reasonable maximum exposure shall represent the total exposure through all of those pathways. At such sites, the cleanup levels and remediation levels derived for individual pathways under WAC 173-340-720 through 173-340-760 and WAC 173-340-350 through 173-340-390 shall be adjusted downward to take into account multiple exposure pathways.

(4) **Cleanup levels for individual hazardous substances.** Cleanup levels for individual hazardous substances will generally be based on a combination of requirements in applicable state and federal laws and risk assessment.

(5) **Multiple hazardous substances.**

(a) Cleanup levels for individual hazardous substances established under Methods B and C and remediation levels shall be adjusted downward to take into account exposure to multiple hazardous substances. This adjustment needs to be made only if, without this adjustment, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}).

(b) Adverse effects resulting from exposure to two or more hazardous substances with similar types of toxic response are assumed to be additive unless scientific evidence is available to demonstrate otherwise. Cancer risks resulting from exposure to two or more carcinogens are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(c) For noncarcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the health threats resulting from exposure to two or more hazardous substances with similar types of toxic response may be apportioned between those hazardous substances in any combination as long as the hazard index does not exceed one (1).

(d) For carcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the cancer risks resulting from exposure to multiple hazardous substances may be apportioned between hazardous substances in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}).

(e) The department may require biological testing to assess the potential interactive effects associated with chemical mixtures.

(f) When making adjustments to cleanup levels and remediation levels for multiple hazardous substances, the concentration for individual hazardous substances shall not be adjusted downward to less than the practical quantitation limit or natural background.

(6) **Multiple pathways of exposure.**

(a) Estimated doses of individual hazardous substances resulting from more than one pathway of exposure are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(b) Cleanup levels and remediation levels based on one pathway of exposure shall be adjusted downward to take into account exposures from more than one exposure pathway. The number of exposure pathways considered at a given site shall be based on the reasonable maximum exposure scenario as defined in WAC 173-340-708(3). This adjustment needs to be made only if exposure through multiple pathways is likely to occur at a site and, without the adjustment, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}).

(c) For noncarcinogens, for purposes of establishing cleanup levels under Methods B and C, and remediation levels, the health threats associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the hazard index does not exceed one (1).

(d) For carcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the cancer risks associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}).

(e) When making adjustments to cleanup levels and remediation levels for multiple pathways of exposure, the concentration for individual hazardous substances shall not be adjusted downward to less than the practical quantitation limit or natural background.

(7) **Reference doses.**

(a) The chronic reference dose/reference concentration and the developmental reference dose/reference concentration shall be used to establish cleanup levels and remediation levels under this chapter. Cleanup levels and remediation levels shall be established using the value which results in the most protective concentration.

(b) Inhalation reference doses/reference concentrations shall be used in WAC 173-340-750. Where the inhalation reference dose/reference concentration is reported as a concentration in air, that value shall be converted to a corresponding inhaled intake (mg/kg-day) using a human body weight of 70 kg and an inhalation rate of 20 m^3/day, and take into account, where available, the respiratory deposition and absorption characteristics of the gases and inhaled particles.

(c) A subchronic reference dose/reference concentration may be used to evaluate potential noncarcinogenic effects resulting from exposure to hazardous substances over short periods of time. This value may be used in place of the chronic reference dose/reference concentration where it can be demonstrated that a particular hazardous substance will degrade to negligible concentrations during the exposure period.

(d) For purposes of establishing cleanup levels and remediation levels for hazardous substances under this chapter, a reference dose/reference concentration established by the United States Environmental Protection Agency and available through the "integrated risk information system" (IRIS) data base shall be used. If a reference dose/reference concentration is not available through the IRIS data base, a reference dose/reference concentration from the U.S. EPA Health Effects Assessment Summary Table ("HEAST") data base or, if more appropriate, the National Center for Environmental Assessment ("NCEA") shall be used.

(e) If a reference dose/reference concentration is available through IRIS, HEAST, or the NCEA, it shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.

(f) If a reference dose/reference concentration for a hazardous substance including petroleum fractions and petroleum constituents is not available through IRIS, HEAST or the NCEA or is demonstrated to be inappropriate under (e) of this subsection and the department determines that development of a reference dose/reference concentration is necessary for the hazardous substance at the site, then a reference dose/reference concentration shall be established on a case-by-case basis. When establishing a reference dose on a case-by-case basis, the methods described in "Reference Dose (RfD): Description and Use in Health Risk Assessment: Background Document 1A", USEPA, March 15, 1993, shall be used.

(g) In estimating a reference dose/reference concentration for a hazardous substance under (e) or (f) of this subsection, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency and may, as appropriate, consult with other qualified persons. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a reference dose/reference concentration for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

(h) Where a reference dose/reference concentration other than those established under (d) or (g) of this subsection is used to establish a cleanup level or remediation level at individual sites, the department shall summarize the scientific rationale for the use of those values in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC 173-340-380 and 173-340-600.

(8) **Carcinogenic potency factor.**

(a) For purposes of establishing cleanup levels and remediation levels for hazardous substances under this chapter, a carcinogenic potency factor established by the United States Environmental Protection Agency and available through the IRIS data base shall be used. If a carcinogenic potency factor is not available from the IRIS data base, a carcinogenic potency factor from HEAST or, if more appropriate, from the NCEA shall be used.

(b) If a carcinogenic potency factor is available from the IRIS, HEAST or the NCEA, it shall be used unless the

department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.

(c) If a carcinogenic potency factor is not available through IRIS, HEAST or the NCEA or is demonstrated to be inappropriate under (b) of this subsection and the department determines that development of a cancer potency factor is necessary for the hazardous substance at the site, then one of the following methods shall be used to establish a carcinogenic potency factor:

(i) The carcinogenic potency factor may be derived from appropriate human epidemiology data on a case-by-case basis; or

(ii) The carcinogenic potency factor may be derived from animal bioassay data using the following procedures:

(A) All carcinogenicity bioassays shall be reviewed and data of appropriate quality shall be used for establishing the carcinogenic potency factor.

(B) The linearized multistage extrapolation model shall be used to estimate the slope of the dose-response curve unless the department determines that there is clear and convincing scientific data which demonstrates that the use of an alternate extrapolation model is more appropriate;

(C) All doses shall be adjusted to give an average daily dose over the study duration; and

(D) An interspecies scaling factor shall be used to take into account differences between animals and humans. For oral carcinogenic toxicity values this scaling factor shall be based on the assumption that milligrams per surface area is an equivalent dose between species unless the department determines there is clear and convincing scientific data which demonstrates that an alternate procedure is more appropriate. The slope of the dose response curve for the test species shall be multiplied by this scaling factor in order to obtain the carcinogenic potency factor, except where such scaling factors are incorporated into the extrapolation model under (B) of this subsection. The procedure to derive a human equivalent concentration of inhaled particles and gases shall take into account, where available, the respiratory deposition and absorption characteristics of the gases and inhaled particles. Where adequate pharmacokinetic and metabolism studies are available, data from these studies may be used to adjust the interspecies scaling factor.

(d) ((~~When assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF) either of the following methods shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of these methods is inappropriate:~~

~~(i) The entire mixture is assumed to be as toxic as 2, 3, 7, 8 CDD or 2, 3, 7, 8 CDF, as applicable; or~~

~~(ii) The toxicity equivalency factors and methodology described in: EPA. 1989. *"Interim procedures for estimating risks associated with exposure to mixtures of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs and CDFs) and 1989 update"*, USEPA, Risk Assessment Forum, Washington, D.C., publication number EPA/625/3-89/016.~~)) **Mixtures of dioxins and furans.** When establishing and determining compliance with cleanup levels and remediation levels for mixtures of chlorinated dibenzo-p-dioxins (dioxins) and/or chlorinated dibenzofurans (furans), the following procedures shall be used:

(i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, mixtures of dioxins and/or furans shall be considered a single hazardous substance.

(ii) **Establishing cleanup levels and remediation levels.** The cleanup levels and remediation levels established for 2,3,7,8 tetrachloro dibenzo-p-dioxin (2,3,7,8-TCDD) shall be used, respectively, as the cleanup levels and remediation levels for mixtures of dioxins and/or furans.

(iii) **Determining compliance with cleanup levels and remediation levels.** When determining compliance with the cleanup levels and remediation levels established for mixtures of dioxins and/or furans, the following procedures shall be used:

(A) Calculate the total toxic equivalent concentration of 2,3,7,8-TCDD for each sample of the mixture. The total toxic equivalent concentration shall be calculated using the following method, unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this method is inappropriate:

(I) Analyze samples from the medium of concern to determine the concentration of each dioxin and furan congener listed in Table 708-1;

(II) For each sample analyzed, multiply the measured concentration of each congener in the sample by its corresponding toxicity equivalency factor (TEF) in Table 708-1 to obtain the toxic equivalent concentration of 2,3,7,8-TCDD for that congener; and

(III) For each sample analyzed, add together the toxic equivalent concentrations of all the congeners within the sample to obtain the total toxic equivalent concentration of 2,3,7,8-TCDD for that sample.

(B) After calculating the total toxic equivalent concentration of each sample of the mixture, use the applicable compliance monitoring requirements in WAC 173-340-720 through 173-340-760 to determine whether the total toxic equivalent concentrations of the samples comply with the cleanup level or remediation level for the mixture at the applicable point of compliance.

(iv) **Protecting the quality of other media.** When establishing cleanup levels and remediation levels for mixtures of dioxins and/or furans in a medium of concern that are based on protection of another medium (the receiving medium) (e.g., soil levels protective of ground water quality), the following procedures shall be used:

(A) The cleanup level or remediation level for 2,3,7,8-TCDD in the receiving medium shall be used, respectively, as the cleanup level or remediation level for the receiving medium.

(B) When determining the concentrations in the medium of concern that will achieve the cleanup level or remediation level in the receiving medium, the congener-specific physical and chemical properties shall be considered during that assessment.

(e) ((~~When assessing the potential carcinogenic risk of mixtures of polycyclic aromatic hydrocarbons, either of the~~

~~following methods shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of these methods is inappropriate:~~

~~(i) The entire mixture is assumed to be as toxic as benzo(a)pyrene; or~~

~~(ii) The toxicity equivalency factors and methodology described in *"CalEPA. 1994. Benzo(a)pyrene as a toxic air contaminant. Part B: Health Assessment."* Published by the Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, Berkeley, CA.~~)) **Mixtures of carcinogenic PAHs.** When establishing and determining compliance with cleanup levels and remediation levels for mixtures of carcinogenic polycyclic aromatic hydrocarbons (carcinogenic PAHs), the following procedures shall be used:

(i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, mixtures of carcinogenic PAHs shall be considered a single hazardous substance.

(ii) **Establishing cleanup levels and remediation levels.** The cleanup levels and remediation levels established for benzo(a)pyrene shall be used, respectively, as the cleanup levels and remediation levels for mixtures of carcinogenic PAHs.

(iii) **Determining compliance with cleanup levels and remediation levels.** When determining compliance with cleanup levels and remediation levels established for mixtures of carcinogenic PAHs, the following procedures shall be used:

(A) Calculate the total toxic equivalent concentration of benzo (a) pyrene for each sample of the mixture. The total toxic equivalent concentration shall be calculated using the following method, unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this method is inappropriate:

(I) Analyze samples from the medium of concern to determine the concentration of each carcinogenic PAH listed in Table 708-2 and, for those carcinogenic PAHs required by the department under WAC 173-340-708 (8)(e)(iv), in Table 708-3;

(II) For each sample analyzed, multiply the measured concentration of each carcinogenic PAH in the sample by its corresponding toxicity equivalency factor (TEF) in Tables 708-2 and 708-3 to obtain the toxic equivalent concentration of benzo(a)pyrene for that carcinogenic PAH; and

(III) For each sample analyzed, add together the toxic equivalent concentrations of all the carcinogenic PAHs within the sample to obtain the total toxic equivalent concentration of benzo(a)pyrene for that sample.

(B) After calculating the total toxic equivalent concentration of each sample of the mixture, use the applicable compliance monitoring requirements in WAC 173-340-720 through 173-340-760 to determine whether the total toxic equivalent concentrations of the samples comply with the cleanup level or remediation level for the mixture at the applicable point of compliance.

(iv) **Protecting the quality of other media.** When establishing cleanup levels and remediation levels for mixtures of carcinogenic PAHs in a medium of concern that are based on protection of another medium (the receiving medium) (e.g., soil levels protective of ground water quality), the following procedures shall be used:

(A) The cleanup level or remediation level for benzo(a) pyrene in the receiving medium shall be used, respectively, as the cleanup level or remediation level for the receiving medium.

(B) When determining the concentrations in the medium of concern that will achieve the cleanup level or remediation level in the receiving medium, the carcinogenic PAH-specific physical and chemical properties shall be considered during that assessment.

(v) When using this methodology, at a minimum, the ((~~following~~)) compounds in Table 708-2 shall be analyzed for and included in the calculations((~~: Benzo[a]pyrene, Benz[a]anthracene, Benzo[b]fluoranthene, Benzo[k]fluoranthene, Chrysene, Dibenz[a,h]anthracene, Indeno[1,2,3cd]pyrene~~)). The department may require additional compounds ((~~from the CalEPA list~~)) in Table 708-3 to be included in the methodology should site testing data or information from other comparable sites or waste types indicate the additional compounds are potentially present at the site. *NOTE: Many of the polycyclic aromatic hydrocarbons ((~~on the CalEPA list~~)) in Table 708-3 are found primarily in air emissions from combustion sources and may not be present in the soil or water at contaminated sites. Users should consult with the department for information on the need to test for these additional compounds.*

(f) **PCB mixtures.** When establishing and determining compliance with cleanup levels and remediation levels for polychlorinated biphenyls (PCBs) mixtures, the following procedures shall be used:

(i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, PCB mixtures shall be considered a single hazardous substance.

(ii) **Establishing cleanup levels and remediation levels.** When establishing cleanup levels and remediation levels under Methods B and C for PCB mixtures, the following procedures shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of these methods is inappropriate:

(A) Assume the PCB mixture is equally potent and use the appropriate carcinogenic potency factor provided for under WAC 173-340-708 (8)(a) through (c) for the entire mixture; or

(B) Use the toxicity equivalency factors for the dioxin-like PCBs congeners in Table 708-4 and procedures approved by the department. When using toxicity equivalency factors, the department may require that the health effects posed by the dioxin-like PCB congeners and non-dioxin-like PCB congeners be considered in the evaluation.

(iii) **Determining compliance with cleanup levels and remediation levels.** When determining compliance with cleanup levels and remediation levels established for PCB mixtures, the following procedures shall be used:

(A) Analyze compliance monitoring samples for a total PCB concentration and use the applicable compliance monitoring requirements in WAC 173-340-720 through 173-340-760 to determine whether the total PCB concentrations of the samples complies with the cleanup level or remediation level for the mixture at the applicable point of compliance; or

(B) When using toxicity equivalency factors to determine compliance with cleanup or remediation levels for PCB mixtures, use procedures approved by the department.

(g) In estimating a carcinogenic potency factor for a hazardous substance under (c) of this subsection, or approving the use of a toxicity equivalency factor other than that established under (d), (e) or (f) of this subsection, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency and may, as appropriate, consult with other qualified persons. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a carcinogenic potency factor or approved an alternative toxicity equivalency factor for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

(((~~(g)~~))) (h) Where a carcinogenic potency factor other than that established under (a)(((~~, (d) and (e)~~))) of this subsection or a toxicity equivalency factor other than that established under (d), (e) or (f) of this subsection is used to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of that value in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC 173-340-380 and 173-340-600.

(9) **Bioconcentration factors.**

(a) For purposes of establishing cleanup levels and remediation levels for a hazardous substance under WAC 173-340-730, a bioconcentration factor established by the United States Environmental Protection Agency and used to establish the ambient water quality criterion for that substance under section 304 of the Clean Water Act shall be used. These values shall be used unless the department determines that there is adequate scientific data which demonstrates that the use of an alternate value is more appropriate. If the department determines that a bioconcentration factor is appropriate for a specific hazardous substance and no such factor has been established by USEPA, then other appropriate EPA documents, literature sources or empirical information may be used to determine a bioconcentration factor.

(b) When using a bioconcentration factor other than that used to establish the ambient water quality criterion, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency. Scientific data supporting such a value shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a bioconcentration factor for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

(c) Where a bioconcentration factor other than that established under (a) of this subsection is used to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of that factor in the draft cleanup action plan. The department shall provide the opportunity for public review and comment on the value in accordance with the requirements of WAC 173-340-380 and 173-340-600.

(10) **Exposure parameters.**

(a) As a matter of policy, the department has defined in WAC 173-340-720 through 173-340-760 the default values for exposure parameters to be used when establishing cleanup levels and remediation levels under this chapter. Except as provided for in (b) and (c) of this subsection and in WAC 173-340-720 through 173-340-760, these default values shall not be changed for individual hazardous substances or sites.

(b) Exposure parameters that are primarily a function of the exposed population characteristics (such as body weight and lifetime) and those that are primarily a function of human behavior that cannot be controlled through an engineered or institutional control (such as: Fish consumption rate; soil ingestion rate; drinking water ingestion rate; and breathing rate) are not expected to vary on a site-by-site basis. The default values for these exposure parameters shall not be changed when calculating cleanup levels except when necessary to establish a more stringent cleanup level to protect human health. For remediation levels the default values for these exposure parameters may only be changed when an alternate reasonable maximum exposure scenario is used, as provided for in WAC 173-340-708 (3)(d), that reflects a different exposed population such as using an adult instead of a child exposure scenario. Other exposure parameters may be changed only as follows:

(i) For calculation of cleanup levels, the types of exposure parameters that may be changed are those that are:

(A) Primarily a function of reliably measurable characteristics of the hazardous substance, soil, hydrologic or hydrogeologic conditions at the site; and

(B) Not dependent on the success of engineered controls or institutional controls for controlling exposure of persons to the hazardous substances at the site.

The default values for these exposure parameters may be changed where there is adequate scientific data to demonstrate that use of an alternative or additional value would be more appropriate for the conditions present at the site. Examples of exposure parameters for which the default values may be changed under this provision are as follows: Contaminant leaching and transport variables (such as the soil organic carbon content, aquifer permeability and soil sorption coefficient); inhalation correction factor; fish bioconcentration factor; soil gastrointestinal absorption fraction; and inhalation absorption percentage.

(ii) For calculation of remediation levels, in addition to the exposure parameters that may be changed under (b)(i) of this subsection, the types of exposure parameters that may be changed from the default values are those where a demonstration can be made that the proposed cleanup action uses engineered controls and/or institutional controls that can be successfully relied on, for the reasonably foreseeable future, to

control contaminant mobility and/or exposure to the contamination remaining on the site. In general, exposure parameters that may be changed under this provision are those that define the exposure frequency, exposure duration and exposure time. The default values for these exposure parameters may be changed where there is adequate scientific data to demonstrate that use of an alternative or additional value would be more appropriate for the conditions present at the site. Examples of exposure parameters for which the default value may be changed under this provision are as follows: Infiltration rate; frequency of soil contact; duration of soil exposure; duration of drinking water exposure; duration of air exposure; drinking water fraction; and fish diet fraction.

(c) When the modifications provided for in (b) of this subsection result in significantly higher values for cleanup levels or remediation levels than would be calculated using the default values for exposure parameters, the risk from other potentially relevant pathways of exposure shall be addressed under the procedures provided for in WAC 173-340-720 through 173-340-760. For exposure pathways and parameters for which default values are not specified in this chapter, the framework provided for by this subsection, along with the quality of information requirements in WAC 173-340-702, shall be used to establish appropriate or additional assumptions for these parameters and pathways.

(d) Where the department approves the use of exposure parameters other than those established under WAC 173-340-720 through 173-340-760 to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of those parameters in the cleanup action plan. The department shall provide the opportunity for public review and comment on those values in accordance with the requirements of WAC 173-340-380 and 173-340-600. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16).

(11) **Probabilistic risk assessment.** Probabilistic risk assessment methods may be used under this chapter only on an informational basis for evaluating alternative remedies. Such methods shall not be used to replace cleanup standards and remediation levels derived using deterministic methods under this chapter until the department has adopted rules describing adequate technical protocols and policies for the use of probabilistic risk assessment under this chapter.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 8/15/01)

WAC 173-340-740 Unrestricted land use soil cleanup standards. (1) **General considerations.**

(a) Presumed exposure scenario soil cleanup levels shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The department has determined that residential land use is generally the site use requiring the most protective cleanup levels and that exposure to hazardous substances under residential land use conditions represents the reasonable maximum exposure scenario. Unless a site qualifies for use of an industrial soil cleanup level under WAC 173-340-745, soil cleanup levels shall use this presumed exposure scenario and be established in accordance with this section.

(b) In the event of a release of a hazardous substance to the soil at a site, a cleanup action complying with this chapter shall be conducted to address all areas where the concentration of hazardous substances in the soil exceeds cleanup levels at the relevant point of compliance.

(c) The department may require more stringent soil cleanup standards than required by this section where, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708. The following are examples of situations that may require more stringent cleanup levels.

(i) Concentrations that eliminate or substantially reduce the potential for food chain contamination;

(ii) Concentrations that eliminate or substantially reduce the potential for damage to soils or biota in the soils which could impair the use of soils for agricultural or silvicultural purposes;

(iii) Concentrations necessary to address the potential health risk posed by dust at a site;

(iv) Concentrations necessary to protect the ground water at a particular site;

(v) Concentrations necessary to protect nearby surface waters from hazardous substances in runoff from the site; and

(vi) Concentrations that eliminate or minimize the potential for the accumulation of vapors in buildings or other structures.

(d) Relationship between soil cleanup levels and other cleanup standards. Soil cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of ground water, surface water, sediment, or air cleanup standards established under this chapter or applicable state and federal laws. A property that qualifies for a Method C soil cleanup level under WAC 173-340-745 does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(2) **Method A soil cleanup levels for unrestricted land use.**

(a) **Applicability.** Method A soil cleanup levels may only be used at sites qualifying under WAC 173-340-704(1).

(b) **General requirements.** Method A soil cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations in Table 740-1 and compliance with the corresponding footnotes;

(ii) Concentrations established under applicable state and federal laws;

(iii) Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC 173-340-7490 through 173-340-7493, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and

(iv) For a hazardous substance that is deemed an indicator hazardous substance under WAC 173-340-708(2) and for which there is no value in Table 740-1 or applicable state and federal laws, a concentration that does not exceed the natural

background concentration or the practical quantification limit, subject to the limitations in this chapter.

(3) **Method B soil cleanup levels for unrestricted land use.**

(a) **Applicability.** Method B soil cleanup levels consist of standard and modified cleanup levels determined using the procedures in this subsection. Either standard or modified Method B soil cleanup levels may be used at any site.

(b) **Standard Method B soil cleanup levels.** Standard Method B cleanup levels for soils shall be at least as stringent as all of the following:

(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws;

(ii) **Environmental protection.** Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors established using the procedures specified in WAC 173-340-7490 through 173-340-7494 unless it is demonstrated under those sections that establishing a soil concentration is unnecessary.

(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations that protect human health as determined by evaluating the following exposure pathways:

(A) **Ground water protection.** Concentrations that will not cause contamination of ground water at levels which exceed ground water cleanup levels established under WAC 173-340-720 as determined using the methods described in WAC 173-340-747.

(B) **Soil direct contact.** Concentrations that, due to direct contact with contaminated soil, are estimated to result in no acute or chronic noncarcinogenic toxic effects on human health using a hazard quotient of one (1) and concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one million (1×10^{-6}). Equations 740-1 and 740-2 and the associated default assumptions shall be used to calculate the concentration for direct contact with contaminated soil.

(I) **Noncarcinogens.** For noncarcinogenic toxic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 740-1. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 740-1]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RfD x ABW x UCF x HQ x AT}}{\text{SIR x AB1 x EF x ED}}$$

Where:

RfD = Reference dose as defined in WAC 173-340-708(7) (mg/kg-day)
ABW = Average body weight over the exposure duration (16 kg)
UCF = Unit conversion factor (1,000,000 mg/kg)
SIR = Soil ingestion rate (200 mg/day)
AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
EF = Exposure frequency (1.0) (unitless)
HQ = Hazard quotient (1) (unitless)
AT = Averaging time (6 years)
ED = Exposure duration (6 years)

(II) **Carcinogens.** For carcinogenic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 740-2. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 740-2]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RISK x ABW x AT x UCF}}{\text{CPF x SIR x AB1 x ED x EF}}$$

Where:

RISK = Acceptable cancer risk level (1 in 1,000,000) (unitless)
ABW = Average body weight over the exposure duration (16 kg)
AT = Averaging time (75 years)
UCF = Unit conversion factor (1,000,000 mg/kg)
CPF = Carcinogenic potency factor as defined in WAC 173-340-708(8) (kg-day/mg)
SIR = Soil ingestion rate (200 mg/day)
AB1 = Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans
ED = Exposure duration (6 years)
EF = Exposure frequency (1.0) (unitless)

(III) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds substances present in the petroleum mixture. Equation 740-3 shall be used for this calculation. This equation takes into account concurrent exposure due to ingestion and dermal contact with petroleum contaminated soils. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 740-4 and 740-5. See Table 830-1 for the analyses required for various petroleum products to use this method.

[Equation 740-3]

$$C_{soil} = \frac{HI \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1}{10^6 mg/kg} \sum_{i=1}^{n} \frac{F(i)}{RfDo(i)} \right) + \left(\frac{SA \times AF}{10^6 mg/kg} \sum_{i=1}^{n} \frac{F(i) \times ABS(i)}{RfDd(i)} \right) \right]}$$

Where:

C_{soil} = TPH soil cleanup level (mg/kg)
HI = Hazard index (1) (unitless)
ABW = Average body weight over the exposure duration (16 kg)
AT = Averaging time (6 years)
EF = Exposure frequency (1.0) (unitless)
ED = Exposure duration (6 years)
SIR = Soil ingestion rate (200 mg/day)
AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
F(i) = Fraction (by weight) of petroleum component (i) (unitless)
SA = Dermal surface area (2,200 cm^2)
AF = Adherence factor (0.2 mg/cm^2-day)
ABS = Dermal absorption fraction for petroleum component (i) (unitless). May use chemical-specific values or the following defaults:

- 0.0005 for volatile petroleum components with vapor press > = benzene
- 0.03 for volatile petroleum components with vapor press < benzene
- 0.1 for other petroleum components

RfDo(i) = Oral reference dose of petroleum component (i) as defined in WAC 173-340-708(7) (mg/kg-day)

RfDd(i) = Dermal reference dose for petroleum component (i) (mg/kg-day) derived by RfDo x GI

GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:

- 0.8 for volatile petroleum components
- 0.5 for other petroleum components

n = The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

(C) **Soil vapors.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(II) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(III) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

See subsection (3)(c)(iv)(B) of this section for methods that may be used to evaluate the soil to vapor pathway.

(c) **Modified Method B soil cleanup levels.**

(i) **General.** Modified Method B soil cleanup levels are standard Method B soil cleanup levels, modified with chemical-specific or site-specific data. When making these modifications, the resultant cleanup levels shall meet applicable state and federal laws, meet health risk levels for standard Method B soil cleanup levels, and be demonstrated to be environmentally protective using the procedures specified in WAC 173-340-7490 through 173-340-7494. Changes to exposure assumptions must comply with WAC 173-340-708(10).

(ii) **Allowable modifications.** The following modifications can be made to the default assumptions in the standard Method B equations to derive modified Method B soil cleanup levels:

(A) For the protection of ground water, see WAC 173-340-747;

(B) For soil ingestion, the gastrointestinal absorption fraction, may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(C) For dermal contact, the adherence factor, dermal absorption fraction and gastrointestinal absorption conversion factor may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(D) The toxicity equivalent factors((~~, as described~~)) provided in WAC 173-340-708 (8)((~~, may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons~~)) (d), (e), and (f), may be modified if the requirements of WAC 173-340-708 (8)(g) and (h) are met;

(E) The reference dose and cancer potency factor may be modified if the requirements in WAC 173-340-708 (7) and (8) are met; and

(F) Other modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16).

(iii) **Dermal contact.** For hazardous substances other than petroleum mixtures, dermal contact with the soil shall be evaluated whenever the proposed changes to Equations 740-1 or 740-2 would result in a significantly higher soil cleanup level than would be calculated without the proposed changes. When conducting this evaluation, the following equations and default assumptions shall be used.

(A) For noncarcinogens use Equation 740-4. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 740-4]

$$C_{soil} = \frac{HQ \times ABW \times AT}{EF \times ED \left[\left(\frac{1}{RfDo} \times \frac{SIR \times AB1}{10^6 mg/kg} \right) + \left(\frac{1}{RfDd} \times \frac{SA \times AF \times ABS}{10^6 mg/kg} \right) \right]}$$

Where:

C_{soil} = Soil cleanup level (mg/kg)

HQ = Hazard quotient (unitless)

ABW = Average body weight over the exposure duration (16 kg)

AT = Averaging time (6 years)

EF = Exposure frequency (1.0) (unitless)

ED = Exposure duration (6 years)

SIR = Soil ingestion rate (200 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless)

SA = Dermal surface area (2,200 cm^2)

AF = Adherence factor (0.2 mg/cm^2-day)

ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:

- 0.01 for inorganic hazardous substances
- 0.0005 for volatile organic compounds with vapor press > = benzene
- 0.03 for volatile organic compounds with vapor press < benzene
- 0.1 for other organic hazardous substances

RfDo = Oral reference dose as defined in WAC 173-340-708(7) (mg/kg-day)

RfDd = Dermal reference dose (mg/kg-day) derived by RfDo x GI

GI = Gastrointestinal absorption conversion factor (unitless). May use chemical specific values or the following defaults:

- 0.2 for inorganic hazardous substances
- 0.8 for volatile organic compounds
- 0.5 for other organic hazardous substances

(B) For carcinogens use Equation 740-5. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 740-5]

$$C_{soil} = \frac{RISK \times ABW \times AT}{EF \times ED\left[\left(\frac{SIR \times AB1 \times CPFo}{10^6 mg/kg}\right)+\left(\frac{SA \times AF \times ABS \times CPFd}{10^6 mg/kg}\right)\right]}$$

Where:

C_{soil} = Soil cleanup level (mg/kg)

RISK = Acceptable cancer risk (1 in 1,000,000) (unitless)

ABW = Average body weight over the exposure duration (16 kg)

AT = Averaging time (75 years)

EF = Exposure frequency (1.0) (unitless)

ED = Exposure duration (6 years)

SIR = Soil ingestion rate (200 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans

CPFo = Oral cancer potency factor as defined in WAC 173-340-708(8) (kg-day/mg)

CPFd = Dermal cancer potency factor (kg-day/mg) derived by CPFo/GI

GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:

- 0.2 for inorganic hazardous substances
- 0.8 for volatile organic compounds and for mixtures of dioxins and/or furans
- 0.5 for other organic hazardous substances

SA = Dermal surface area (2,200 cm^2)

AF = Adherence factor (0.2 mg/cm^2-day)

ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:

- 0.01 for inorganic hazardous substances
- 0.0005 for volatile organic compounds with vapor press > = benzene
- 0.03 for volatile organic compounds with vapor press < benzene and for mixtures of dioxins and/or furans
- 0.1 for other organic hazardous substances

(C) Modifications may be made to Equations 740-4 and 740-5 as provided for in subsection (3)(c)(ii) of this section.

(iv) **Soil vapors.**

(A) **Applicability.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For other than petroleum hydrocarbon mixtures, the proposed changes to the standard Method B equations (Equations 740-1 and 740-2) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(II) For petroleum hydrocarbon mixtures, the proposed changes to the standard Method B equations (Equations 740-3, 740-4 and 740-5) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(III) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(IV) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(V) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

(B) **Evaluation methods.** Soil cleanup levels that are protective of the indoor and ambient air shall be determined on a site-specific basis. Soil cleanup levels may be evaluated as being protective of air pathways using any of the following methods:

(I) Measurements of the soil vapor concentrations, using methods approved by the department, demonstrating vapors in the soil would not exceed air cleanup levels established under WAC 173-340-750.

(II) Measurements of ambient air concentrations and/or indoor air vapor concentrations throughout buildings, using methods approved by the department, demonstrating air does not exceed cleanup levels established under WAC 173-340-750. Such measurements must be representative of current and future site conditions when vapors are likely to enter and accumulate in structures. Measurement of ambient air may be excluded if it can be shown that indoor air is the most protective point of exposure.

(III) Use of modeling methods approved by the department to demonstrate the air cleanup standards established under WAC 173-340-750 will not be exceeded. When this method is used, the department may require soil vapor and/or air monitoring to be conducted to verify the calculations and compliance with air cleanup standards.

(IV) Other methods as approved by the department demonstrating the air cleanup standards established under WAC 173-340-750 will not be exceeded.

(d) **Using modified Method B to evaluate soil remediation levels.** In addition to the adjustments allowed under subsection (3)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(4) **Method C soil cleanup levels.** This section does not provide procedures for establishing Method C soil cleanup levels. Except for qualifying industrial properties, Method A and Method B, as described in this section, are the only methods available for establishing soil cleanup levels at sites. See WAC 173-340-745 for use of Method C soil cleanup levels at qualifying industrial properties. See also WAC 173-340-357 and 173-340-708 (3)(d) for how land use may be considered when selecting a cleanup action at a site.

(5) **Adjustments to cleanup levels.**

(a) **Total site risk adjustments.** Soil cleanup levels for individual hazardous substances developed in accordance

with subsection (3) of this section, including cleanup levels based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}).

(b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (2) or (3) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level must be adjusted downward so that the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}) and the hazard index does not exceed one (1) at the site.

(c) **Natural background and PQL considerations.** Cleanup levels determined under subsection (2) or (3) of this section, including cleanup levels adjusted under subsection (5)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements pertaining to practical quantitation limits and natural background.

(6) **Point of compliance.**

(a) The point of compliance is the point or points where the soil cleanup levels established under subsection (2) or (3) of this section shall be attained.

(b) For soil cleanup levels based on the protection of ground water, the point of compliance shall be established in the soils throughout the site.

(c) For soil cleanup levels based on protection from vapors, the point of compliance shall be established in the soils throughout the site from the ground surface to the uppermost ground water saturated zone (e.g., from the ground surface to the uppermost water table).

(d) For soil cleanup levels based on human exposure via direct contact or other exposure pathways where contact with the soil is required to complete the pathway, the point of compliance shall be established in the soils throughout the site from the ground surface to fifteen feet below the ground surface. This represents a reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities.

(e) For soil cleanup levels based on ecological considerations, see WAC 173-340-7490 for the point of compliance.

(f) The department recognizes that, for those cleanup actions selected under this chapter that involve containment of hazardous substances, the soil cleanup levels will typically not be met at the points of compliance specified in (b) through (e) of this subsection. In these cases, the cleanup action may be determined to comply with cleanup standards, provided:

(i) The selected remedy is permanent to the maximum extent practicable using the procedures in WAC 173-340-360;

(ii) The cleanup action is protective of human health. The department may require a site-specific human health risk assessment conforming to the requirements of this chapter to demonstrate that the cleanup action is protective of human health;

(iii) The cleanup action is demonstrated to be protective of terrestrial ecological receptors under WAC 173-340-7490 through 173-340-7494;

(iv) Institutional controls are put in place under WAC 173-340-440 that prohibit or limit activities that could interfere with the long-term integrity of the containment system;

(v) Compliance monitoring under WAC 173-340-410 and periodic reviews under WAC 173-340-430 are designed to ensure the long-term integrity of the containment system; and

(vi) The types, levels and amount of hazardous substances remaining on-site and the measures that will be used to prevent migration and contact with those substances are specified in the draft cleanup action plan.

(7) **Compliance monitoring.**

(a) Compliance with soil cleanup levels shall be based on total analyses of the soil fraction less than two millimeters in size. When it is reasonable to expect that larger soil particles could be reduced to two millimeters or less during current or future site use and this reduction could cause an increase in the concentrations of hazardous substances in the soil, soil cleanup levels shall also apply to these larger soil particles. Compliance with soil cleanup levels shall be based on dry weight concentrations. The department may approve the use of alternate procedures for stabilized soils.

(b) When soil levels have been established at a site, sampling of the soil shall be conducted to determine if compliance with the soil cleanup levels has been achieved. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data that are representative of the area where exposure to hazardous substances may occur.

(c) The data analysis and evaluation procedures used to evaluate compliance with soil cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. These procedures shall meet the following general requirements:

(i) Methods of data analysis shall be consistent with the sampling design. Separate methods may be specified for surface soils and deeper soils;

(ii) When cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be used to evaluate compliance with cleanup levels unless those procedures conflict with the intent of this section;

(iii) Where procedures for evaluating compliance are not specified in an applicable state and federal law, statistical methods shall be appropriate for the distribution of sampling data for each hazardous substance. If the distributions for

hazardous substances differ, more than one statistical method may be required; and

(iv) The data analysis plan shall specify which parameters are to be used to determine compliance with soil cleanup levels.

(A) For cleanup levels based on short-term or acute toxic effects on human health or the environment, an upper percentile soil concentration shall be used to evaluate compliance with cleanup levels.

(B) For cleanup levels based on chronic or carcinogenic threats, the true mean soil concentration shall be used to evaluate compliance with cleanup levels.

(d) When data analysis procedures for evaluating compliance are not specified in an applicable state or federal law the following procedures shall be used:

(i) A confidence interval approach that meets the following requirements:

(A) The upper one sided ninety-five percent confidence limit on the true mean soil concentration shall be less than the soil cleanup level. For lognormally distributed data, the upper one-sided ninety-five percent confidence limit shall be calculated using Land's method; and

(B) Data shall be assumed to be lognormally distributed unless this assumption is rejected by a statistical test. If a lognormal distribution is inappropriate, data shall be assumed to be normally distributed unless this assumption is rejected by a statistical test. The W test, D'Agostino's test, or, censored probability plots, as appropriate for the data, shall be the statistical methods used to determine whether the data are lognormally or normally distributed;

(ii) For an evaluation conducted under (c)(iv)(A) of this subsection, a parametric test for percentiles based on tolerance intervals to test the proportion of soil samples having concentrations less than the soil cleanup level. When using this method, the true proportion of samples that do not exceed the soil cleanup level shall not be less than ninety percent. Statistical tests shall be performed with a Type I error level of 0.05;

(iii) Direct comparison of soil sample concentrations with cleanup levels may be used to evaluate compliance with cleanup levels where selective sampling of soil can be reliably expected to find suspected soil contamination. There must be documented, reliable information that the soil samples have been taken from the appropriate locations. Persons using this method must demonstrate that the basis used for selecting the soil sample locations provides a high probability that any existing areas of soil contamination have been found; or

(iv) Other statistical methods approved by the department.

(e) All data analysis methods used, including those specified in state and federal law, must meet the following requirements:

(i) No single sample concentration shall be greater than two times the soil cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations; and

(ii) Less than ten percent of the sample concentrations shall exceed the soil cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations.

(f) When using statistical methods to demonstrate compliance with soil cleanup levels, the following procedures shall be used for measurements below the practical quantitation limit:

(i) Measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit when not more than fifteen percent of the measurements are below the practical quantitation limit.

(ii) Measurements above the method detection limit but below the practical quantitation limit shall be assigned a value equal to the method detection limit when not more than fifteen percent of the measurements are below the practical quantitation limit.

(iii) When between fifteen and fifty percent of the measurements are below the practical quantitation limit and the data are assumed to be lognormally or normally distributed, Cohen's method shall be used to calculate a corrected mean and standard deviation for use in calculating an upper confidence limit on the true mean soil concentration.

(iv) If more than fifty percent of the measurements are below the practical quantitation limit, the largest value in the data set shall be used in place of an upper confidence limit on the true mean soil concentration.

(v) The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit.

(vi) If a hazardous substance or petroleum fraction has never been detected in any sample at a site and these substances are not suspected of being present at the site based on site history and other knowledge, that hazardous substance or petroleum fraction may be excluded from the statistical analysis.

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

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 8/15/01)

WAC 173-340-745 Soil cleanup standards for industrial properties. (1) **Applicability.**

(a) Criteria. This section shall be used to establish soil cleanup levels where the department has determined that industrial land use represents the reasonable maximum exposure. Soil cleanup levels for this presumed exposure scenario shall be established in accordance with this section. To qualify as an industrial land use and to use an industrial soil cleanup level a site must meet the following criteria:

(i) The area of the site where industrial property soil cleanup levels are proposed must meet the definition of an industrial property under WAC 173-340-200;

Industrial soil cleanup levels are based on an adult worker exposure scenario. It is essential to evaluate land uses and zoning for compliance with this definition in the context of this exposure scenario. Local governments use a variety of zoning categories for industrial land uses so a property does not necessarily have to be in a zone called "industrial" to meet the definition of "industrial property." Also, there are land

uses allowed in industrial zones that are actually commercial or residential, rather than industrial, land uses. Thus, an evaluation to determine compliance with this definition should include a review of the actual text in the comprehensive plan and zoning ordinance pertaining to the site and a visit to the site to observe land uses in the zone. When evaluating land uses to determine if a property use not specifically listed in the definition is a "traditional industrial use" or to determine if the property is "zoned for industrial use," the following characteristics shall be considered:

(A) People do not normally live on industrial property. The primary potential exposure is to adult employees of businesses located on the industrial property;

(B) Access to industrial property by the general public is generally not allowed. If access is allowed, it is highly limited and controlled due to safety or security considerations;

(C) Food is not normally grown/raised on industrial property. (However, food processing operations are commonly considered industrial facilities);

(D) Operations at industrial properties are often (but not always) characterized by use and storage of chemicals, noise, odors and truck traffic;

(E) The surface of the land at industrial properties is often (but not always) mostly covered by buildings or other structures, paved parking lots, paved access roads and material storage areas—minimizing potential exposure to the soil; and

(F) Industrial properties may have support facilities consisting of offices, restaurants, and other facilities that are commercial in nature but are primarily devoted to administrative functions necessary for the industrial use and/or are primarily intended to serve the industrial facility employees and not the general public.

(ii) The cleanup action provides for appropriate institutional controls implemented in accordance with WAC 173-340-440 to limit potential exposure to residual hazardous substances. This shall include, at a minimum, placement of a covenant on the property restricting use of the area of the site where industrial soil cleanup levels are proposed to industrial property uses; and

(iii) Hazardous substances remaining at the property after remedial action would not pose a threat to human health or the environment at the site or in adjacent nonindustrial areas. In evaluating compliance with this criterion, at a minimum the following factors shall be considered:

(A) The potential for access to the industrial property by the general public, especially children. The proximity of the industrial property to residential areas, schools or childcare facilities shall be considered when evaluating access. In addition, the presence of natural features, manmade structures, arterial streets or intervening land uses that would limit or encourage access to the industrial property shall be considered. Fencing shall not be considered sufficient to limit access to an industrial property since this is insufficient to assure long term protection;

(B) The degree of reduction of potential exposure to residual hazardous substances by the selected remedy. Where the residual hazardous substances are to be capped to reduce exposure, consideration shall be given to the thickness of the cap and the likelihood of future site maintenance activities, utility and drainage work, or building construction reexposing residual hazardous substances;

(C) The potential for transport of residual hazardous substances to off-property areas, especially residential areas, schools and childcare facilities;

(D) The potential for significant adverse effects on wildlife caused by residual hazardous substances using the procedures in WAC 173-340-7490 through 173-340-7494; and

(E) The likelihood that these factors would not change for the foreseeable future.

(b) **Expectations.** In applying the criteria in (a) of this subsection, the department expects the following results:

(i) The department expects that properties zoned for heavy industrial or high intensity industrial use and located within a city or county that has completed a comprehensive plan and adopted implementing zoning regulations under the Growth Management Act (chapter 36.70A RCW) will meet the definition of industrial property. For cities and counties not planning under the Growth Management Act, the department expects that spot zoned industrial properties will not meet the definition of industrial property but that properties that are part of a larger area zoned for heavy industrial or high intensity industrial use will meet the definition of an industrial property;

(ii) For both GMA and non-GMA cities and counties, the department expects that light industrial and commercial zones and uses should meet the definition of industrial property where the land uses are comparable to those cited in the definition of industrial property or the land uses are an integral part of a qualifying industrial use (such as, ancillary or support facilities). This will require a site-by-site evaluation of the zoning text and land uses;

(iii) The department expects that for portions of industrial properties in close proximity to (generally, within a few hundred feet) residential areas, schools or childcare facilities, residential soil cleanup levels will be used unless:

(A) Access to the industrial property is very unlikely or, the hazardous substances that are not treated or removed are contained under a cap of clean soil (or other materials) of substantial thickness so that it is very unlikely the hazardous substances would be disturbed by future site maintenance and construction activities (depths of even shallow footings, utilities and drainage structures in industrial areas are typically three to six feet); and

(B) The hazardous substances are relatively immobile (or have other characteristics) or have been otherwise contained so that subsurface lateral migration or surficial transport via dust or runoff to these nearby areas or facilities is highly unlikely; and

(iv) Note that a change in the reasonable maximum exposure to industrial site use primarily affects the direct contact exposure pathway. Thus, for example, for sites where the soil cleanup level is based primarily on the potential for the hazardous substance to leach and cause ground water contamination, it is the department's expectation that an industrial land use will not affect the soil cleanup level. Similarly, where the soil cleanup level is based primarily on surface water protection or other pathways other than direct human contact, land use is not expected to affect the soil cleanup level.

(2) **General considerations.**

(a) In the event of a release of a hazardous substance at a site qualifying as industrial property, a cleanup action that complies with this chapter shall be conducted to address those soils with hazardous substance concentrations which exceed industrial soil cleanup levels at the relevant point of compliance.

(b) Soil cleanup levels for areas beyond the industrial property boundary that do not qualify for industrial soil cleanup levels under this section (including implementation of institutional controls and a covenant restricting use of the property to industrial property uses) shall be established in accordance with WAC 173-340-740.

(c) Industrial soil cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of ground water, surface water, sediment or air cleanup standards established under this chapter or under applicable state and federal laws. A property that qualifies for an industrial soil cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(d) The department may require more stringent soil cleanup standards than required by this section when, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment, including consideration of the factors in WAC 173-340-740 (1)(c). Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708.

(3) **Method A industrial soil cleanup levels.**

(a) **Applicability.** Method A industrial soil cleanup levels may be used only at any industrial property qualifying under WAC 173-340-704(1).

(b) **General requirements.** Method A industrial soil cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations in Table 745-1 and compliance with the corresponding footnotes;

(ii) Concentrations established under applicable state and federal laws;

(iii) Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC 173-340-7490 through 173-340-7493, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and

(iv) For a hazardous substance that is deemed an indicator hazardous substance under WAC 173-340-708(2) and for which there is no value in Table 745-1 or applicable state and federal laws, a concentration that does not exceed the natural background concentration or the practical quantification limit, subject to the limitations in this chapter.

(4) **Method B industrial soil cleanup levels.** This section does not provide procedures for establishing Method B industrial soil cleanup levels. Method C is the standard method for establishing soil cleanup levels at industrial sites and its use is conditioned upon the continued use of the site for industrial purposes. The person conducting the cleanup action also has the option of establishing unrestricted land use soil cleanup levels under WAC 173-340-740 for qualifying industrial properties. This option may be desirable when the person wants to avoid restrictions on the future use of the property. When a site does not qualify for a Method A or Method C industrial soil cleanup level under this section, or the user chooses to establish unrestricted land use soil cleanup levels at a site, soil cleanup levels must be established using Methods A or B under WAC 173-340-740.

(5) **Method C industrial soil cleanup levels.**

(a) **Applicability.** Method C industrial soil cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method C soil cleanup levels may be used at any industrial property qualifying under subsection (1) of this section.

(b) **Standard Method C industrial soil cleanup levels.** Standard Method C industrial soil cleanup levels for industrial properties shall be at least as stringent as all of the following:

(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws;

(ii) **Environmental protection.** Concentrations that result in no significant adverse effects on the protection and propagation of wildlife established using the procedures specified in WAC 173-340-7490 through 173-340-7494, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary.

(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations that protect human health as determined by evaluating the following exposure pathways:

(A) **Ground water protection.** Concentrations that will not cause contamination of ground water to concentrations which exceed ground water cleanup levels established under WAC 173-340-720 as determined using the methods described in WAC 173-340-747.

(B) **Soil direct contact.** Concentrations that, due to direct contact with contaminated soil, are estimated to result in no acute or chronic noncarcinogenic toxic effects on human health using a hazardous quotient of one (1) and concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one hundred thousand (1×10^{-5}). Equations 745-1 and 745-2 and the associated default assumptions shall be used to conduct this calculation.

(I) **Noncarcinogens.** For noncarcinogenic toxic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 745-1. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 745-1]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RfD} \times \text{ABW} \times \text{UCF} \times \text{HQ} \times \text{AT}}{\text{SIR} \times \text{AB1} \times \text{EF} \times \text{ED}}$$

Where:

RfD = Reference dose as specified in WAC 173-340-708(7) (mg/kg-day)

ABW = Average body weight over the exposure duration (70 kg)

UCF = Unit conversion factor (1,000,000 mg/kg)
SIR = Soil ingestion rate (50 mg/day)
AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
EF = Exposure frequency (0.4) (unitless)
HQ = Hazard quotient (1) (unitless)
AT = Averaging time (20 years)
ED = Exposure duration (20 years)

(II) **Carcinogens.** For carcinogenic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 745-2. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 745-2]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RISK x ABW x AT x UCF}}{\text{CPF x SIR x AB1 x ED x EF}}$$

Where:

RISK = Acceptable cancer risk level (1 in 100,000) (unitless)
ABW = Average body weight over the exposure duration (70 kg)
AT = Averaging time (75 years)
UCF = Unit conversion factor (1,000,000 mg/kg)
CPF = Carcinogenic Potency Factor as specified in WAC 173-340-708(8) (kg-day/mg)
SIR = Soil ingestion rate (50 mg/day)
AB1 = Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans
ED = Exposure duration (20 years)
EF = Exposure frequency (0.4) (unitless)

(III) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds present in the petroleum mixture. Equation 745-3 shall be used for this calculation. This equation takes into account concurrent exposure due to ingestion and dermal contact with petroleum contaminated soils. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 745-4 and 745-5. See Table 830-1 for the analyses required for various petroleum products to use this method.

[Equation 745-3]

$$C_{soil} = \frac{HI \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1}{10^6 mg/kg} \sum_{i=1}^{n} \frac{F(i)}{RfDo(i)} \right) + \left(\frac{SA \times AF}{10^6 mg/kg} \sum_{i=1}^{n} \frac{F(i) \times ABS(i)}{RfDd(i)} \right) \right]}$$

Where:

C_{soil} = TPH soil cleanup level (mg/kg)
HI = Hazard index (1) (unitless)
ABW = Average body weight over the exposure duration (70 kg)
AT = Averaging time (20 years)
EF = Exposure frequency (0.7) (unitless)
ED = Exposure duration (20 years)
SIR = Soil ingestion rate (50 mg/day)
AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
F(i) = Fraction (by weight) of petroleum component (i) (unitless)
SA = Dermal surface area (2,500 cm^2)
AF = Adherence factor (0.2 mg/cm^2-day)
ABS = Dermal absorption fraction for petroleum component (i) (unitless). May use chemical-specific values or the following defaults:
- 0.0005 for volatile petroleum components with vapor press > = benzene
- 0.03 for volatile petroleum components with vapor press < benzene
- 0.1 for other petroleum components

RfDo(i) = Oral reference dose of petroleum component (i) as defined in WAC 173-340-708(7) (mg/kg-day)
RfDd(i) = Dermal reference dose for petroleum component (i) (mg/kg-day) derived by RfDo x GI
GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:
- 0.8 for volatile petroleum components
- 0.5 for other petroleum components

n = The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

(C) **Soil vapors.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(II) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(III) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

See subsection (5)(c)(iv)(B) of this section for methods that may be used to evaluate the soil to vapor pathway.

(c) **Modified Method C soil cleanup levels.**

(i) **General.** Modified Method C soil cleanup levels are standard Method C soil cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws, meet health risk levels for standard Method C soil cleanup levels, and be demonstrated to be environmentally protective using the procedures specified in WAC 173-340-7490 through 173-340-7494. Changes to exposure assumptions must comply with WAC 173-340-708(10).

(ii) **Allowable modifications.** The following modifications may be made to the default assumptions in the standard Method C equations to derive modified Method C soil cleanup levels:

(A) For the protection of ground water see WAC 173-340-747;

(B) For soil ingestion, the gastrointestinal absorption fraction may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(C) For dermal contact, the adherence factor, dermal absorption fraction and gastrointestinal absorption conversion factor may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(D) The toxicity equivalent factors((~~, as described~~)) provided in WAC 173-340-708 (8)((~~, may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons~~)) (d), (e) and (f), may be modified provided the requirements of WAC 173-340-708 (8)(g) and (h) are met;

(E) The reference dose and cancer potency factor may be modified if the requirements in WAC 173-340-708 (7) and (8) are met; and

(F) Modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16).

(iii) **Dermal contact.** For hazardous substances other than petroleum mixtures, dermal contact with the soil shall be evaluated whenever the proposed changes to Equations 745-1 and 745-2 would result in a significantly higher soil cleanup level than would be calculated without the proposed changes. When conducting this evaluation, the following equations and default assumptions shall be used:

(A) For noncarcinogens use Equation 745-4. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 745-4]

$$C_{soil} = \frac{HQ \times ABW \times AT}{EF \times ED \left[\left(\frac{1}{RfDo} \times \frac{SIR \times AB1}{10^6 mg/kg} \right) + \left(\frac{1}{RfDd} \times \frac{SA \times AF \times ABS}{10^6 mg/kg} \right) \right]}$$

Where:

C_{soil} = Soil cleanup level (mg/kg)

HQ = Hazard quotient (unitless)

ABW = Average body weight over the exposure duration (70 kg)

AT = Averaging time (20 years)

EF = Exposure frequency (0.7) (unitless)

ED = Exposure duration (20 years)

SIR = Soil ingestion rate (50 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless)

SA = Dermal surface area (2,500 mg/cm^2)

AF = Adherence factor (0.2 mg/cm^2-day)

ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:

- 0.01 for inorganic hazardous substances
- 0.0005 for volatile organic compounds with vapor press >= benzene
- 0.03 for volatile organic compounds with vapor press < benzene
- 0.1 for other organic hazardous substances

RfDo = Oral reference dose as defined in WAC 173-340-708(7) (mg/kg-day)

RfDd = Dermal reference dose (mg/kg-day) derived by RfDo x GI

GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:

- 0.2 for inorganic hazardous substances
- 0.8 for volatile organic compounds
- 0.5 for other organic hazardous substances

(B) For carcinogens use Equation 745-5. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 745-5]

$$C_{soil} = \frac{RISK \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1 \times CPFo}{10^6 mg/kg} \right) + \left(\frac{SA \times AF \times ABS \times CPFd}{10^6 mg/kg} \right) \right]}$$

Where:

C_{soil} = Soil cleanup level (mg/kg)

RISK = Acceptable cancer risk (1 in 100,000) (unitless)

ABW = Average body weight over the exposure duration (70 kg)

AT = Averaging time (75 years)

EF = Exposure frequency (0.7) (unitless)

ED = Exposure duration (20 years)

SIR = Soil ingestion rate (50 mg/day)

AB1 = Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans

CPFo = Oral cancer potency factor as defined in WAC 173-340-708(8) (kg-day/mg)

CPFd = Dermal cancer potency factor (kg-day/mg) derived by CPFo/GI

GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:

- 0.2 for inorganic hazardous substances
- 0.8 for volatile organic compounds and mixtures of dioxins and/or furans
- 0.5 for other organic hazardous substances

SA = Dermal surface area (2,500 cm^2)

AF = Adherence factor (0.2 mg/cm^2-day)

ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:

- 0.01 for inorganic hazardous substances
- 0.0005 for volatile organic compounds with vapor press >= benzene
- 0.03 for volatile organic compounds substances with vapor press < benzene and for mixtures of dioxins and/or furans
- 0.1 for other organic hazardous substances

(C) Modifications may be made to Equations 745-4 and 745-5 as provided for in subsection (5)(c)(ii) of this section.

(iv) **Soil vapors.**

(A) **Applicability.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For other than petroleum hydrocarbon mixtures, the proposed changes to the standard Method C equations (Equations 745-1 and 745-2) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(II) For petroleum hydrocarbon mixtures, the proposed changes to the standard Method C equations (Equations 745-3, 745-4 and 745-5) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(III) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(IV) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(V) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

(B) **Evaluation methods.** Soil cleanup levels that are protective of the indoor and ambient air shall be determined on a site-specific basis. Soil cleanup levels may be evaluated as being protective of air pathways using any of the following methods:

(I) Measurements of the soil vapor concentrations, using methods approved by the department, demonstrating vapors in the soil would not exceed air cleanup levels established under WAC 173-340-750.

(II) Measurements of ambient air concentrations and/or indoor air vapor concentrations throughout buildings, using methods approved by the department, demonstrating air does not exceed cleanup levels established under WAC 173-340-750. Such measurements must be representative of current and future site conditions when vapors are likely to enter and accumulate in structures. Measurement of ambient air may be excluded if it can be shown that indoor air is the most protective point of exposure.

(III) Use of modeling methods approved by the department to demonstrate the air cleanup standards established under WAC 173-340-750 will not be exceeded. When this method is used, the department may require soil vapor and/or air monitoring to be conducted to verify the calculations and compliance with air cleanup standards.

(IV) Other methods as approved by the department demonstrating the air cleanup standards established under WAC 173-340-750 will not be exceeded.

(d) **Using modified Method C to evaluate industrial soil remediation levels.** In addition to the adjustments allowed under subsection (5)(c) of this section, other adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(6) **Adjustments to industrial soil cleanup levels.**

(a) **Total site risk adjustments.** Soil cleanup levels for individual hazardous substances developed in accordance with subsection (5) of this section, including cleanup levels based on state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}).

(b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (3) or (5) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level shall be adjusted downward so that total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}) and the hazard index does not exceed one (1) at the site.

(c) **Natural background and analytical considerations.** Cleanup levels determined under subsection (3) or (5) of this section, including cleanup levels adjusted under subsection (6)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background concentration, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements pertaining to practical quantitation limits and natural background.

(7) **Point of compliance.** The point of compliance for industrial property soil cleanup levels shall be established in accordance with WAC 173-340-740(6).

(8) **Compliance monitoring.** Compliance monitoring and data analysis and evaluation for industrial property soil cleanup levels shall be performed in accordance with WAC 173-340-410 and 173-340-740(7).

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

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 8/15/01)

WAC 173-340-900 Tables.

Table 708-1: Toxicity Equivalency Factors for Chlorinated dibenzo-p-dioxins and Chlorinated Dibenzofurans Congeners

CAS Number	Hazardous Substance	Toxicity Equivalency Factor (unitless)[1]
	Dioxin Congeners	
1746-01-6	2,3,7,8-Tetrachloro dibenzo-p-dioxin	1
40321-76-4	1,2,3,7,8-Pentachloro dibenzo-p-dioxin	1
3927-28-6	1,2,3,4,7,8-Hexachloro dibenzo-p-dioxin	0.1
57653-85-7	1,2,3,6,7,8-Hexachloro dibenzo-p-dioxin	0.1
19408-74-3	1,2,3,7,8,9-Hexachloro dibenzo-p-dioxin	0.1
35822-46-9	1,2,3,4,6,7,8-Heptachloro dibenzo-p-dioxin	0.01
3268-87-9	1,2,3,4,6,7,8,9-Octachloro dibenzo-p-dioxin	0.0003
	Furan Congeners	
51207-31-9	2,3,7,8-Tetrachloro dibenzofuran	0.1
57117-41-6	1,2,3,7,8-Pentachloro dibenzofuran	0.03
57117-31-4	2,3,4,7,8-Pentachloro dibenzofuran	0.3
70648-26-9	1,2,3,4,7,8-Hexachloro dibenzofuran	0.1
57117-44-9	1,2,3,6,7,8-Hexachloro dibenzofuran	0.1
72918-21-9	1,2,3,7,8,9-Hexachloro dibenzofuran	0.1
60851-34-5	2,3,4,6,7,8-Hexachloro dibenzofuran	0.1
67562-39-4	1,2,3,4,6,7,8-Heptachloro dibenzofuran	0.01
55673-89-7	1,2,3,4,7,8,9-Heptachloro dibenzofuran	0.01
39001-02-0	1,2,3,4,6,7,8,9-Octachloro dibenzofuran	0.0003

[1] Source: Van den Berg et al. 2006. The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds.
Toxicological Sciences 2006 93(2):223-241; doi:10.1093/toxsci/kfl055.

Table 708-2: Toxicity Equivalency Factors for Minimum Required Carcinogenic Polyaromatic Hydrocarbons (cPAHs) under WAC 173-340-708(e)

CAS Number	Hazardous Substance	TEF (unitless)[1]
50-32-08	benzo[a]pyrene	1
56-55-3	benzo[a]anthracene	0.1
205-99-2	benzo[b]fluoranthene	0.1
207-08-9	benzo[k]fluoranthene	0.1
218-01-9	chrysene	0.01
53-70-3	dibenz[a, h]anthracene	0.1
193-39-5	indeno[1,2,3-cd]pyrene	0.1

[1] Source: Cal-EPA, 2005. Air Toxics Hot Spots Program Risk Assessment Guidelines, Part II Technical Support Document for Describing Available Cancer Potency Factors. Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. May 2005.

Table 708-3: Toxicity Equivalency Factors for Carcinogenic Polyaromatic Hydrocarbons (cPAHs) that May be Required under WAC 173-340-708 (8)(e)(v)

CAS Number	Hazardous Substance	TEF (unitless)[1]
205-82-3	benzo(j)fluoranthene	0.1
224-42-0	dibenz[a, j]acridine	0.1
226-36-8	dibenz[a, h]acridine	0.1
194-59-2	7H-dibenzo[c, g]carbazole	1
192-65-4	dibenzo[a, e]pyrene	1
189-64-0	dibenzo[a, h]pyrene	10
189-55-9	dibenzo[a, i]pyrene	10
191-30-0	dibenzo[a, l]pyrene	10
3351-31-3	5-methylchrysene	1
5522-43-0	1-nitropyrene	0.1
57835-92-4	4-nitropyrene	0.1
42397-64-8	1,6-dinitropyrene	10
42397-65-9	1,8-dinitropyrene	1
7496-02-8	6-nitrochrysene	10
607-57-8	2-nitrofluorene	0.01

Table 708-3: Toxicity Equivalency Factors for Carcinogenic Polyaromatic Hydrocarbons (cPAHs) that May be Required under WAC 173-340-708 (8)(e)(v)

CAS Number	Hazardous Substance	TEF (unitless)[1]
57-97-6	7,12-dimethylbenzanthracene	10
56-49-5	3-methylcholanthrene	1
602-87-9	5-nitroacenaphthene	0.01

[1]Source: Cal-EPA, 2005. Air Toxics Hot Spots Program Risk Assessment Guidelines, Part II Technical Support Document for Describing Available Cancer Potency Factors. Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. May 2005.

Table 708-4: Toxicity Equivalency Factors for Dioxin-Like Polychlorinated Biphenyls (PCBs)

CAS Number	Hazardous Substance	TEF (unitless)[1]
	Dioxin-Like PCBs	
32598-13-3	3,3',4,4'-Tetrachlorobiphenyl (PCB 77)	0.0001
70362-50-4	3,4,4',5- Tetrachlorobiphenyl (PCB 81)	0.0003
32598-14-4	2,3,3',4,4'-Pentachlorobiphenyl (PCB 105)	0.00003
74472-37-0	2,3,4,4',5-Pentachlorobiphenyl (PCB 114)	0.00003
31508-00-6	2,3',4,4',5-Pentachlorobiphenyl (PCB 118)	0.00003
65510-44-3	2',3,4,4',5-Pentachlorobiphenyl (PCB 123)	0.00003
57465-28-8	3,3',4,4',5-Pentachlorobiphenyl (PCB 126)	0.1
38380-08-4	2,3,3',4,4',5-Hexachlorobiphenyl (PCB 156)	0.00003
69782-90-7	2,3,3',4,4',5'-Hexachlorobiphenyl (PCB 157)	0.00003
52663-72-6	2,3',4,4',5,5'-Hexachlorobiphenyl (PCB 167)	0.00003
32774-16-6	3,3',4,4',5,5'-Hexachlorobiphenyl (PCB 169)	0.03
39635-31-9	2,3,3',4,4',5,5'-Heptachlorobiphenyl (PCB 189)	0.00003

[1]Source: Van den Berg et al. 2006. The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds. Toxicological Sciences 2006 93(2):223-241; doi:10.1093/toxsci/kfl055.

Table 720-1
Method A Cleanup Levels for Ground Water.[a]

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	5 ug/liter[b]
Benzene	71-43-2	5 ug/liter[c]
Benzo(a)pyrene	50-32-8	0.1 ug/liter[d]
Cadmium	7440-43-9	5 ug/liter[e]
Chromium (Total)	7440-47-3	50 ug/liter[f]
DDT	50-29-3	0.3 ug/liter[g]
1,2 Dichloroethane (EDC)	107-06-2	5 ug/liter[h]
Ethylbenzene	100-41-4	700 ug/liter[i]
Ethylene dibromide (EDB)	106-93-4	0.01 ug/liter[j]
Gross Alpha Particle Activity		15 pCi/liter[k]
Gross Beta Particle Activity		4 mrem/yr[l]
Lead	7439-92-1	15 ug/liter[m]
Lindane	58-89-9	0.2 ug/liter[n]
Methylene chloride	75-09-2	5 ug/liter[o]
Mercury	7439-97-6	2 ug/liter[p]
MTBE	1634-04-4	20 ug/liter[q]
Naphthalenes	91-20-3	160 ug/liter[r]
PAHs (carcinogenic)		See benzo(a) pyrene
PCB mixtures		0.1 ug/liter[s]
Radium 226 and 228		5 pCi/liter[t]
Radium 226		3 pCi/liter[u]
Tetrachloroethylene	127-18-4	5 ug/liter[v]
Toluene	108-88-3	1,000 ug/liter[w]
Total Petroleum Hydrocarbons[x]		
[Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!]		
Gasoline Range Organics		
Benzene present in ground water		800 ug/liter
No detectable benzene in ground water		1,000 ug/liter
Diesel Range Organics		500 ug/liter
Heavy Oils		500 ug/liter
Mineral Oil		500 ug/liter
1,1,1 Trichloroethane	71-55-6	200 ug/liter[y]
Trichloroethylene	79-01-6	5 ug/liter[z]
Vinyl chloride	75-01-4	0.2 ug/liter[aa]
Xylenes	1330-20-7	1,000 ug/liter[bb]

Footnotes:

a **Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for drinking water beneficial uses at sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the ground water must be restored to those levels at all sites. The level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.

b **Arsenic.** Cleanup level based on background concentrations for state of Washington.

c **Benzene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

d **Benzo(a)pyrene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61), adjusted to a 1 x 10^{-5} risk. If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).

e **Cadmium.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.62).

f **Chromium (Total).** Cleanup level based on concentration derived using Equation 720-1 for hexavalent chromium. This is a total value for chromium III and chromium VI. If just chromium III is present at the site, a cleanup level of 100 ug/l may be used (based on WAC 246-290-310 and 40 C.F.R. 141.62).

g **DDT (dichlorodiphenyltrichloroethane).** Cleanup levels based on concentration derived using Equation 720-2.

h **1,2 Dichloroethane (ethylene dichloride or EDC).** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

i **Ethylbenzene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

j **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on concentration derived using Equation 720-2, adjusted for the practical quantitation limit.

k **Gross Alpha Particle Activity, excluding uranium.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).

l **Gross Beta Particle Activity, including gamma activity.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).

m **Lead.** Cleanup level based on applicable state and federal law (40 C.F.R. 141.80).

n **Lindane.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

o **Methylene chloride (dichloromethane).** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

p **Mercury.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.62).

q **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on federal drinking water advisory level (EPA-822-F-97-009, December 1997).

r **Naphthalenes.** Cleanup level based on concentration derived using Equation 720-1. This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.

s **PCB mixtures.** Cleanup level based on concentration derived using Equation 720-2, adjusted for the practical quantitation limit. This cleanup level is a total value for all PCBs.

t **Radium 226 and 228.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).

u **Radium 226.** Cleanup level based on applicable state law (WAC 246-290-310).

v **Tetrachloroethylene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

w **Toluene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

x **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.

- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use. Two cleanup levels are provided. The higher value is based on the assumption that no benzene is present in the ground water sample. If any detectable amount of benzene is present in the ground water sample, then the lower TPH cleanup level must be used. No interpolation between these cleanup levels is allowed. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene, EDB and EDC] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and MTBE], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for gasoline releases.
- **Diesel range organics** means organic compounds measured using NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on protection from noncarcinogenic effects during drinking water use. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene and PAHs] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and naphthalenes], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on protection from noncarcinogenic effects during drinking water use, assuming a product composition similar to diesel fuel. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and naphthalenes], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors measured using NWTPH-Dx. The cleanup level is based on protection from noncarcinogenic effects during drinking water use. Sites using this cleanup level must analyze ground water samples for PCBs and meet the PCB cleanup level in this table unless it can be demonstrated that: (1) The release originated from an electrical device manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B (or Method C, if applicable) must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.

y **1,1,1 Trichloroethane.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

z **Trichloroethylene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).

aa **Vinyl chloride.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61), adjusted to a 1 x 10^{-5} risk.

bb **Xylenes.** Cleanup level based on xylene not exceeding the maximum allowed cleanup level in this table for total petroleum hydrocarbons and on prevention of adverse aesthetic characteristics. This is a total value for all xylenes.

Table 740-1
Method A Soil Cleanup Levels for Unrestricted Land Uses.[a]

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20 mg/kg[b]
Benzene	71-43-2	0.03 mg/kg[c]
Benzo(a)pyrene	50-32-8	0.1 mg/kg[d]
Cadmium	7440-43-9	2 mg/kg[e]
Chromium		
Chromium VI	18540-29-9	19 mg/kg[f1]
Chromium III	16065-83-1	2,000 mg/kg[f2]
DDT	50-29-3	3 mg/kg[g]
Ethylbenzene	100-41-4	6 mg/kg[h]
Ethylene dibromide (EDB)	106-93-4	0.005 mg/kg[i]
Lead	7439-92-1	250 mg/kg[j]
Lindane	58-89-9	0.01 mg/kg[k]
Methylene chloride	75-09-2	0.02 mg/kg[l]
Mercury (inorganic)	7439-97-6	2 mg/kg[m]
MTBE	1634-04-4	0.1 mg/kg[n]
Naphthalenes	91-20-3	5 mg/kg[o]
PAHs (carcinogenic)		See benzo(a) pyrene[d]
PCB Mixtures		1 mg/kg[p]
Tetrachloroethylene	127-18-4	0.05 mg/kg[q]
Toluene	108-88-3	7 mg/kg[r]
Total Petroleum Hydrocarbons[s]		
[Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!]		
Gasoline Range Organics		
Gasoline mixtures without benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture		100 mg/kg
All other gasoline mixtures		30 mg/kg
Diesel Range Organics		2,000 mg/kg
Heavy Oils		2,000 mg/kg
Mineral Oil		4,000 mg/kg
1,1,1 Trichloroethane	71-55-6	2 mg/kg[t]
Trichloroethylene	79-01-6	0.03 mg/kg[u]
Xylenes	1330-20-7	9 mg/kg[v]

Footnotes:

a **Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or for sites with relatively few hazardous substances, and the site qualifies under WAC 173-340-7491 for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or it can be demonstrated using a terrestrial ecological evaluation under WAC 173-340-7492 or 173-340-7493 that the values in this table are ecologically protective for the site. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the soil must be restored to these levels at a site. The level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.

b **Arsenic.** Cleanup level based on direct contact using Equation 740-2 and protection of ground water for drinking water use using the procedures in WAC 173-340-747(4), adjusted for natural background for soil.

c **Benzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures in WAC 173-340-747 (4) and (6).

d **Benzo(a)pyrene.** Cleanup level based on direct contact using Equation 740-2. If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).

e **Cadmium.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

f1 **Chromium VI.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

f2 **Chromium III.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). Chromium VI must also be tested for and the cleanup level met when present at a site.

g **DDT (dichlorodiphenyltrichloroethane).** Cleanup level based on direct contact using Equation 740-2.

h **Ethylbenzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

i **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

j **Lead.** Cleanup level based on preventing unacceptable blood lead levels.

k **Lindane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit.

l **Methylene chloride (dichloromethane).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

m **Mercury.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

n **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

o **Naphthalenes.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.

p **PCB Mixtures.** Cleanup level based on applicable federal law (40 C.F.R. 761.61). This is a total value for all PCBs.

q **Tetrachloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

r **Toluene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

s **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.

- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use using the procedures described in WAC 173-340-747(6). Two cleanup levels are provided. The lower value of 30 mg/kg can be used at any site. When using this lower value, the soil must also be tested for and meet the benzene soil cleanup level. The higher value of 100 mg/kg can only be used if the soil is tested and found to contain no benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture. No interpolation between these cleanup levels is allowed. In both cases, the soil cleanup level for any other carcinogenic components of the petroleum [such as EDB and EDC], if present at the site, must also be met. Also, in both cases, soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes, naphthalene, and MTBE], also must be met if these substances are found to exceed ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for gasoline releases.
- **Diesel range organics** means organic compounds measured using method NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). The soil cleanup level for any carcinogenic components of the petroleum [such as benzene and PAHs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if these substances are found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10) and assuming a product composition similar to diesel fuel. The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors, measured using NWTPH-Dx. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). Sites using this cleanup level must also analyze soil samples and meet the soil cleanup level for PCBs, unless it can be demonstrated that: (1) The release originated from an electrical device that was manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.

t **1,1,1 Trichloroethane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

u **Trichloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

v **Xylenes.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for all xylenes.

Table 745-1

Method A Soil Cleanup Levels for Industrial Properties.[a]

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20 mg/kg[b]
Benzene	71-43-2	0.03 mg/kg[c]
Benzo(a)pyrene	50-32-8	2 mg/kg[d]
Cadmium	7440-43-9	2 mg/kg[e]
Chromium		
Chromium VI	18540-29-9	19 mg/kg[f1]
Chromium III	16065-83-1	2,000 mg/kg[f2]
DDT	50-29-3	4 mg/kg[g]
Ethylbenzene	100-41-4	6 mg/kg[h]
Ethylene dibromide (EDB)	106-93-4	0.005 mg/kg[i]
Lead	7439-92-1	1,000 mg/kg[j]
Lindane	58-89-9	0.01 mg/kg[k]
Methylene chloride	75-09-2	0.02 mg/kg[l]
Mercury (inorganic)	7439-97-6	2 mg/kg[m]
MTBE	1634-04-4	0.1 mg/kg[n]
Naphthalene	91-20-3	5 mg/kg[o]
PAHs (carcinogenic)		See benzo(a) pyrene[d]
PCB Mixtures		10 mg/kg[p]
Tetrachloroethylene	127-18-4	0.05 mg/kg[q]
Toluene	108-88-3	7 mg/kg[r]
Total Petroleum Hydrocarbons[s]		
[Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!]		
Gasoline Range Organics		
Gasoline mixtures without benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture		100 mg/kg
All other gasoline mixtures		30 mg/kg
Diesel Range Organics		2,000 mg/kg
Heavy Oils		2,000 mg/kg
Mineral Oil		4,000 mg/kg

1,1,1 Trichloroethane	71-55-6	2 mg/kg[t]
Trichloroethylene	79-01-6	0.03 mg/kg[u]
Xylenes	1330-20-7	9 mg/kg[v]

Footnotes:

a **Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or for industrial properties with relatively few hazardous substances, and the site qualifies under WAC 173-340-7491 for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or it can be demonstrated using a terrestrial ecological evaluation under WAC 173-340-7492 or 173-340-7493 that the values in this table are ecologically protective for the site. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the soil must be restored to these levels at a site. The level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.

b **Arsenic.** Cleanup level based on protection of ground water for drinking water use, using the procedures in WAC 173-340-747(4), adjusted for natural background for soil.

c **Benzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747 (4) and (6).

d **Benzo(a)pyrene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).

e **Cadmium.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

f1 **Chromium VI.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

f2 **Chromium III.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). Chromium VI must also be tested for and the cleanup level met when present at a site.

g **DDT (dichlorodiphenyltrichloroethane).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

h **Ethylbenzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

i **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

j **Lead.** Cleanup level based on direct contact.

k **Lindane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit.

l **Methylene chloride (dichloromethane).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

m **Mercury.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

n **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

o **Naphthalenes.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.

p **PCB Mixtures.** Cleanup level based on applicable federal law (40 C.F.R. 761.61). This is a total value for all PCBs. This value may be used only if the PCB contaminated soils are capped and the cap maintained as required by 40 C.F.R. 761.61. If this condition cannot be met, the value in Table 740-1 must be used.

q **Tetrachloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

r **Toluene.** Cleanup level based on protection of ground water for drinking water use, using the procedure described in WAC 173-340-747(4).

s **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.

- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use using the procedures described in WAC 173-340-747(6). Two cleanup levels are provided. The lower value of 30 mg/kg can be used at any site. When using this lower value, the soil must also be tested for and meet the benzene soil cleanup level. The higher value of 100 mg/kg can only be used if the soil is tested and found to contain no benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture. No interpolation between these cleanup levels is allowed. In both cases, the soil cleanup level for any other carcinogenic components of the petroleum [such as EDB and EDC], if present at the site, must also be met. Also, in both cases, soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes, naphthalene, and MTBE], also must be met if these substances are found to exceed ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for gasoline releases.
- **Diesel range organics** means organic compounds measured using method NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, and PAHs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if these substances are found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10) and assuming a product composition similar to diesel fuel. The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors, measured using NWTPH-Dx. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). Sites using this cleanup level must also analyze soil samples and meet the soil cleanup level for PCBs, unless it can be demonstrated that: (1) The release originated from an electrical device that was manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested

and did not contain PCBs. Method B or C must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.

t **1,1,1 Trichloroethane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

u **Trichloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

v **Xylenes.** Cleanup level based on protection of ground water for drinking water use, using the procedure in WAC 173-340-747(4). This is a total value for all xylenes.

Table 747-1
Soil Organic Carbon-Water Partitioning Coefficient (K_{oc}) Values: Nonionizing Organics.

Hazardous Substance	K_{oc} (ml/g)
ACENAPHTHENE	4,898
ALDRIN	48,685
ANTHRACENE	23,493
BENZ(a)ANTHRACENE	357,537
BENZENE	62
BENZO(a)PYRENE	968,774
BIS(2-CHLOROETHYL)ETHER	76
BIS(2-ETHYLHEXYL)PHTHALATE	111,123
BROMOFORM	126
BUTYL BENZYL PHTHALATE	13,746
CARBON TETRACHLORIDE	152
CHLORDANE	51,310
CHLOROBENZENE	224
CHLOROFORM	53
DDD	45,800
DDE	86,405
DDT	677,934
DIBENZO(a,h)ANTHRACENE	1,789,101
1,2-DICHLOROBENZENE (o)	379
1,4-DICHLOROBENZENE (p)	616
DICHLOROETHANE-1,1	53
DICHLOROETHANE-1,2	38
DICHLOROETHYLENE-1,1	65
trans-1,2 DICHLOROETHYLENE	38
DICHLOROPROPANE-1,2	47
DICHLOROPROPENE-1,3	27
DIELDRIN	25,546
DIETHYL PHTHALATE	82
DI-N-BUTYLPHTHALATE	1,567
EDB	66
ENDRIN	10,811
ENDOSULFAN	2,040
ETHYL BENZENE	204
FLUORANTHENE	49,096
FLUORENE	7,707
HEPTACHLOR	9,528
HEXACHLOROBENZENE	80,000
α-HCH (α-BHC)	1,762
β-HCH (β-BHC)	2,139
γ-HCH (LINDANE)	1,352
MTBE	11
METHOXYCHLOR	80,000
METHYL BROMIDE	9
METHYL CHLORIDE	6
METHYLENE CHLORIDE	10
NAPHTHALENE	1,191
NITROBENZENE	119
PCB-Arochlor 1016	107,285
PCB-Arochlor 1260	822,422
PENTACHLOROBENZENE	32,148
PYRENE	67,992
STYRENE	912
1,1,2,2,-TETRACHLOROETHANE	79
TETRACHLOROETHYLENE	265
TOLUENE	140
TOXAPHENE	95,816
1,2,4-TRICHLOROBENZENE	1,659
TRICHLOROETHANE -1,1,1	135
TRICHLOROETHANE-1,1,2	75
TRICHLOROETHYLENE	94
o-XYLENE	241
m-XYLENE	196
p-XYLENE	311

Sources: Except as noted below, the source of the K_{oc} values is the 1996 *EPA Soil Screening Guidance: Technical Background Document*. The values obtained from this document represent the geometric mean of a survey of values published in the scientific literature. Sample populations ranged from 1-65. EDB value from *ATSDR Toxicological Profile* (TP 91/13). MTBE value from *USGS Final Draft Report on Fuel Oxygenates* (March 1996). PCB-Arochlor values from 1994 *EPA Draft Soil Screening Guidance*.

Table 747-2
Predicted Soil Organic Carbon-Water Partitioning Coefficient (K_{oc}) as a Function of pH: Ionizing Organics.

Hazardous Substance	K_{oc} Value (ml/g)		
	pH = 4.9	pH = 6.8	pH = 8.0
Benzoic acid	5.5	0.6	0.5
2-Chlorophenol	398	388	286
2-4-Dichlorophenol	159	147	72
2-4-Dinitrophenol	0.03	0.01	0.01
Pentachlorophenol	9,055	592	410
2,3,4,5-Tetrachlorophenol	17,304	4,742	458

Table 747-2
Predicted Soil Organic Carbon-Water Partitioning Coefficient (K_{oc}) as a Function of pH: Ionizing Organics.

Hazardous Substance	K_{oc} Value (ml/g)		
2,3,4,6-Tetrachlorophenol	4,454	280	105
2,4,5-Trichlorophenol	2,385	1,597	298
2,4,6-Trichlorophenol	1,040	381	131

Source: 1996 *EPA Soil Screening Guidance: Technical Background Document*. The predicted K_{oc} values in this table were derived using a relationship from thermodynamic equilibrium considerations to predict the total sorption of an ionizable organic compound from the partitioning of its ionized and neutral forms.

Table 747-3
Metals Distribution Coefficients (K_d).

Hazardous Substance	K_d (L/kg)
Arsenic	29
Cadmium	6.7
Total Chromium	1,000
Chromium VI	19
Copper	22
Mercury	52
Nickel	65
Lead	10,000
Selenium	5
Zinc	62

Source: Multiple sources compiled by the department of ecology.

Table 747-4
Petroleum EC Fraction Physical/Chemical Values.

Fuel Fraction	Equivalent Carbon Number[1]	Water Solubility[2] (mg/L)	Mol. Wt.[3] (g/mol)	Henry's Constant[4] (cc/cc)	GFW[5] (mg/mol)	Density[6] (mg/l)	Soil Organic Carbon-Water Partitioning Coefficient K_{oc}[7] (L/kg)
ALIPHATICS							
EC 5 - 6	5.5	36.0	81.0	33.0	81,000	670,000	800
EC > 6 - 8	7.0	5.4	100.0	50.0	100,000	700,000	3,800
EC > 8 - 10	9.0	0.43	130.0	80.0	130,000	730,000	30,200
EC > 10 - 12	11.0	0.034	160.0	120.0	160,000	750,000	234,000
EC > 12 - 16	14.0	7.6E-04	200.0	520.0	200,000	770,000	5.37E+06
EC > 16 - 21	19.0	1.3E-06	270.0	4,900	270,000	780,000	9.55E+09
EC > 21 - 34	28.0	1.5E-11	400.0	100,000	400,000	790,000	1.07E+10
AROMATICS							
EC > 8 - 10	9.0	65.0	120.0	0.48	120,000	870,000	1,580
EC > 10 - 12	11.0	25.0	130.0	0.14	130,000	900,000	2,510
EC > 12 - 16	14.0	5.8	150.0	0.053	150,000	1,000,000	5,010
EC > 16 - 21	19.0	0.51	190.0	0.013	190,000	1,160,000	15,800
EC > 21 - 34	28.0	6.6E-03	240.0	6.7E-04	240,000	1,300,000	126,000
TPH COMPONENTS							
Benzene	6.5	1,750	78.0	0.228	78,000	876,500	62.0
Toluene	7.6	526.0	92.0	0.272	92,000	866,900	140.0
Ethylbenzene	8.5	169.0	106.0	0.323	106,000	867,000	204.0
Total Xylenes[8] (average of 3)	8.67	171.0	106.0	0.279	106,000	875,170	233.0
n-Hexane[9]	6.0	9.5	86.0	74.0	86,000	659,370	3,410
MTBE[10]		50,000	88.0	0.018	88,000	744,000	10.9
Naphthalenes	11.69	31.0	128.0	0.0198	128,000	1,145,000	1,191

Sources:

1 **Equivalent Carbon Number.** Gustafson, J.B. et al., *Selection of Representative TPH Fractions Based on Fate and Transport Considerations. Total Petroleum Hydrocarbon Criteria Working Group Series*, Volume 3 (1997) [hereinafter *Criteria Working Group*].

2 **Water Solubility.** For aliphatics and aromatics EC groups, *Criteria Working Group.* For TPH components except n-hexane and

MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.

3 **Molecular Weight.** *Criteria Working Group.*

4 **Henry's Constant.** For aliphatics and aromatics EC groups, *Criteria Working Group.* For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.

5 **Gram Formula Weight (GFW).** Based on 1000 x Molecular Weight.

6 **Density.** For aliphatics and aromatics EC groups, based on correlation between equivalent carbon number and data on densities of individual hazardous substances provided in *Criteria Working Group.* For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document.*

7 **Soil Organic Carbon-Water Partitioning Coefficient.** For aliphatics and aromatics EC groups, *Criteria Working Group.* For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document.*

8 **Total Xylenes.** Values for total xylenes are a weighted average of m, o and p xylene based on gasoline composition data from the *Criteria Working Group* (m= 51% of total xylene; o= 28% of total xylene; and p=21% of total xylene).

9 **n-Hexane.** For values other than density, *Criteria Working Group*. For the density value, *Hawley's Condensed Chemical Dictionary,* 11th ed., revised by N. Irving Sax and Richard J. Lewis (1987).

10 **MTBE.** *USGS Final Report on Fuel Oxygenates* (March 1996).

Table 747-5
Residual Saturation Screening Levels for TPH.

Fuel	Screening Level (mg/kg)
Weathered Gasoline	1,000
Middle Distillates (e.g., Diesel No. 2 Fuel Oil)	2,000
Heavy Fuel Oils (e.g., No. 6 Fuel Oil)	2,000
Mineral Oil	4,000
Unknown Composition or Type	1,000

Note: The residual saturation screening levels for petroleum hydrocarbons specified in Table 747-5 are based on coarse sand and gravelly soils; however, they may be used for any soil type. Screening levels are based on the presumption that there are no preferential pathways for NAPL to flow downward to ground water. If such pathways exist, more stringent residual saturation screening levels may need to be established.

Table 749-1
Simplified Terrestrial Ecological Evaluation - Exposure Analysis Procedure under WAC 173-340-7492 (2)(a)(ii).[a]

Estimate the area of contiguous (connected) undeveloped land on the site or within 500 feet of any area of the site to the nearest 1/2 acre (1/4 acre if the area is less than 0.5 acre). "Undeveloped land" means land that is not covered by existing buildings, roads, paved areas or other barriers that will prevent wildlife from feeding on plants, earthworms, insects or other food in or on the soil.	
1) From the table below, find the number of points corresponding to the area and enter this number in the box to the right.	
Area (acres) / Points	
0.25 or less / 4	
0.5 / 5	
1.0 / 6	
1.5 / 7	
2.0 / 8	
2.5 / 9	
3.0 / 10	
3.5 / 11	
4.0 or more / 12	
2) Is this an industrial or commercial property? See WAC 173-340-7490 (3)(c). If yes, enter a score of 3 in the box to the right. If no, enter a score of 1.	
3) Enter a score in the box to the right for the habitat quality of the site, using the rating system shown below[b]. (High = 1, Intermediate = 2, Low = 3)	
4) Is the undeveloped land likely to attract wildlife? If yes, enter a score of 1 in the box to the right. If no, enter a score of 2. See footnote c.	
5) Are there any of the following soil contaminants present: Chlorinated dibenzo-p-dioxins/dibenzofurans, PCB mixtures, DDT, DDE, DDD, aldrin, chlordane, dieldrin, endosulfan, endrin, heptachlor, benzene hexachloride, toxaphene, hexachlorobenzene, pentachlorophenol, pentachlorobenzene? If yes, enter a score of 1 in the box to the right. If no, enter a score of 4.	
6) Add the numbers in the boxes on lines 2 through 5 and enter this number in the box to the right. If this number is larger than the number in the box on line 1, the simplified terrestrial ecological evaluation may be ended under WAC 173-340-7492 (2)(a)(ii).	

Footnotes:

a It is expected that this habitat evaluation will be undertaken by an experienced field biologist. If this is not the case, enter a conservative score (1) for questions 3 and 4.

b Habitat rating system. Rate the quality of the habitat as high, intermediate or low based on your professional judgment as a field biologist. The following are suggested factors to consider in making this evaluation:

Low: Early successional vegetative stands; vegetation predominantly noxious, nonnative, exotic plant species or weeds. Areas severely disturbed by human activity, including intensively cultivated croplands. Areas isolated from other habitat used by wildlife.

High: Area is ecologically significant for one or more of the following reasons: Late-successional native plant communities present; relatively high species diversity; used by an uncommon or rare species; priority habitat (as defined by the Washington department of fish and wildlife); part of a larger area of habitat where size or fragmentation may be important for the retention of some species.

Intermediate: Area does not rate as either high or low.

c Indicate "yes" if the area attracts wildlife or is likely to do so. Examples: Birds frequently visit the area to feed; evidence of high use by mammals (tracks, scat, etc.); habitat "island" in an

industrial area; unusual features of an area that make it important for feeding animals; heavy use during seasonal migrations.

Table 749-2
Priority Contaminants of Ecological Concern for Sites that Qualify for the Simplified Terrestrial Ecological Evaluation Procedure.[a]

Priority contaminant	Soil concentration (mg/kg)	
	Unrestricted land use[b]	Industrial or commercial site
METALS[C]		
Antimony	See note d	See note d
Arsenic III	20 mg/kg	20 mg/kg
Arsenic V	95 mg/kg	260 mg/kg
Barium	1,250 mg/kg	1,320 mg/kg
Beryllium	25 mg/kg	See note d
Cadmium	25 mg/kg	36 mg/kg
Chromium (total)	42 mg/kg	135 mg/kg
Cobalt	See note d	See note d
Copper	100 mg/kg	550 mg/kg
Lead	220 mg/kg	220 mg/kg
Magnesium	See note d	See note d
Manganese	See note d	23,500 mg/kg
Mercury, inorganic	9 mg/kg	9 mg/kg
Mercury, organic	0.7 mg/kg	0.7 mg/kg
Molybdenum	See note d	71 mg/kg
Nickel	100 mg/kg	1,850 mg/kg
Selenium	0.8 mg/kg	0.8 mg/kg
Silver	See note d	See note d
Tin	275 mg/kg	See note d
Vanadium	26 mg/kg	See note d
Zinc	270 mg/kg	570 mg/kg
PESTICIDES		
Aldicarb/aldicarb sulfone (total)	See note d	See note d
Aldrin	0.17 mg/kg	0.17 mg/kg
Benzene hexachloride (including lindane)	10 mg/kg	10 mg/kg
Carbofuran	See note d	See note d
Chlordane	1 mg/kg	7 mg/kg
Chlorpyrifos/chlorpyrifos-methyl (total)	See note d	See note d
DDT/DDD/DDE (total)	1 mg/kg	1 mg/kg
Dieldrin	0.17 mg/kg	0.17 mg/kg
Endosulfan	See note d	See note d
Endrin	0.4 mg/kg	0.4 mg/kg
Heptachlor/heptachlor epoxide (total)	0.6 mg/kg	0.6 mg/kg
Hexachlorobenzene	31 mg/kg	31 mg/kg
Parathion/methyl parathion (total)	See note d	See note d
Pentachlorophenol	11 mg/kg	11 mg/kg
Toxaphene	See note d	See note d
OTHER CHLORINATED ORGANICS		
Chlorinated dibenzofurans (total)	3E-06 mg/kg	3E-06 mg/kg
Chlorinated dibenzo-p-dioxins (total)	5E-06 mg/kg	5E-06 mg/kg
Hexachlorophene	See note d	See note d
PCB mixtures (total)	2 mg/kg	2 mg/kg
Pentachlorobenzene	168 mg/kg	See note d
OTHER NONCHLORINATED ORGANICS		
Acenaphthene	See note d	See note d
Benzo(a)pyrene	30 mg/kg	300 mg/kg
Bis (2-ethylhexyl) phthalate	See note d	See note d
Di-n-butyl phthalate	200 mg/kg	See note d
PETROLEUM		
Gasoline Range Organics	200 mg/kg	12,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.
Diesel Range Organics	460 mg/kg	15,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.

Footnotes:

a Caution on misusing these chemical concentration numbers. These values have been developed for use at sites where a site-specific terrestrial ecological evaluation is not required. They are not intended to be protective of terrestrial ecological receptors at every site. Exceedances of the values in this table do not necessarily trigger requirements for cleanup action under this chapter. The table is not intended for purposes such as evaluating sludges or wastes.
This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site.

b Applies to any site that does not meet the definition of industrial or commercial.

c For arsenic, use the valence state most likely to be appropriate for site conditions, unless laboratory information is available. Where soil conditions alternate between saturated, anaerobic and unsaturated, aerobic states, resulting in the alternating presence of

arsenic III and arsenic V, the arsenic III concentrations shall apply.

d Safe concentration has not yet been established. See WAC 173-340-7492 (2)(c).

Table 749-3

Ecological Indicator Soil Concentrations (mg/kg) for Protection of Terrestrial Plants and Animals[a]. For chemicals where a value is not provided, see footnote b.

Note: These values represent soil concentrations that are expected to be protective at any MTCA site and are provided for use in eliminating hazardous substances from further consideration under WAC 173-340-7493 (2)(a)(i). Where these values are exceeded, various options are provided for demonstrating that the hazardous substance does not pose a threat to ecological receptors at a site, or for developing site-specific remedial standards for eliminating threats to ecological receptors. See WAC 173-340-7493 (1)(b)(i), 173-340-7493 (2)(a)(ii) and 173-340-7493(3).

Hazardous Substance[b]	Plants[c]	Soil biota[d]	Wildlife[e]
METALS[f]:			
Aluminum (soluble salts)	50		
Antimony	5		
Arsenic III			7
Arsenic V	10	60	132
Barium	500		102
Beryllium	10		
Boron	0.5		
Bromine	10		
Cadmium	4	20	14
Chromium (total)	42[g]	42[g]	67
Cobalt	20		
Copper	100	50	217
Fluorine	200		
Iodine	4		
Lead	50	500	118
Lithium	35[g]		
Manganese	1,100[g]		1,500
Mercury, inorganic	0.3	0.1	5.5
Mercury, organic			0.4
Molybdenum	2		7
Nickel	30	200	980
Selenium	1	70	0.3
Silver	2		
Technetium	0.2		
Thallium	1		
Tin	50		
Uranium	5		
Vanadium	2		
Zinc	86[g]	200	360
PESTICIDES:			
Aldrin			0.1
Benzene hexachloride (including lindane)			6
Chlordane		1	2.7
DDT/DDD/DDE (total)			0.75
Dieldrin			0.07
Endrin			0.2
Hexachlorobenzene			17
Heptachlor/heptachlor epoxide (total)			0.4
Pentachlorophenol	3	6	4.5
OTHER CHLORINATED ORGANICS:			
1,2,3,4-Tetrachlorobenzene		10	
1,2,3-Trichlorobenzene		20	
1,2,4-Trichlorobenzene		20	
1,2-Dichloropropane		700	
1,4-Dichlorobenzene		20	
2,3,4,5-Tetrachlorophenol		20	
2,3,5,6-Tetrachloroaniline	20	20	
2,4,5-Trichloroaniline	20	20	
2,4,5-Trichlorophenol	4	9	
2,4,6-Trichlorophenol		10	
2,4-Dichloroaniline		100	
3,4-Dichloroaniline		20	
3,4-Dichlorophenol	20	20	
3-Chloroaniline	20	30	
3-Chlorophenol	7	10	
Chlorinated dibenzofurans (total)			2E-06
Chloroacetamide		2	
Chlorobenzene		40	
Chlorinated dibenzo-p-dioxins (total)			2E-06
Hexachlorocyclopentadiene	10		
PCB mixtures (total)	40		0.65
Pentachloroaniline		100	
Pentachlorobenzene		20	

Hazardous Substance[b]	Plants[c]	Soil biota[d]	Wildlife[e]
OTHER NONCHLORINATED ORGANICS:			
2,4-Dinitrophenol	20		
4-Nitrophenol		7	
Acenaphthene	20		
Benzo(a)pyrene			12
Biphenyl	60		
Diethylphthalate	100		
Dimethylphthalate		200	
Di-n-butyl phthalate	200		
Fluorene		30	
Furan	600		
Nitrobenzene		40	
N-nitrosodipheny-lamine		20	
Phenol	70	30	
Styrene	300		
Toluene	200		
PETROLEUM:			
Gasoline Range Organics		100	5,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.
Diesel Range Organics		200	6,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.

Footnotes:

a Caution on misusing ecological indicator concentrations. Exceedances of the values in this table do not necessarily trigger requirements for cleanup action under this chapter. Natural background concentrations may be substituted for ecological indicator concentrations provided in this table. The table is not intended for purposes such as evaluating sludges or wastes.
This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site.

b For hazardous substances where a value is not provided, plant and soil biota indicator concentrations shall be based on a literature survey conducted in accordance with WAC 173-340-7493(4) and calculated using methods described in the publications listed below in footnotes c and d. Methods to be used for developing wildlife indicator concentrations are described in Tables 749-4 and 749-5.

c Based on benchmarks published in *Toxicological Benchmarks for Screening Potential Contaminants of Concern for Effects on Terrestrial Plants: 1997 Revision*, Oak Ridge National Laboratory, 1997.

d Based on benchmarks published in *Toxicological Benchmarks for Potential Contaminants of Concern for Effects on Soil and Litter Invertebrates and Heterotrophic Process*, Oak Ridge National Laboratory, 1997.

e Calculated using the exposure model provided in Table 749-4 and chemical-specific values provided in Table 749-5. Where both avian and mammalian values are available, the wildlife value is the lower of the two.

f For arsenic, use the valence state most likely to be appropriate for site conditions, unless laboratory information is available. Where soil conditions alternate between saturated, anaerobic and unsaturated, aerobic states, resulting in the alternating presence of arsenic III and arsenic V, the arsenic III concentrations shall apply.

g Benchmark replaced by Washington state natural background concentration.

Table 749-4
Wildlife Exposure Model for Site-specific Evaluations.[a]

Plant	
K_{Plant}	Plant uptake coefficient (dry weight basis)
	Units: mg/kg plant/mg/kg soil
	Value: chemical-specific (see Table 749-5)
Soil biota Surrogate receptor: Earthworm	
BAF_{Worm}	Earthworm bioaccumulation factor (dry weight basis)
	Units: mg/kg worm/mg/kg soil
	Value: chemical-specific (see Table 749-5)
Mammalian predator Surrogate receptor: Shrew (*Sorex*)	
$P_{SB\ (shrew)}$	Proportion of contaminated food (earthworms) in shrew diet
	Units: unitless
	Value: 0.50
$FIR_{Shrew,DW}$	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight - day
	Value: 0.45
$SIR_{Shrew,DW}$	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight - day
	Value: 0.0045
$RGAF_{Soil,\ shrew}$	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)
T_{Shrew}	Toxicity reference value for shrew
	Units: mg/kg - day
	Value: chemical-specific (see Table 749-5)
Home range	0.1 Acres
Avian predator Surrogate receptor: American robin (*Turdus migratorius*)	
$P_{SB\ (Robin)}$	Proportion of contaminated food (soil biota) in robin diet
	Unit: unitless
	Value: 0.52
$FIR_{Robin,DW}$	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight - day
	Value: 0.207
$SIR_{Robin,DW}$	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight - day
	Value: 0.0215
$RGAF_{Soil,\ robin}$	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)
T_{Robin}	Toxicity reference value for robin
	Units: mg/kg - day
	Value: chemical-specific (see Table 749-5)

Home range	0.6 Acres
Mammalian herbivore Surrogate receptor: Vole (*Microtus*)	
$P_{Plant, vole}$	Proportion of contaminated food (plants) in vole diet
	Units: unitless
	Value: 1.0
$FIR_{Vole,DW}$	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight - day
	Value: 0.315
$SIR_{Vole,DW}$	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight - day
	Value: 0.0079
$RGAF_{Soil, vole}$	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)
T_{Vole}	Toxicity reference value for vole
	Units: mg/kg - day
	Value: chemical-specific (see Table 749-5)
Home range	0.08 Acres
Soil concentrations for wildlife protection[b]	
(1) Mammalian predator: $SC_{MP} = (T_{Shrew})/[(FIR_{Shrew,DW} \times P_{SB\ (shrew)} \times BAF_{Worm}) + (SIR_{Shrew,DW} \times RGAF_{Soil, shrew})]$	
(2) Avian predator: $SC_{AP} = (T_{Robin})/[(FIR_{Robin,DW} \times P_{SB\ (Robin)} \times BAF_{Worm}) + (SIR_{Robin,DW} \times RGAF_{Soil, robin})]$	
(3) Mammalian herbivore: $SC_{MH} = (T_{Vole})/[(FIR_{Vole,DW} \times P_{Plant, vole} \times K_{Plant}) + (SIR_{Vole,DW} \times RGAF_{Soil, vole})]$	

Footnotes:

a Substitutions for default receptors may be made as provided for in WAC 173-340-7493(7). If a substitute species is used, the values for food and soil ingestion rates, and proportion of contaminated food in the diet, may be modified to reasonable maximum exposure estimates for the substitute species based on a literature search conducted in accordance with WAC 173-340-7493(4).
Additional species may be added on a site-specific basis as provided in WAC 173-340-7493 (2)(a).
The department shall consider proposals for modifications to default values provided in this table based on new scientific information in accordance with WAC 173-340-702(14).

b Use the lowest of the three concentrations calculated as the wildlife value.

Table 749-5
Default Values for Selected Hazardous Substances for use with the Wildlife Exposure Model in Table 749-4.[a]

	Toxicity reference value (mg/kg - d)				
Hazardous Substance	**BAF_{Worm}**	**K_{Plant}**	**Shrew**	**Vole**	**Robin**
METALS:					
Arsenic III	1.16	0.06	1.89	1.15	
Arsenic V	1.16	0.06	35	35	22
Barium	0.36		43.5	33.3	
Cadmium	4.6	0.14	15	15	20
Chromium	0.49		35.2	29.6	5
Copper	0.88	0.020	44	33.6	61.7
Lead	0.69	0.0047	20	20	11.3
Manganese	0.29		624	477	
Mercury, inorganic	1.32	0.0854	2.86	2.18	0.9

	Toxicity reference value (mg/kg - d)				
Hazardous Substance	**BAF_{Worm}**	**K_{Plant}**	**Shrew**	**Vole**	**Robin**
Mercury, organic	1.32		0.352	0.27	0.064
Molybdenum	0.48	1.01	3.09	2.36	35.3
Nickel	0.78	0.047	175.8	134.4	107
Selenium	10.5	0.0065	0.725	0.55	1
Zinc	3.19	0.095	703.3	537.4	131
PESTICIDES:					
Aldrine	4.77	0.007[b]	2.198	1.68	0.06
Benzene hexachloride (including lindane)	10.1				7
Chlordane	17.8	0.011[b]	10.9	8.36	10.7
DDT/DDD/DDE	10.6	0.004[b]	8.79	6.72	0.87
Dieldrin	28.8	0.029[b]	0.44	0.34	4.37
Endrin	3.6	0.038[b]	1.094	0.836	0.1
Heptachlor/heptachlor epoxide	10.9	0.027[b]	2.857	2.18	0.48
Hexachlorobenzene	1.08				2.4
Pentachlorophenol	5.18	0.043[b]	5.275	4.03	
OTHER CHLORINATED ORGANICS:					
Chlorinated dibenzofurans	48				1.0E-05
Chlorinated dibenzo-p-dioxins	48	0.005[b]	2.2E-05	1.7E-05	1.4E-04
PCB mixtures	4.58	0.087[b]	0.668	0.51	1.8
OTHER NONCHLORINATED ORGANICS:					
Benzo(a)pyrene	0.43	0.011	1.19	0.91	

Footnotes:

a For hazardous substances not shown in this table, use the following default values. Alternatively, use values established from a literature survey conducted in accordance with WAC 173-340-7493(4) and approved by the department.

K_{Plant}: Metals (including metalloid elements): 1.01
Organic chemicals: $K_{Plant}=10^{(1.588-(0.578\log Kow))}$,
where $\log K_{ow}$ is the logarithm of the octanol-water partition coefficient.

BAF_{Worm}: Metals (including metalloid elements): 4.6
Nonchlorinated organic chemicals:
$\log K_{ow} < 5$: 0.7
$\log K_{ow} > 5$: 0.9
Chlorinated organic chemicals:
$\log K_{ow} < 5$: 4.7
$\log K_{ow} > 5$: 11.8

$RGAF_{Soil}$ (all receptors): 1.0
Toxicity reference values (all receptors): Values established from a literature survey conducted in accordance with WAC 173-340-7493(4).
Site-specific values may be substituted for default values, as described below:

K_{Plant} Value from a literature survey conducted in accordance with WAC 173-340-7493(4) or from empirical studies at the site.

BAF_{Worm} Value from a literature survey conducted in accordance with WAC 173-340-7493(4) or from empirical studies at the site.

$RGAF_{Soil}$ (all receptors): Value established from a literature survey conducted in accordance with WAC 173-340-7493(4).
Toxicity reference values (all receptors): Default toxicity reference values provided in this table may be replaced by a value established from a literature survey conducted in accordance with WAC 173-340-7493(4).

b Calculated from $\log K_{ow}$ using formula in footnote a.

Table 830-1
Required Testing for Petroleum Releases.

	Gasoline Range Organics (GRO) (1)	Diesel Range Organics (DRO) (2)	Heavy Oils (DRO) (3)	Mineral Oils (4)	Waste Oils and Unknown Oils (5)
Volatile Petroleum Compounds					
Benzene	X (6)	X (7)			X (8)
Toluene	X (6)	X (7)			X (8)
Ethyl benzene	X (6)	X (7)			X (8)

Table 830-1
Required Testing for Petroleum Releases.

	Gasoline Range Organics (GRO) (1)	Diesel Range Organics (DRO) (2)	Heavy Oils (DRO) (3)	Mineral Oils (4)	Waste Oils and Unknown Oils (5)
Xylenes	X (6)	X (7)			X (8)
n-Hexane	X (9)				
Fuel Additives and Blending Compounds					
Dibromoethane, 1-2 (EDB); and Dichloroethane, 1-2 (EDC)	X (10)				X (8)
Methyl tertiary-butyl ether (MTBE)	X (11)				X (8)
Total lead &other additives	X (12)				X (8)
Other Petroleum Components					
Carcinogenic PAHs		X (13)	X (13)		X (8)
Naphthalenes	X (14)	X (14)	X (14)		X (14)
Other Compounds					
Polychlorinated Biphenyls (PCBs)			X (15)	X (15)	X (8)
Halogenated Volatile Organic Compounds (VOCs)					X (8)
Other	X (16)	X (16)	X (16)	X (16)	X (16)
Total Petroleum Hydrocarbons Methods					
TPH Analytical Method for Total TPH (Method A Cleanup Levels) (17)	NWTPH-Gx	NWTPH-Dx	NWTPH-Dx	NWTPH-Dx	NWTPH-Gx & NWTPH-Dx
TPH Analytical Methods for TPH fractions (Methods B or C) (17)	VPH	EPH	EPH	EPH	VPH and EPH

Use of Table 830-1: An "X" in the box means that the testing requirement applies to ground water and soil if a release is known or suspected to have occurred to that medium, unless otherwise specified in the footnotes. A box with no "X" indicates (except in the last two rows) that, for the type of petroleum product release indicated in the top row, analyses for the hazardous substance(s) named in the far-left column corresponding to the empty box are not typically required as part of the testing for petroleum releases. However, such analyses may be required based on other site-specific information. Note that testing for Total Petroleum Hydrocarbons (TPH) is required for every type of petroleum release, as indicated in the bottom two rows of the table. The testing method for TPH depends on the type of petroleum product released and whether Method A or Method B or C is being used to determine TPH cleanup levels. See WAC 173-340-830 for analytical procedures. **The footnotes to this table are important for understanding the specific analytical requirements for petroleum releases.**

Footnotes:

(1) The following petroleum products are common examples of GRO: automotive and aviation gasolines, mineral spirits, stoddard solvents, and naphtha. To be in this range, 90 percent of the petroleum components need to be quantifiable using the NWTPH-Gx; if NWTPH-HCID results are used for this determination, then 90 percent of the "area under the TPH curve" must be quantifiable using NWTPH-Gx. Products such as jet fuel, diesel No. 1, kerosene, and heating oil may require analysis as both GRO and DRO depending on the range of petroleum components present (range can be measured by NWTPH-HCID). (See footnote 17 on analytical methods.)

(2) The following petroleum products are common examples of DRO: Diesel No. 2, fuel oil No. 2, light oil (including some bunker oils). To be in this range, 90 percent of the petroleum components need to be quantifiable using the NWTPH-Dx quantified against a diesel standard. Products such as jet fuel, diesel No. 1, kerosene, and heating oil may require analysis as both GRO and DRO depending on the range of petroleum components present as measured in NWTPH-HCID.

(3) The following petroleum products are common examples of the heavy oil group: Motor oils, lube oils, hydraulic fluids, etc. Heavier oils may require the addition of an appropriate oil range standard for quantification.

(4) Mineral oil means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors.

(5) The waste oil category applies to waste oil, oily wastes, and unknown petroleum products and mixtures of petroleum and nonpetroleum substances. Analysis of other chemical components (such as solvents) than those listed may be required based on site-specific information. Mixtures of identifiable petroleum products (such as gasoline and diesel, or diesel and motor oil) may be analyzed based on the presence of the individual products, and need not be treated as waste and unknown oils.

(6) When using Method A, testing soil for benzene is required. Furthermore, testing ground water for BTEX is necessary when a petroleum release to ground water is known or suspected. If the ground water is tested and toluene, ethyl benzene or xylene is in the ground water above its respective Method A cleanup level, the soil must also be tested for that chemical. When using Method B or C, testing the soil for BTEX is required and testing for BTEX in ground water is required when a release to ground water is known or suspected.

(7)(a) For DRO releases from other than home heating oil systems, follow the instructions for GRO releases in Footnote (6).

(b) For DRO releases from typical home heating oil systems (systems of 1,100 gallons or less storing heating oil for residential consumptive use on the premises where stored), testing for BTEX is not usually required for either ground water or soil. Testing of the ground water is also not usually required for these systems; however, if the ground water is tested and benzene is found in the ground water, the soil must be tested for benzene.

(8) Testing is required in a sufficient number of samples to determine whether this chemical is present at concentrations of concern. If the chemical is found to be at levels below the applicable cleanup level, then no further analysis is required.

(9) Testing for n-hexane is required when VPH analysis is performed for Method B or C. In this case, the concentration of n-hexane should be deleted from its respective fraction to avoid double-counting its concentration. n-Hexane's contribution to overall toxicity is then evaluated using its own reference dose.

(10) Volatile fuel additives (such as dibromoethane, 1 - 2 (EDB) (CAS# 106-93-4) and dichloroethane, 1 - 2 (EDC) (CAS# 107-06-2)) must be part of a volatile organics analysis (VOA) of GRO contaminated ground water. If any is found in ground water, then the contaminated soil must also be tested for these chemicals.

(11) Methyl tertiary-butyl ether (MTBE) (CAS# 1634-04-4) must be analyzed in GRO contaminated ground water. If any is found in ground water, then the contaminated soil must also be tested for MTBE.

(12)(a) For automotive gasoline where the release occurred prior to 1996 (when "leaded gasoline" was used), testing for lead is required unless it can be demonstrated that lead was not part of the release. If this demonstration cannot be made, testing is required in a sufficient number of samples to determine whether lead is present at concentrations of concern. Other additives and blending compounds of potential environmental significance may need to be considered for testing, including: tertiary-butyl alcohol (TBA); tertiary-amyl methyl ether (TAME); ethyl tertiary-butyl ether (ETBE); ethanol; and methanol. Contact the department for additional testing recommendations regarding these and other additives and blending compounds.

(b) For aviation gasoline, racing fuels and similar products, testing is required for likely fuel additives (especially lead) and likely blending compounds, no matter when the release occurred.

(13) Testing for carcinogenic PAHs is required for DRO and heavy oils, except for the following products for which adequate information exists to indicate their absence: Diesel No. 1 and 2, home heating oil, kerosene, jet fuels, and electrical insulating mineral oils. The carcinogenic PAHs include benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, benzo(k)fluoranthene, benzo(a)anthracene, and benzo(b)fluoranthene.

(14)(a) Except as noted in (b) and (c), testing for the noncarcinogenic PAHs, including the "naphthalenes" (naphthalene, 1-methylnaphthalene, and 2-methyl-naphthalene) is not required when using Method A cleanup levels, because they are included in the TPH cleanup level.

(b) Testing of soil for naphthalenes is required under Methods B and C when the inhalation exposure pathway is evaluated.

(c) If naphthalenes are found in ground water, then the soil must also be tested for naphthalenes.

(15) Testing for PCBs is required unless it can be demonstrated that: (1) the release originated from an electrical device manufactured for use in the United States after July 1, 1979; (2) oil containing PCBs was never used in the equipment suspected as the source of the release (examples of equipment where PCBs are likely to be found include transformers, electric motors, hydraulic systems, heat transfer systems, electromagnets, compressors, capacitors, switches and miscellaneous other electrical devices); or, (3) the oil released was recently tested and did not contain PCBs.

(16) Testing for other possible chemical contaminants may be required based on site-specific information.

(17) The analytical methods NWTPH-Gx, NWTPH-Dx, NWTPH-HCID, VPH, and EPH are methods published by the department of ecology and available on the department's internet web site: http://www.ecy.wa.gov/programs/tcp/cleanup.html.

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

WSR 07-08-104
PROPOSED RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed April 4, 2007, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-14-093.

Title of Rule and Other Identifying Information: Amending WAC 246-840-740 Sexual misconduct prohibited, this rule applies to nurses, advanced registered nurse practitioners and nursing technicians.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on May 11, 2007, at 9:00 a.m.

Date of Intended Adoption: May 11, 2007.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47864, Olympia, WA 98504-7864, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-4723, by May 1, 2007.

Assistance for Persons with Disabilities: Contact Kendra Pitzler by May 1, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule prohibits sexual misconduct for those who hold a credential issued under chapter 18.79 RCW. The current language refers specifically to "nurses." Nursing technicians may not be aware

that this rule also applies to them. The commission wishes to clarify the language to assure that nursing technicians understand that they are held to the same standards as all other nurses and that they may be disciplined if they do not comply with the existing rule.

Reasons Supporting Proposal: Sexual misconduct rules are already in place for nurses, however, this proposed amendment will clearly identify that nursing technicians are subject to the existing rules.

Statutory Authority for Adoption: RCW 18.130.050 and 18.79.110.

Statute Being Implemented: RCW 18.130.180.

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

Name of Proponent: Department of health, nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kendra Pitzler, Department of Health, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4723.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This amendment is only to clarify the language of this rule without changing its effect and is exempt under RCW 19.85.025(3). The commission's intent has always been that the rule applies to all persons who hold a credential under chapter 18.79 RCW, including nurses and nursing technicians.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is only to clarify the language of this rule and is not considered significant. Therefore RCW 84.05.328 [34.05.328] does not apply to this rule. The commission's intent has always been that the rule applies to all persons who hold a credential under chapter 18.79 RCW, including nurses and nursing technicians. Under RCW 34.05.328 (5)(b)(iv), a cost-benefit analysis is not required.

April 3, 2007
Judith D. Personett, EdD. RN, Chair
Nursing Care Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 99-04-051, filed 1/28/99, effective 2/28/99)

WAC 246-840-740 Sexual misconduct prohibited. (1) **What is the nursing commission's intent in prohibiting this type of misconduct?**

Sexual or romantic conduct with a client or the client's family is serious misconduct because it harms the nurse/client relationship and interferes with the safe and effective delivery of nursing services. A nurse or nursing technician does not need to be "assigned" to the client in order for the nurse/client relationship to exist. The role of the nurse or nursing technician in the nurse/client relationship places the nurse or nursing technician in the more powerful position and the nurse or nursing technician must not abuse this power. Under certain circumstances, the nurse/client relationship continues beyond the termination of nursing services. Not only does sexual or romantic misconduct violate the trust and confidence held by health care clients towards nursing staff, but it also undermines public confidence in nursing. Nurses and nursing technicians can take measures to avoid allegations of such misconduct by establishing and maintaining professional boundaries in dealing with their clients.

(2) **What conduct is prohibited?**

Nurses and nursing technicians shall never engage, or attempt to engage, in sexual or romantic conduct with clients, or a client's immediate family members or significant others. Such conduct does not have to involve sexual contact. It includes behaviors or expressions of a sexual or intimately romantic nature. Sexual or romantic conduct is prohibited whether or not the client, family member or significant other initiates or consents to the conduct. Such conduct is also prohibited between a nursing educator and student.

Regardless of the existence of a nurse/client relationship, nurses and nursing technicians shall never use patient information derived through their role as a health care provider to attempt to contact a patient in pursuit of a nurse's own sexual or romantic interests or for any other purpose other than legitimate health care.

(3) **What should a nurse or nursing technician do to avoid allegations of sexual or romantic misconduct?**

Establishing and maintaining professional boundaries is critical to avoiding even the appearance of sexual or romantic misconduct. Nurses and nursing technicians can take certain preventative steps to make sure safeguards are in place at all times, such as:

(a) Setting appropriate boundaries with patients, physically and verbally, at the outset of professional relationships, and documenting such actions and the basis for such actions;

(b) Consulting with supervisors regarding difficulties in establishing and maintaining professional boundaries with a given client; and/or

(c) Seeking reassignment to avoid incurring a violation of these rules.

(4) **What about former clients?**

A nurse or nursing technician shall not engage or attempt to engage a former client, or former client's immediate family member or significant other, in sexual or romantic conduct if such conduct would constitute abuse of the nurse/client relationship. The nurse/client relationship is abused when a nurse or nursing technician uses and/or benefits from the nurse's professional status and the vulnerability of the client due to the client's condition or status as a patient.

(a) Due to the unique vulnerability of mental health and chemical dependency clients, nurses and nursing technicians are prohibited from engaging in or attempting to engage in sexual or romantic conduct with such former clients, or their immediate family or significant other, for a period of at least two years after termination of nursing services. After two years, sexual or romantic conduct may be permitted with a former mental health or chemical dependency client, but only if the conduct would not constitute abuse of the nurse/client relationship.

(b) Factors which the commission may consider in determining whether there was abuse of the nurse/client relationship include, but are not limited to:

(i) The amount of time that has passed since nursing services were terminated;

(ii) The nature and duration of the nurse/client relationship, the extent to which there exists an ongoing nurse/client relationship following the termination of services, and

whether the client is reasonably anticipated to become a client of the nurse in the future;

(iii) The circumstances of the cessation or termination of the nurse/client relationship;

(iv) The former client's personal history;

(v) The former client's current or past mental status, and whether the client has been the recipient of mental health services;

(vi) The likelihood of an adverse impact on the former client and others;

(vii) Any statements or actions made by the nurse during the course of treatment suggesting or inviting the possibility of sexual or romantic conduct;

(viii) Where the conduct is with a client's immediate family member or significant other, whether such a person is vulnerable to being induced into such relationship due to the condition or treatment of the client or the overall circumstances.

(5) **Are there situations where these rules do not apply?**

These rules do not prohibit:

(a) The provision of nursing services on an urgent, unforeseen basis where circumstances will not allow a nurse or nursing technician to obtain reassignment or make an appropriate referral;

(b) The provision of nursing services to a spouse, or family member, or any other person who is in a preexisting, established relationship with the nurse or nursing technician where no evidence of abuse of the nurse/client relationship exists.

WSR 07-08-106
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed April 4, 2007, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-22-054.

Title of Rule and Other Identifying Information: WAC 388-550-2501 Acute physical medicine and rehabilitation (acute PM&R) program—General, 388-550-2511 Acute PM&R definitions

WAC 388-550-2521 Client eligibility requirements for acute PM&R services, 388-550-2531 Requirements for becoming an acute PM&R provider, 388-550-2541 Quality of care, and 388-550-2561 MAA's prior authorization requirements for acute PM&R services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. 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, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.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 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend sections in chapter 388-550 WAC relating to the acute physical medicine and rehabilitation (acute PM&R) program in order to update and clarify existing language for the acute PM&R program, change verbiage from "medical assistance administration (MAA)" to "the department," change verbiage from "facility" to "hospital," and delete definitions for terms that are no longer applicable or that are defined in other sections. In addition, the department is adding verbiage that states on and after August 1, 2007, an instate, bordering city, or critical border hospital may apply to become a department-approved acute PM&R hospital, adding the language "for dates of admission before July 1, 2007," a department-approved acute PM&R facility must provide documentation that confirms the facility is contracted under the department's selective contracting program, if in a selective contracting area, unless exempted from the requirements, and removing language that states the department may authorize administrative day(s) for a client who…Stays in the facility longer than the "community standards length of stay."

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Statute Being Implemented: RCW 74.09.500.

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: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Larry Linn, P.O. Box 45502, Olympia, WA 98504-5502, (360) 725-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Larry Linn, P.O. Box 45502, Olympia, WA 98504-5502, phone (360) 725-1856, fax (360) 753-9152, e-mail linnld@dshs.wa.gov.

March 30, 2007
Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2501 Acute physical medicine and rehabilitation (acute PM&R) program—General. Acute

physical medicine and rehabilitation (acute PM&R) is a twenty-four-hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation. The ((~~medical assistance administration (MAA)~~)) department requires prior authorization for acute PM&R services. (See WAC 388-550-2561 for prior authorization requirements.)

(1) An interdisciplinary team coordinates individualized acute PM&R services at ((~~an MAA~~)) a department-approved rehabilitation ((~~facility~~)) hospital to achieve the following for a client:

(a) Improved health and welfare; and

(b) Maximum physical, social, psychological and educational or vocational potential.

(2) ((~~MAA~~)) The department determines and authorizes a length of stay based on:

(a) The client's acute PM&R needs; and

(b) Community standards of care for acute PM&R services.

(3) When ((~~MAA's~~)) the department's authorized acute period of rehabilitation ends, the hospital provider ((~~transfers the client to a more~~)) discharges the client to the client's residence, or to an appropriate level of care. Therapies may continue to help the client achieve maximum potential through other ((~~MAA~~)) department programs such as:

(a) Home health services;

(b) Nursing facilities;

(c) Outpatient physical, occupational, and speech therapies; or

(d) Neurodevelopmental centers.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2511 Acute PM&R definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to the acute PM&R program. If conflicts occur, this section prevails for this subchapter.

"Accredit" (or "Accreditation") means a term used by nationally recognized health organizations, such as CARF, to state a facility meets community standards of medical care.

"Acute" means an intense medical episode, not longer than three months.

((~~**"Acute physical medicine and rehabilitation (acute PM&R)"** means a comprehensive inpatient rehabilitative program coordinated by an interdisciplinary team at an MAA-approved rehabilitation facility. The program provides twenty-four-hour specialized nursing services and an intense level of therapy for specific medical conditions for which the client shows significant potential for functional improvement.~~

~~**"Administrative day"** means a day of a hospital stay in which an acute inpatient level of care is no longer necessary, and noninpatient hospital placement is appropriate.~~

~~**"Administrative day rate"** means the statewide Medicaid average daily nursing facility rate as determined by the department.~~

~~**"CARF"** is the official name for The Rehabilitation Accreditation Commission' of Tucson, Arizona. CARF is a national private agency that develops and maintains current, "field-driven" (community) standards through surveys and accreditations of rehabilitation facilities.~~

~~**"Rehabilitation Accreditation Commission, The"** - See **"CARF."**~~))

"**Survey**" or "**review**" means an inspection conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with acute PM&R program requirements.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2521 Client eligibility requirements for acute PM&R services. (1) Only a client who is eligible for one of the following programs may receive acute PM&R services, subject to the restrictions and limitations in this section and WAC 388-550-2501, 388-550-2511, 388-550-2531, 388-550-2541, 388-550-2551, 388-550-2561, 388-550-3381, and other ((~~published~~)) rules:

(a) Categorically needy program (CNP);

(b) ((~~CNP -~~)) State children's health insurance program (((~~CNP -~~))SCHIP);

(c) Limited casualty program - Medically needy program (LCP-MNP);

(d) ((~~CNP -~~)) Alien emergency medical ((~~only~~)) (AEM) (CNP);

(e) ((~~LCP-MNP -~~)) Alien emergency medical ((~~only~~)) (AEM) (LCP-MNP);

(f) General assistance unemployable (GA-U - No out-of-state care); or

(g) Alcoholism and drug addiction treatment and support act (ADATSA)((~~; and~~

~~(h) Medically indigent program (MIP) - Emergency hospital-based and emergency transportation services only when:~~

~~(i) The client is transferred directly from an acute hospital stay; and~~

~~(ii) The client's acute PM&R needs are directly related to the emergency medical condition that qualified the client for MIP~~)).

(2) If a client is enrolled in ((~~an MAA Healthy Options~~)) a department managed care organization (MCO) plan at the time of acute care admission, that plan pays for and coordinates acute PM&R services as appropriate.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2531 Requirements for becoming an acute PM&R provider. (1) Before August 1, 2007, only an in-state or ((~~border area~~)) bordering city hospital may apply to become a ((~~medical assistance administration (MAA)~~)) department-approved acute PM&R ((~~facility~~)) hospital. On and after August 1, 2007 an instate, bordering city, or critical border hospital may apply to become a department-approved acute PM&R hospital. To apply, ((~~MAA~~)) the department requires the hospital provider to submit a letter of request to:

Acute PM&R Program Manager
Division of ((~~Medical Management - Medical Operations~~)) Healthcare Services
((~~Medical Assistance~~)) Health and Recovery Services Administration
P.O. Box 45506
Olympia, WA 98504-5506

(2) A hospital that applies to become ((~~an MAA~~)) a department-approved acute PM&R facility must provide ((~~MAA~~)) the department with documentation that confirms the facility is all of the following:

(a) A medicare-certified hospital;

(b) Accredited by the Joint Commission on Accreditation of ((~~Hospital~~)) Healthcare Organizations (JCAHO);

(c) Licensed by the department of health (DOH) as an acute care hospital as defined under WAC 246-310-010;

(d) Commission on Accreditation of Rehabilitation Facilities (CARF) accredited as a comprehensive integrated inpatient rehabilitation program or as a pediatric family centered rehabilitation program, unless subsection (3) of this section applies;

(e) For dates of admission before July 1, 2007, contracted under ((~~MAA's~~)) the department's selective contracting program, if in a selective contracting area, unless exempted from the requirements by ((~~MAA~~)) the department; and

(f) Operating per the standards set by DOH (excluding the certified rehabilitation registered nurse (CRRN) requirement) in either:

(i) WAC 246-976-830, Level I trauma rehabilitation designation; or

(ii) WAC 246-976-840, Level II trauma rehabilitation designation.

(3) A hospital not yet accredited by CARF:

(a) May apply for or be awarded a twelve-month conditional written approval by ((~~MAA~~)) the department if the facility:

(i) Provides ((~~MAA~~)) the department with documentation that it has started the process of obtaining full CARF accreditation; and

(ii) Is actively operating under CARF standards.

(b) Is required to obtain full CARF accreditation within twelve months of ((~~MAA's~~)) the department's conditional approval date. If this requirement is not met, ((~~MAA~~)) the department sends a letter of notification to revoke the conditional approval.

(4) A hospital qualifies as ((~~an MAA~~)) a department-approved acute PM&R ((~~facility~~)) hospital when:

(a) The ((~~facility~~)) hospital meets all the applicable requirements in this section;

(b) ((~~MAA's~~)) The department's clinical staff has conducted a facility site visit; and

(c) ((~~MAA~~)) The department provides written notification that the ((~~facility~~)) hospital qualifies to be ((~~reimbursed~~)) paid for providing acute PM&R services to eligible medical assistance clients.

(5) ((~~MAA~~)) The department-approved acute PM&R ((~~facilities~~)) hospitals must meet the general requirements in chapter 388-502 WAC, Administration of medical programs—Providers.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2541 Quality of care—Department-approved acute PM&R hospital. (1) To ensure quality of care, the ((~~medical assistance administration (MAA)~~)) department may conduct reviews (e.g., post-pay, on-site) of any ((~~MAA~~)) department-approved acute PM&R ((~~facility~~)) hospital.

(2) A provider of acute PM&R services must act on any report of substandard care or violation of the ((~~facility's~~)) hospital's medical staff bylaws and CARF standards. The provider must have and follow written procedures that:

(a) Provide a resolution to either a complaint or grievance or both; and

(b) Comply with applicable CARF standards for adults or pediatrics as appropriate.

(3) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(a) The department of health (DOH);

(b) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

(c) CARF;

(d) ((~~MAA~~)) The department; or

(e) Other agencies with review authority for ((~~MAA~~)) the department's programs.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2561 ((~~MAA's~~)) The department's prior authorization requirements for acute PM&R services. (1) The ((~~medical assistance administration (MAA)~~)) department requires prior authorization for acute PM&R services. The acute PM&R provider of services must obtain prior authorization:

(a) Before admitting a client to the rehabilitation unit; and

(b) For an extension of stay before the client's current authorized period of stay expires.

(2) For an initial admit:

(a) A client must:

(i) Be eligible under one of the programs listed in WAC 388-550-2521, subject to the restrictions and limitations listed in that section;

(ii) Require acute PM&R services as determined in WAC 388-550-2551;

(iii) Be medically stable and show evidence of physical and cognitive readiness to participate in the rehabilitation program; and

(iv) Be willing and capable to participate at least three hours per day, seven days per week, in acute PM&R activities.

(b) The acute PM&R provider of services must:

(i) Submit a request for prior authorization to the ((~~MAA~~)) department's clinical consultation team by fax, electronic mail, or telephone as published in ((~~MAA's~~)) the department's acute PM&R billing instructions; and

(ii) Include sufficient medical information to justify that:

(A) Acute PM&R treatment would effectively enable the client to obtain a greater degree of self-care and/or independence;

(B) The client's medical condition requires that intensive twenty-four-hour inpatient comprehensive acute PM&R services be provided in ((~~an MAA~~)) a department-approved acute PM&R facility; and

(C) The client suffers from severe disabilities including, but not limited to, neurological and/or cognitive deficits.

(3) For an extension of stay:

(a) A client must meet the conditions listed in subsection (2)(a) of this section and have observable and significant improvement; and

(b) The acute PM&R provider of services must:

(i) Submit a request for the extension of stay to the ((~~MAA~~)) department clinical consultation team by fax, electronic mail, or telephone as published in ((~~MAA's~~)) the department's acute PM&R billing instructions; and

(ii) Include sufficient medical information to justify the extension and include documentation that the client's condition has observably and significantly improved.

(4) If ((~~MAA~~)) the department denies the request for an extension of stay, the client must be transferred to an appropriate lower level of care as described in WAC 388-550-2501(3).

(5) The ((~~MAA~~)) department's clinical consultation team approves or denies authorization for acute PM&R services for initial stays or extensions of stay based on individual circumstances and the medical information received. ((~~MAA~~)) The department notifies the client and the acute PM&R provider of a decision.

(a) If ((~~MAA~~)) the department approves the request for authorization, the notification letter includes:

(i) The number of days requested;

(ii) The allowed dates of service;

(iii) ((~~An MAA~~)) A department-assigned authorization number;

(iv) Applicable limitations to the authorized services; and

(v) ((~~MAA's~~)) The department's process to request additional services.

(b) If ((~~MAA~~)) the department denies the request for authorization, the notification letter includes:

(i) The number of days requested;

(ii) The reason for the denial;

(iii) Alternative services available for the client; and

(iv) The client's right to request a fair hearing. (See subsection (7) of this section.)

(6) A hospital or other facility intending to transfer a client to ((~~an MAA~~)) a department-approved acute PM&R ((~~facility~~)) hospital, and/or ((~~an~~)) a department-approved acute PM&R ((~~facility~~)) hospital requesting an extension of stay for a client, must:

(a) Discuss ((~~MAA's~~)) the department's authorization decision with the client and/or the client's legal representative; and

(b) Document in the client's medical record that ((~~MAA's~~)) the department's decision was discussed with the client and/or the client's legal representative.

(7) A client who does not agree with a decision regarding acute PM&R services has a right to a fair hearing under chapter 388-02 WAC. After receiving a request for a fair hearing, ((~~MAA~~)) the department may request additional information from the client and the facility, or both. After ((~~MAA~~)) the department reviews the available information, the result may be:

(a) A reversal of the initial ((~~MAA~~)) department decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted per chapter 388-02 WAC.

(8) ((~~MAA~~)) The department may authorize administrative day(s) for a client who:

(a) Does not meet requirements described in subsection (3) of this section; or

(b) ((~~Stays in the facility longer than the "community standards length of stay"; or~~

~~(c)~~)) Is waiting for a discharge destination or a discharge plan.

(9) ((~~MAA~~)) The department does not authorize acute PM&R services for a client who:

(a) Is deconditioned by a medical illness or by surgery; or

(b) Has loss of function primarily as a result of a psychiatric condition(s); or

(c) Has had a recent surgery and has no complicating neurological deficits. Examples of surgeries that do not qualify a client for inpatient acute PM&R services without extenuating circumstances are:

(i) Single amputation;

(ii) Single extremity surgery; and

(iii) Spine surgery.

WSR 07-08-107
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed April 4, 2007, 9:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-22-054.

Title of Rule and Other Identifying Information: WAC 388-550-1000 Applicability, 388-550-2565 The long-term acute care (LTAC) program—General, 388-550-2570 LTAC program definitions, 388-550-2575 Client eligibility requirements for LTAC services, 388-550-2580 Requirements for becoming an LTAC facility, 388-550-2585 LTAC facilities—Quality of care, 388-550-2590 MAA's prior authorization requirements for Level 1 and Level 2 services, 388-550-2595 Identification of and payment methodology for services and equipment included in the LTAC fixed per diem rate, and 388-550-2596 Services and equipment covered by the department but not included in the LTAC fixed per diem rate.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff

Lane. 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, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.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 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend sections in chapter 388-550 WAC relating to the long-term acute care (LTAC) program in order to change verbiage from "medical assistance administration (MAA)" to "the department," change verbiage from "facility" to "hospital," add verbiage that special client service contracts that complement a core provider agreement for an out-of-state LTAC hospital take precedence over any conflicting payment program policies set in WAC by the department, and to clarify and update existing language for the LTAC program WAC sections, and WAC 388-550-1000.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Statute Being Implemented: RCW 74.09.500.

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: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Larry Linn, P.O. Box 45502, Olympia, WA 98504-5502, (360) 725-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department has determined that the proposed rule is does not meet the definition of "significant legislative rule" under RCW 34.05.328, and therefore a cost-benefit analysis is not required.

March 30, 2007
Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

WAC 388-550-1000 Applicability. The department ((~~shall~~)) pays for hospital services provided to eligible clients when:

(1) The eligible client is a patient in ((~~a general~~)) an acute care hospital and the hospital meets the definition of hospital or psychiatric hospital in RCW 70.41.020, WAC 388-500-0005 or 388-550-1050;

(2) The services are medically necessary as defined under WAC 388-500-0005; and

(3) The conditions, exceptions and limitations in this chapter are met.

AMENDATORY SECTION (Amending WSR 02-14-162, filed 7/3/02, effective 8/3/02)

WAC 388-550-2565 The long-term acute care (LTAC) program—General. The long-term acute care (LTAC) program is a twenty-four-hour inpatient comprehensive program of integrated medical and rehabilitative services provided in a ((~~medical assistance administration (MAA)~~)) department-approved LTAC ((~~facility~~)) hospital during the acute phase of a client's care. ((~~MAA~~)) The department requires prior authorization for LTAC stays. See WAC 388-550-2590 for prior authorization requirements.

(1) A facility's multidisciplinary team coordinates individualized LTAC services at ((~~an MAA~~)) a department-approved LTAC ((~~facility~~)) hospital.

(2) ((~~MAA~~)) The department determines the authorized length of stay for LTAC services based on the client's need as documented in the client's medical records and the criteria described in WAC 388-550-2590.

(3) When the ((~~MAA~~)) department-authorized length of stay ends, the provider transfers the client to a more appropriate level of care or, if appropriate, discharges the client to the client's residence.

AMENDATORY SECTION (Amending WSR 02-14-162, filed 7/3/02, effective 8/3/02)

WAC 388-550-2570 LTAC program definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to the LTAC program.

"Level 1 services" means long-term acute care (LTAC) services provided to clients who require more than eight hours of direct skilled nursing care per day. Level 1 services include one or both of the following:

(1) Active ventilator weaning care and any specialized therapy services, such as physical, occupational, and speech therapies; or

(2) Complex medical care that may include: Care for complex draining wounds, care for central lines, multiple medications, frequent assessments and close monitoring, third degree burns that may involve grafts and/or frequent transfusions, and specialized therapy services, such as physical, occupational, and speech therapies.

"Level 2 services" means long-term acute care (LTAC) services provided to clients who require four to eight hours of direct skilled nursing care per day. Level 2 services include at least two of the following:

(1) Ventilator care for clients who are stable, dependent on a ventilator, and have complex medical needs;

(2) Care for clients who have tracheostomies, complex airway management and medical needs, and the potential for decannulation; and

(3) Specialized therapy services, such as physical, occupational, and speech therapies.

"Long-term acute care" means inpatient intensive long-term care services provided in ((~~MAA~~)) department-approved LTAC ((~~facilities~~)) hospitals to eligible medical assistance clients who require Level 1 or Level 2 services.

"Survey" or "review" means an inspection conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with LTAC program requirements.

"Transportation company" means either ((~~an MAA~~)) a department-approved transportation broker or a transportation company doing business with ((~~MAA~~)) the department.

AMENDATORY SECTION (Amending WSR 02-14-162, filed 7/3/02, effective 8/3/02)

WAC 388-550-2575 Client eligibility requirements for LTAC services. Only a client who is eligible for one of the following programs may receive LTAC services, subject to the restrictions and limitations in WAC 388-550-2565, 388-550-2570, 388-550-2580, 388-550-2585, 388-550-2590, 388-550-2595, 388-550-2596, and other ((~~published~~)) rules:

(1) Categorically needy program (CNP);

(2) ((~~CNP -~~)) State children's health insurance program (((~~CNP -~~))SCHIP);

(3) Limited casualty program - medically needy program (LCP-MNP);

(4) ((~~CNP -~~)) Alien emergency medical ((~~only~~)) (AEM) (CNP); or

(5) ((~~LCP-MNP -~~)) Alien emergency medical ((~~only~~)) (AEM) (LCP-MNP).

AMENDATORY SECTION (Amending WSR 02-14-162, filed 7/3/02, effective 8/3/02)

WAC 388-550-2580 Requirements for becoming an LTAC ((~~facility~~)) hospital. (1) To apply to become ((~~an MAA~~)) a department-approved LTAC ((~~facility~~)) hospital, ((~~MAA~~)) the department requires a hospital ((~~provider~~)) to:

(a) Submit a letter of request to:

LTAC Program Manager
Division of ((~~Medical Management~~)) Healthcare Services
((~~Medical Assistance~~)) Health and Recovery Services Administration
P.O. Box 45506
Olympia WA 98504-5506; and

(b) Include documentation that confirms the facility is:

(i) Medicare certified for LTAC;

(ii) Accredited by the Joint Commission on Accreditation of ((~~hospital~~)) Healthcare Organizations (JCAHO);

(iii) ((~~Licensed by the department of health (DOH)~~)) For an in-state hospital licensed as an acute care hospital ((~~as defined~~)) by the department of health (DOH) under WAC 246-310-010; ((~~and~~))

(iv) ((~~Contracted under MAA's selective contracting program, if in a selective contracting area, unless exempted from the requirements by MAA~~)) For a hospital located out-of-state, licensed as an acute care hospital by that state; and

(v) Contracted with the department to provide LTAC services if the LTAC hospital is located outside the state of Washington.

(2) The hospital ((~~facility~~)) qualifies as ((~~an MAA~~)) a department-approved LTAC ((~~facility~~)) hospital when:

(a) The ((~~facility~~)) hospital meets all the requirements in this section;

(b) ((~~MAA's~~)) The department's clinical staff has conducted ((~~a facility~~)) an on-site visit; and

(c) ((~~MAA~~)) The department provides written notification that the ((~~facility~~)) hospital qualifies to be ((~~reimbursed~~)) paid for providing LTAC services to eligible medical assistance clients.

(3) ((~~MAA~~)) Department-approved LTAC ((~~facilities~~)) hospitals must meet the general requirements in chapter 388-502 WAC((~~, Administration of medical programs providers~~)).

AMENDATORY SECTION (Amending WSR 02-14-162, filed 7/3/02, effective 8/3/02)

WAC 388-550-2585 LTAC ((~~facilities~~)) hospitals—Quality of care. (1) To ensure quality of care, ((~~MAA~~)) the department may conduct post-pay or on-site reviews of any ((~~MAA~~)) department-approved LTAC ((~~facility~~)) hospital. See WAC 388-502-0240, Audits and the audit appeal process for contractors/providers, for additional information on audits conducted by department staff.

(2) A provider of LTAC services must act on any reports of substandard care or violations of the ((~~facility's~~)) hospital's medical staff bylaws. The provider must have and follow written procedures that provide a resolution to either a complaint or grievance or both.

(3) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(a) The department of health (DOH);

(b) The Joint Commission on Accreditation of ((~~Hospital~~)) Healthcare Organizations (JCAHO);

(c) ((~~MAA~~)) The department; or

(d) Other agencies with review authority for ((~~MAA~~)) the department's programs.

AMENDATORY SECTION (Amending WSR 02-14-162, filed 7/3/02, effective 8/3/02)

WAC 388-550-2590 ((~~MAA's~~)) Department prior authorization requirements for Level 1 and Level 2 LTAC services. (1) ((~~MAA~~)) The department requires prior authorization for Level 1 and Level 2 LTAC inpatient stays. The prior authorization process includes all of the following:

(a) For an initial thirty-day stay:

(i) The client must:

(A) Be eligible under one of the programs listed in WAC 388-550-2575;

(B) Meet the high cost outlier or high outlier status, respectively, at the transferring hospital as described in WAC 388-550-3700((~~; and~~)). Exception: If the claim is paid under a payment method other than the DRG or per diem payment method, the claim must meet the same outlier threshold described in WAC 388-550-3700.

(C) Require Level 1 or Level 2 LTAC services as defined in WAC 388-550-2570.

(ii) The LTAC provider of services must:

(A) Before admitting the client to the LTAC ((~~facility~~)) hospital, submit a request for prior authorization to the ((~~MAA~~)) the department's clinical consultation team by fax, electronic mail, or telephone, as published in ((~~MAA's~~)) the department's LTAC billing instructions; ((~~and~~))

(B) Include sufficient medical information to justify the requested initial stay.

(C) Receive prior authorization from the department's medical director or designee, based on clinical quality review by the department's clinical consultation team to determine the client's circumstances and the medical justification for transfer from the transferring hospital; and

(D) Meet all the requirements in WAC 388-550-2580.

(b) For extensions of stay:

(i) The client must:

(A) Be eligible under one of the programs listed in WAC 388-550-2575; and

(B) Require Level 1 or Level 2 LTAC services as defined in WAC 388-550-2570.

(ii) The LTAC provider of services must:

(A) Before the client's current authorized period of stay expires, submit a request for the extension of stay to the ((~~MAA~~)) the department's clinical consultation team by fax, electronic mail, or telephone; and

(B) Include sufficient medical information to justify the requested extension of stay.

(2) The ((~~MAA~~)) department's clinical consultation team authorizes((~~, in writing,~~)) Level 1 or Level 2 LTAC services for initial stays or extensions of stay based on the client's circumstances and the medical justification received. A client who does not agree with a decision regarding a length of stay has a right to a fair hearing under chapter 388-02 WAC. After receiving a request for a fair hearing, ((~~MAA~~)) the department may request additional information from the client and the facility, or both. After ((~~MAA~~)) the department reviews the available information, the result may be:

(a) A reversal of the initial ((~~MAA~~)) department decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted per chapter 388-02 WAC.

(3) ((~~MAA~~)) The department may authorize administrative day rate ((~~reimbursement~~)) payment for a client who:

(a) Does not meet the requirements described in this section;

(b) Is waiting for placement in another hospital or other facility; or

(c) If appropriate, is waiting to be discharged to the client's residence.

AMENDATORY SECTION (Amending WSR 03-02-056, filed 12/26/02, effective 1/26/03)

WAC 388-550-2595 Identification of and payment methodology for services and equipment included in the LTAC fixed per diem rate. (1) In addition to room and board, the LTAC fixed per diem rate includes, but is not limited to, the following (see ((~~MAA's~~)) the department's LTAC billing instructions for applicable revenue codes):

(a) Room and board - Rehabilitation;

(b) Room and board - Intensive care;

(c) Pharmacy - Up to and including two hundred dollars per day in total allowed covered charges for any combination of pharmacy services that includes prescription drugs, total parenteral nutrition (TPN) therapy, IV infusion therapy, and/or epogen/neupogen therapy;

(d) Medical/surgical supplies and devices;

(e) Laboratory - General;

(f) Laboratory - Chemistry;

(g) Laboratory - Immunology;

(h) Laboratory - Hematology;

(i) Laboratory - Bacteriology and microbiology;

(j) Laboratory - Urology;

(k) Laboratory - Other laboratory services;

(l) Respiratory services;

(m) Physical therapy;

(n) Occupational therapy; and

(o) Speech-language therapy.

(2) ((~~MAA~~)) The department pays the LTAC ((~~facility~~)) hospital for services covered by the LTAC fixed per diem rate by the rate in effect at the ((~~time the LTAC services are provided~~)) date of admission, minus the sum of:

(a) Client liability, whether or not collected by the provider; and

(b) Any amount of coverage from third parties, whether or not collected by the provider, including, but not limited to, coverage from:

(i) Insurers and indemnitors;

(ii) Other federal or state ((~~medical care~~)) healthcare programs;

(iii) Payments made to the provider on behalf of the client by individuals or organizations not liable for the client's financial obligations; and

(iv) Any other contractual or legal entitlement of the client, including, but not limited to:

(A) Crime victims' compensation;

(B) Workers' compensation;

(C) Individual or group insurance;

(D) Court-ordered dependent support arrangements; and

(E) The tort liability of any third party.

(3) ((~~MAA~~)) The department may make annual rate increases to the LTAC fixed per diem rate by using ((~~the same inflation factor and date of rate increase that MAA uses for acute care hospital diagnostic related group (DRG) rates. This DRG rate adjustment method is described in WAC 388-550-3450(5)~~)) a vendor rate increase. The department may rebase the LTAC fixed per diem rate periodically.

(4) When the department establishes a special client service contract to complement the core provider agreement with an out-of-state LTAC hospital for services, the contract terms take precedence over any conflicting payment program policies set in WAC by the department.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-550-2596 Services and equipment covered by the department but not included in the LTAC fixed per diem rate. (1) The department uses the ratio of costs-to-charges (RCC) payment method to ((~~reimburse~~)) pay an LTAC ((~~facility~~)) hospital for the following that are not included in the LTAC fixed per diem rate:

(a) Pharmacy - After the first two hundred dollars per day in total allowed covered charges for any combination of pharmacy services that includes prescription drugs, total parenteral nutrition (TPN) therapy, IV infusion therapy, and/or epogen/neupogen therapy;

(b) Radiology services;

(c) Nuclear medicine services;

(d) Computerized tomographic (CT) scan;

(e) Operating room services;

(f) Anesthesia services;

(g) Blood storage and processing;

(h) Blood administration;

(i) Other imaging services - Ultrasound;

(j) Pulmonary function services;

(k) Cardiology services;

(l) Recovery room services;

(m) EKG/ECG services;

(n) Gastro-intestinal services;

(o) Inpatient hemodialysis; and

(p) Peripheral vascular laboratory services.

(2) The department uses the appropriate inpatient or outpatient payment method described in other published WAC to ((~~reimburse~~)) pay providers other than LTAC ((~~facilities~~)) hospitals for services and equipment that are covered by the department but not included in the LTAC fixed per diem rate. The provider must bill the department directly and the department ((~~reimburses~~)) pays the provider directly.

(3) Transportation services that are related to transporting a client to and from another facility for the provision of outpatient medical services while the client is still an inpatient at the LTAC ((~~facility~~)) hospital, or related to transporting a client to another facility after discharge from the LTAC ((~~facility~~)) hospital:

(a) Are not covered or reimbursed through the LTAC fixed per diem rate;

(b) Are not ((~~reimbursable~~)) payable directly to the LTAC ((~~facility~~)) hospital;

(c) Are subject to the provisions in chapter 388-546 WAC; and

(d) Must be billed directly to the:

(i) Department by the transportation company to be reimbursed if the client required ambulance transportation; or

(ii) Department's contracted transportation broker, subject to the prior authorization requirements and provisions described in chapter 388-546 WAC, if the client:

(A) Required ((~~nonemergent~~)) nonemergency transportation; or

(B) Did not have a medical condition that required transportation in a prone or supine position.

(4) The department evaluates requests for covered transportation services that are subject to limitations or other restrictions, and approves such services beyond those limitations or restrictions under the provisions of WAC 388-501-0165 and 388-501-0169.

(5) When the department established a special client service contract to complement the core provider agreement with an out-of-state LTAC hospital for services, the contract terms take precedence over any conflicting payment program policies set in WAC by the department.

WSR 07-08-108
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed April 4, 2007, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-22-054.

Title of Rule and Other Identifying Information: WAC 388-550-1050 Hospital services definitions.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6097), on May 22, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 23, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on May 22, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by May 18, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-550-1050 in order to clarify and update existing definitions, add new definitions relating to inpatient and outpatient hospital services, specifically definitions pertaining to payment methodologies for inpatient hospital services, and repeal outdated definitions. In addition, the department is adding new language that states the department's hospital selective contracting program no longer exists for admissions on and after July 1, 2007.

Reasons Supporting Proposal: In 2005, ESSB 6090, recommended that a study be done by Navigant to look at the department's inpatient payment system and include recommendations on the design. This WAC section is written to incorporate into the definitions the results of the Navigant study, and to update information on the department's hospital coverage, rate-setting, and payment processes. At the same time and for the same reasons, the department is proposing rule making to reflect changes and new sections in chapter 388-550 WAC.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Statute Being Implemented: RCW 74.09.500.

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: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Larry Linn, P.O. Box 45502, Olympia, WA 98504-5502, (360) 725-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Larry Linn, P.O. Box 45502, Olympia, WA 98504-5502, phone (360) 725-1856, fax (360) 753-9152, e-mail linnld@dshs.wa.gov.

March 30, 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 07-09 issue of the Register.

WSR 07-08-110
PROPOSED RULES
HIGHER EDUCATION COORDINATING BOARD
[Filed April 4, 2007, 11:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-15-093.

Title of Rule and Other Identifying Information: 1. Changes to the state need grant award amount to recognize the tuition charged to students engaged in the community college applied baccalaureate degree program.

2. Changes to add the eligibility criteria for proprietary school participation in the state student aid programs and the process to follow when eligibility criteria falls below the acceptable standard.

Hearing Location(s): Higher Education Coordinating Board, 917 Lakeridge Way, 3rd Floor Conference Room, Olympia, WA 98502, on May 25, 2007, at 9:00 a.m.

Date of Intended Adoption: June 28, 2007.

Submit Written Comments to: Julie Japhet, 917 Lakeridge Way, P.O. Box 43430, Olympia, WA 98504-3430, e-mail Juliej@hecb.wa.gov, fax (360) 704-6250 by June 1, 2007.

Assistance for Persons with Disabilities: Contact Julie Japhet by May 18, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 1. To recognize tuition charged to students engaged in community college applied baccalaureate degree programs.

2. To enhance eligibility standards for proprietary school participation in student aid programs. Clarify the process and expectations for the proprietary sector and the process when performance falls below acceptable standards.

Reasons Supporting Proposal: To comply with recent changes in law and to protect the state and students' interest in financial aid programs.

Statutory Authority for Adoption: Chapter 28B.92 RCW.

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

Name of Proponent: Higher education coordinating board, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Japhet, 917 Lakeridge Way, Olympia, WA 98502, (360) 753-7840.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule affects student and proprietary school participation in the state need grant program. The rule does not affect small business in Washington.

A cost-benefit analysis is not required under RCW 34.05.328. The higher education coordinating board is not named in the RCW.

April 4, 2007
John Klacik
Director of Student Financial Aid

AMENDATORY SECTION (Amending WSR 06-17-046, filed 8/8/06, effective 9/8/06)

WAC 250-20-013 Institutional eligibility. (1) For an otherwise eligible student to receive a state need grant, he or she must be enrolled in an eligible program at a postsecondary institution approved by the higher education coordinating board for participation in the state need grant program (((~~except as specified in WAC 250-20-021 less-than-half-time pilot project~~))). To be eligible to participate, a postsecondary institution must:

(a) ((~~Be a public university, college, community college, or vocational-technical institute operated by the state of Washington, or any political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level with full institutional accreditation by an accrediting association recognized by rule of the board.~~)) Be a postsecondary institution as defined in WAC 250-20-021(3).

(b) Participate in the federal Title IV student financial aid programs, including, at a minimum, the Federal Pell Grant program.

(2) In addition, a ((~~for-profit institution must:~~

~~(a) Be certified for participation in the federal Title IV student financial aid programs. A for-profit institution that is provisionally certified for participation in the federal Title IV student financial aid programs due to its failure to meet the factors of administrative capability or financial responsibility as stated in federal regulations, or whose participation has been limited or suspended, is not eligible to participate in the state need grant program until its full eligibility has been reinstated.~~

~~(b) Demonstrate to the satisfaction of the board that it is capable of properly administering the state need grant program. In making a determination of administrative capability, the board will consider such factors as the adequacy of staffing levels, staff training and experience in administering student financial aid programs, standards of administrative capability specified for purposes of federal Title IV program eligibility, its student withdrawal rate, its federal student loan cohort default rate, and such other factors as are reasonable. In determining the administrative capability of participating institutions, the board will also consider the institution's compliance with state need grant program regulations and guidelines.~~

~~(c) Demonstrate to the satisfaction of the board that it has the financial resources to provide the services described in its official publications and statements, provide the administrative resources necessary to comply with program requirements, and that it meets the financial responsibility standards for participation in the federal Title IV programs.~~

~~(d) Renew its eligibility each year under these standards.~~

~~(3) Nothing in this section shall prevent the board, in the exercise of its sound discretion, from denying eligibility or terminating the participation of an institution which the board determines is unable to properly administer the program or to provide advertised services to its students~~)) proprietary institution must demonstrate to the satisfaction of the board:

(a) That it is certified for participation in the federal Title IV student financial aid programs. A proprietary institution that is provisionally certified due to its failure to meet standards of administrative capability or financial responsibility is not eligible to participate in the state need grant program. Institutions which have been limited or suspended from Title IV programs are not eligible to participate in the state need grant program. The board reserves the right to make exceptions for special circumstances such as ownership changes or a change in the accrediting agency.

(b) That it is capable of properly administering the state need grant program. In making this determination, the board will consider such factors as the institution's:

(i) Adequacy of staffing levels.

(ii) Staff training and experience in administering student financial aid programs and turnover in key personnel.

(iii) Compliance with the standards of administrative capability specified for purposes of federal Title IV program eligibility.

(iv) Pending legal regulatory issues.

(v) Written student complaints.

(vi) Compliance with state aid program regulations and guidelines.

(vii) Ability to maintain electronic systems to support state aid program tracking, payment requests and reporting obligations.

(c) That it is maintaining acceptable performance levels. In making this determination the board will consider such factors as the institution's:

(i) Student completion rate.

(ii) Student placement rate.

(iii) Student loan cohort default rate.

In evaluating completion and placement standards, the board will rely on the standards of the institution's accrediting agency or the standard established between the board and the institution at the time the participation agreement is signed. Multiple year averages will be considered in evaluating these standards. Each participating institution will submit its annual accreditation report to the board.

(d) That it is financially stable and has adequate financial resources to provide the services described in its official publications and statements. Institutions must meet the administrative and financial standards for participation in the federal Title IV programs. In making this determination, the board will consider such factors as:

(i) The school's annual financial statements.

(ii) The Department of Education's composite financial score.

(iii) Federal program review findings.

(iv) State reauthorization or relicensing reports.

(v) Accrediting agency show cause or other findings.

(vi) Enrollments by program and intent to terminate an existing program.

(vii) Enrollment trends.

(e) If evaluation of an institution's administrative capability, performance level, or financial strength results in concerns about the institution's participation in the state aid programs, the board may:

(i) Request additional information as well as give the school the opportunity to provide additional clarifying information.

(ii) Place an institution in a probationary status and specify the corrective actions which need to occur.

(iii) Require a letter of credit or bond.

(iv) Limit, suspend, or terminate an institution's participation in accordance with WAC 250-20-081.

(3) "Probation" indicates the board has determined that the school has one or more significant deficiencies for which corrective action is required within a specified time period.

(4) The school must renew its eligibility each year under these standards or as requested by the board. A school that has lost eligibility to participate must complete a new application for reconsideration.

(5) Nothing in this section shall prevent the board, in the exercise of its sound discretion, from denying eligibility or terminating the participation of an institution which the board determines is unable to properly administer the program or provide advertised services to its students.

(6) If an institution disagrees with actions taken by the board, the institution can appeal the action per the procedure outlined in WAC 250-20-081.

AMENDATORY SECTION (Amending WSR 04-08-060, filed 4/5/04, effective 5/6/04)

WAC 250-20-041 Award procedure. (1) The institution will offer grants to eligible students from funds reserved by the board. It is the institution's responsibility to ensure that the reserve is not over expended within each academic year.

(2) The state need grant award for an individual student shall be the base grant, appropriate for the sector attended and a dependent care allowance, if applicable, adjusted for the student's family income and rate of enrollment. Each eligible student receiving a grant must receive the maximum grant

award for which he or she is eligible, unless such award should exceed the student's overall need or the institution's approved gift equity packaging policy.

(3) The grant amount for students shall be established as follows:

(a) The award shall be based on the representative average tuition, service, and activity fees charged within each public sector of higher education. The average is to be determined annually by the higher education coordinating board. The award for students enrolled in the applied baccalaureate pilot program authorized in RCW 28B.50.810 shall be based on the representative tuition and fees used for the comprehensive universities.

(b) Except for the 2003-04 and 2004-05 academic years, the base grant award shall not exceed the actual tuition and fees charged to the eligible student. During the 2003-04 and 2004-05 years the grant award may exceed the tuition charged to the eligible student by fifty dollars.

(c) The base grant award for students attending independent four-year institutions shall be equal to that authorized for students attending the public four-year research institutions. The base grant for students attending private vocational institutions shall be equal to that authorized for students attending the public community and technical colleges.

(4) The total state need grant award shall be reduced for students with family incomes greater than fifty percent of the state's median and for less than full-time enrollment.

(a) Students whose incomes are equal to fifty-one percent to seventy-five percent of the state's median family income shall receive seventy-five percent of the maximum award. Students whose incomes are equal to seventy-six percent to one hundred percent of the state's median family income shall receive fifty percent of the maximum award. Students whose incomes are equal to one hundred one percent to one hundred twenty-five percent of the state's median family income shall receive twenty-five percent of the maximum award.

(b) Eligible students shall receive a prorated portion of their state need grant for any academic period in which they are enrolled at least half-time, as long as funds are available. Students enrolled at a three-quarter time rate, at the time of disbursement, will receive seventy-five percent of their grant. Students enrolled half-time at the time of disbursement will receive fifty percent of their grant.

(5) Depending on the availability of funds, students may receive the need grant for summer session attendance.

(6) The institution will be expected, insofar as possible, to match the state need grant with other funds sufficient to meet the student's need. Matching moneys may consist of student financial aid funds and/or student self-help.

(7) All financial resources available to a state need grant recipient, when combined, may not exceed the amount computed as necessary for the student to attend a postsecondary institution. The student will not be considered overawarded if he or she receives additional funds after the institution awards aid, and the total resources exceed his or her financial need by $200 or less by the end of the academic year.

(8) The institution shall ensure that the recipient's need grant award, in combination with grant aid from all sources, not exceed seventy-five percent of the student's cost-of-attendance. In counting self-help sources of aid, the aid administrator shall include all loans, employment, work-study, scholarships, grants not based on need, family contribution, and unmet need.

(9) The institution will notify the student of receipt of the state need grant.

(10) Any student who has received at least one disbursement and chooses to transfer to another participating institution within the same academic year may apply to the board for funds to continue receipt of the grant at the receiving institution.

WSR 07-08-112
PROPOSED RULES
BEER COMMISSION
[Filed April 4, 2007, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-175.

Title of Rule and Other Identifying Information: Chapter 16-505 WAC, Washington beer commission, for the newly formed Washington beer commission, proposed rules have been developed to put into force the assessment authorized by RCW 15.89.110. The assessments will begin with fourth quarter 2006 production. For the year 2007 and after, it is proposed that assessments would be collected annually the following January based upon the previous year's production data. Federal excise tax-reporting documents will be relied upon to confirm production information reported. The assessment amount is ten cents per barrel produced up to 10,000 barrels per location for an affected producer, as stated in the statute.

Hearing Location(s): Washington State Department of Agriculture, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504, on May 24, 2007, at 10:00 a.m.

Date of Intended Adoption: June 6, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, 1111 Washington Street S.E., Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., June 1, 2007.

Assistance for Persons with Disabilities: Contact the Washington state department of agriculture receptionist by 5:00 p.m., TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In accordance with RCW 15.89.110, the commission is directed to adopt rules prescribing the time, place and method of payment and collection of the assessment from affected producers. The proposed rules will establish the first and subsequent production time frames for which assessments owing the Washington beer commission will be imposed and what information will be relied upon to confirm production information.

Statutory Authority for Adoption: RCW 15.89.070 and 15.89.110.

Statute Being Implemented: Chapter 15.89 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Arlen Harris, Olympia, (360) 391-1232.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal is regarding the date and methods for payment of the beer commission assessment. There is no economic impact associated with these methods.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule establishes the collection time frames of assessments; the assessment amount is in statute.

April 4, 2007
Arlen Harris
Executive Director

Chapter 16-505 WAC

Washington Beer Commission

NEW SECTION

WAC 16-505-010 Collection of assessment. (1) The Washington beer commission is authorized under RCW 15.89.040 and 15.89.110(1) to collect an assessment upon beer produced by an affected producer. The annual assessment is ten cents per barrel of beer produced, up to ten thousand barrels per location, as verified by federal excise tax reports.

(2) The commission shall directly bill affected producers by providing written notice in the form of an assessment invoice. Affected producers shall calculate their assessment on the assessment invoice using the annual production figure as based upon their federal excise tax report. Affected producers must submit the completed assessment invoice, the assessment payment due and a copy of the affected producer's federal excise tax report for verification to the commission at the address specified on the assessment invoice.

(3) The first assessment will be due and payable to the commission in July 2007 and will be based upon beer production during the fourth quarter of 2006.

(4) The second assessment will be due and payable to the commission in January 2008 and will be based upon beer production during the calendar year of 2007.

(5) Assessments thereafter will be due and payable to the commission annually in January and will be based upon the previous year's production.

(6) At this time, assessments due and payable to the commission shall not be reduced based on in-kind contributions.

(7) Failure to receive an invoice for the previous year's product does not relieve an affected producer of its obligation to pay any assessment when due.

NEW SECTION

WAC 16-505-015 Failure to pay assessment. (1) In the event any affected producer fails to pay the commission the full amount of such assessment or such other sum on or before the date due, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collection of the amount due.

(2) In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 07-08-115
PROPOSED RULES
EDMONDS COMMUNITY COLLEGE
[Filed April 4, 2007, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-24-139.

Title of Rule and Other Identifying Information: Traffic rules.

Hearing Location(s): Edmonds Community College, Clearview Building, 7030 196th Street S.W., Suite 122, Lynnwood, WA 98036-5999, on May 9, 2007, at 1:00 - 2:00 p.m.

Date of Intended Adoption: June 15, 2007.

Submit Written Comments to: Kathy Beem, Human Resources Office, 20000 68th Avenue West, Lynnwood, WA 98036-5999, e-mail kbeem@edcc.edu, fax (425) 640-1359, by May 9, 2007, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Kathy Beem by May 1, 2007, at 5:00 p.m., e-mail kbeem@edcc.edu or phone (425) 640-1647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 132Y-100-001, changing "assign" the most efficient use of space to "make"; WAC 132Y-100-003, new section, Definitions, gives definitions of terms; WAC 132Y-100-006, new section, Visitor parking, gives rules on visitor parking; WAC 132Y-100-008, to give rules on parking permits for employees; WAC 132Y-100-012, changes "unexpired" to "current" permit; WAC 132Y-100-014, new section, Free parking by disabled persons, gives rules for disabled parking; WAC 132Y-100-020, adding the word "or" to item six; WAC 132Y-100-028, describes process to obtain a parking permit; WAC 132Y-100-032, describes proper way to display permit; WAC 132Y-100-052, adds "exempt licensed" to rule; WAC 132Y-100-054, new section, Parking—Operator's responsibility, states that no person shall leave an unattended vehicle with engine running; WAC 132Y-100-056, describes areas where parking is prohibited; WAC 132Y-100-060, changing "in effect" to "enforced"; WAC 132Y-100-066, describes carpool parking permit rules; WAC 132Y-100-067, new section, Motorcycle parking, describes motorcycle parking; WAC 132Y-100-068, describes bicycle rules; WAC 132Y-100-070, new section, Alternative transportation regulations, gives rules on the operation of bicycles, electronic bicycles, nonmotorized and electric scooters; WAC 132Y-100-080, adds the words "and place" to rule; WAC 132Y-100-082, new section, Disabled or inoperative vehicles, describes dis-

abled or inoperative vehicle rules; WAC 132Y-100-084, adds the words "designated" and "roadways or parking lots" to rule; WAC 132Y-100-088, removing repetitive line regarding pedestrian traffic; WAC 132Y-100-096, describes special traffic and parking rules; WAC 132Y-100-100, rule name change from "Issuance of traffic citations" to "Enforcement of parking and traffic rules and regulations," details the authority for parking rules authority and enforcement; WAC 132Y-100-106, new section, Fines, penalties and impounding, describes penalties for not adhering to parking and traffic rules. Lists grounds for impoundment. Describes penalties for unpaid fines; WAC 132Y-100-108, extends appeal of fines to five calendar days and changes authority from president to director of security; WAC 132Y-100-114, new section, Parking of trailers, campers, and similar purpose vehicles on campus, states that there is no parking of trailers, campers, etc. on campus; WAC 132Y-100-115, new section, Damage to state property, describes responsibility for damage to state property; WAC 132Y-100-116, name change from "Liability of college" to "Prohibition of literature on vehicles" describes that distribution of literature on motor vehicles is prohibited on campus; and WAC 132Y-100-118, new section, Liability of college, states except for college owned or operated vehicles the college assumes no liability for vehicles parked on campus.

Repealed sections WAC 132Y-100-016, 132Y-100-104, and 132Y-100-112.

General Purpose Statement: Revision of parking rules, in order to be able to cite vehicles parked illegally in carpool spaces, overtime in a load-only zone, or in landscaped areas. Also clarifying and expanding on rules for visitor parking, parking permits, disabled parking and alternative transportation, such as bicycles, electric scooters, skateboards, etc.

Reasons Supporting Proposal: The proposed changes will codify the college's ability to formally cite individuals who drive or park in such ways as to (1) cause increased safety hazards, (2) damage college grounds or facilities, or (3) infringe on the rights of others to freely enjoy use of the college's grounds or facilities.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140(10), chapter 132Y-100 WAC.

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

Name of Proponent: Edmonds Community College, public.

Name of Agency Personnel Responsible for Drafting: Steve Robinson, Edmonds Community College, 20000 68th Avenue West, Room MDL 120, (425) 640-1109; Implementation and Enforcement: Security Staff, Edmonds Community College, (425) 640-1501.

No small business economic impact statement has been prepared under chapter 19.85 RCW. All section changes will take place only on the Edmonds Community College Lynnwood campus parking areas and roadways. There are no small businesses on the campus that will be affected by our parking rules changes. There are the Lynnwood Golf Course and Pro Shop on campus but they have their own parking lot that students and staff may not use.

A cost-benefit analysis is not required under RCW 34.05.328. The college does not anticipate the proposed changes to its traffic rules will have significant cost/benefit effects, other than they will codify the college's ability to formally cite individuals who drive or park in such ways as to (1) cause increased safety hazards, (2) damage college grounds or facilities, or (3) infringe on the rights of others to freely enjoy use of the college's grounds or facilities. The college expects the improved benefit to be a safer public environment that will benefit all users of the college's facilities and grounds, with few additional costs to the college.

April 4, 2007
K. Beem
Vice-President for Human Resources

AMENDATORY SECTION (Amending Resolution No. 81-8-1, filed 8/14/81)

WAC 132Y-100-001 Purpose for adopting rules. Pursuant to the authority granted by RCW 28B.50.140(10), the board of trustees of Community College District 23 is granted authority to make rules and regulations for pedestrian and vehicular traffic on property owned, operated or maintained by the college district. The rules contained in this chapter are established for the following purposes:

(1) To protect and control pedestrian and vehicular traffic; and

(2) To assure access at all times for emergency traffic; and

(3) To minimize traffic disturbances during class hours; and

(4) To facilitate the work of the college by assuring access for its vehicles; and

(5) To ((~~assign the limited parking space for~~)) make the most efficient use of limited parking space.

NEW SECTION

WAC 132Y-100-003 Definitions. For the purpose of this chapter, the following terms and definitions shall apply:

(1) Board: The board of trustees of Edmonds Community College, state of Washington.

(2) Campus: Any or all real property owned, operated, controlled, or maintained by Edmonds Community College, state of Washington.

(3) Car pool: Any group of two or more faculty, staff or students who commute to the college in the same vehicle.

(4) College: Edmonds Community College or any additional community college hereafter established with Edmonds Community College, state of Washington, and collectively, those responsible for its control and operations.

(5) Faculty members: Any employee of Edmonds Community College who is employed on a full-time or part-time basis as a teacher, counselor, librarian or other position for which the training, experience, and responsibilities are comparable as determined by the appointing authority, including administrative appointment.

(6) Foot propelled device: Wheeled devices including, but not limited to, skateboards, roller skates, roller blades,

etc., designed or used for recreation and/or transportation purposes.

(7) Security office: The safety and security department office.

(8) Security officers: Employees of the college accountable to the vice-president of finance and operations and responsible for campus security, safety, and parking and traffic control.

(9) Staff: The administrative and classified members employed by the college.

(10) Student: Any person enrolled in the college.

(11) Vehicle: An automobile, truck, motorcycle, scooter or bicycle, both engine-powered and nonengine-powered.

(12) Visitor(s): Person(s) who come on campus as guest(s) or person(s) who lawfully visit the campus for purposes in keeping with the college's role as an institution of higher learning in the state of Washington that are neither employees nor registered students of the institution.

NEW SECTION

WAC 132Y-100-006 Visitor parking. Visitors to the college may park in designated parking stalls for up to two hours without obtaining a permit. If the stay will be longer than two hours, the driver/operator will need to register their vehicle with the security department and obtain a temporary permit for the vehicle. Vehicles belonging to students, staff, or vehicles parked longer than two hours without a permit which are parked in the visitor stalls are subject to enforcement action.

AMENDATORY SECTION (Amending WSR 92-09-055, filed 4/13/92, effective 5/14/92)

WAC 132Y-100-008 Permits required for employee vehicles in designated lots. Except as provided in WAC ((~~132Y-100-010~~)) 132Y-100-012 and 132Y-100-052 ((~~of these rules, no employee shall leave any vehicle unattended in a designated staff lot, upon the campus of the college without a permit issued by the security office of the college, unless such employee is in the process of loading, unloading, or is a registered visitor.~~

~~Students and visitors are not required to obtain a permit to park in lots not designated as staff or carpool lots~~)) no employee shall leave any vehicle unattended in a designated staff lot, on the campus of the college, without a permit issued by the security office unless such employee is in the process of loading and unloading.

Permits shall not be utilized by any person except the person registered to said permit. The college reserves the right to deny any application, or to revoke any permit at any time, if actions resulting from such application or permission constitute present or imminent danger or unlawful activity, or if a prospective user has previously violated the provisions of these parking policies or other written rules or regulations of the college. Outstanding parking fines must be paid before a parking permit may be issued or renewed.

Parking permits are transferable from vehicle to vehicle when used by the permit holder.

If a vehicle is sold or traded, a new permit will be issued to the permit holder at no additional cost if the permit holder does the following:

(1) Records the invalid permit number; and

(2) Removes invalid permit; and

(3) Brings invalid permit or remnant thereof and permit number to the security office. The security office shall then issue the permit holder a new parking permit.

Students and visitors may park in any lot not designated as staff or car pool, without a permit.

AMENDATORY SECTION (Amending Resolution No. 81-8-1, filed 8/14/81)

WAC 132Y-100-012 ((~~Valid~~)) Permit parking on campus. ((~~A valid permit is:~~)) There are two categories of valid permits:

(1) A temporary permit authorized by the security office of Edmonds Community College and displayed in accordance with instructions; or

(2) ((~~An unexpired parking~~)) A current vehicle permit issued by the security office ((~~of the college, which permit must be~~)) and displayed on the vehicle in accordance with instructions.

NEW SECTION

WAC 132Y-100-014 Free parking by disabled persons. Any person who meets the criteria for special parking privileges under RCW 46.16.381 shall be allowed, free of charge, to park a vehicle used for his or her transportation in any legal disabled parking zone or area for an unlimited period of time. This includes zones or areas with parking meters which are otherwise restricted as to the length of time parking is permitted.

This section does not apply to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. The person shall obtain and display a special placard or license plate under RCW 46.16.381 to be eligible for the privileges under this section.

AMENDATORY SECTION (Amending Resolution No. 83-10-2, filed 11/1/83)

WAC 132Y-100-020 Permit revocation. Parking permits are the property of Edmonds Community College and may be recalled by the security office for any of the following reasons:

(1) When the purpose of which the permit was issued changes or no longer exists;

(2) When a permit is used by an unregistered vehicle or by an unauthorized individual;

(3) Falsification on a parking permit application;

(4) Continued violations of parking rules;

(5) An accumulation of unpaid parking citations;

(6) Counterfeiting or altering a parking permit; or

(7) When it is in the best interest of the college.

AMENDATORY SECTION (Amending WSR 92-09-055, filed 4/13/92, effective 5/14/92)

WAC 132Y-100-028 Issuance of permits. (1) ((~~Employees seeking a permit to park in designated staff lots or students seeking a permit to park in designated carpool lots may be issued a parking permit by the security office, upon registration of his/her vehicle with the campus security office at the beginning of employment with the college or, for students, the beginning of the quarter by presenting vehicle make, model, color, year, license number, and payment.~~

~~(2) Campus information may issue visitor parking permits when such permits are necessary.~~

~~(3) Temporary and special parking permits may be issued when such permits are necessary to enhance the business operation of the college.~~

~~(4) Two permits may be issued to one individual provided the applicant presents either title or registration indicating ownership of both vehicles.~~)) Presentation of valid college identification, vehicle make, model, color, license number is required to be issued a permit.

(2) Employees may be issued a parking permit by the security office, upon registration of his/her vehicle with said office at the beginning of full-time employment.

(3) Part-time employees must obtain permits each quarter.

(4) Carpool permits are issued quarterly.

(5) The security office may issue visitor parking permits when such permits are necessary.

(6) Temporary and special permits may be issued by the security office when such permits are necessary to enhance the business operation of the college.

AMENDATORY SECTION (Amending Resolution No. 83-10-2, filed 11/1/83)

WAC 132Y-100-032 Display of permits. All permanent parking permits shall be displayed as provided in the directions supplied with the parking permit. A special ((~~and~~)) or temporary parking permit((~~s~~)) shall be placed within the vehicle where it can be plainly ((~~observed~~)) seen from the outside of the driver's side of the windshield. Permits not displayed in accordance with the provisions of this section shall not be valid.

AMENDATORY SECTION (Amending Resolution No. 81-8-1, filed 8/14/81)

WAC 132Y-100-052 Parking permit exceptions. Parking permit rules shall not apply to city, county, state, or federally owned and exempt licensed vehicles.

NEW SECTION

WAC 132Y-100-054 Parking—Operator's responsibility. No person operating or in charge of a motor vehicle shall permit it to stand unattended without first:

(1) Stopping the engine, locking the ignition and removing the key; and

(2) Effectively setting the brake and transmission to prevent movement of the vehicle.

AMENDATORY SECTION (Amending Resolution No. 81-8-1, filed 8/14/81)

WAC 132Y-100-056 Parking within designated spaces. (1) Any person parking a vehicle on Edmonds Community College property shall park his/her vehicle in parking areas only.

(2) No vehicle other than those needed for maintenance and landscaping may be parked on any landscaped area ((~~which has been landscaped~~)) or area designed for landscaping, ((~~and~~)) any developed college property; ((~~and/~~))or any cement or asphalt walkway or unpaved pathway intended for pedestrian use.

(3) No vehicle shall be parked so as to occupy any portion of more than one parking ((~~area~~)) space. The fact that other vehicles may have been so parked as to require the operator of another vehicle ((~~parked to occupy~~)) to park in more than one space shall not constitute an excuse for violation of this section.

(4) No vehicle may be parked on any area set aside as yellow curb zones, driveways, pedestrian walkways, or loading and service areas.

AMENDATORY SECTION (Amending Resolution No. 81-8-1, filed 8/14/81)

WAC 132Y-100-060 Locating legal parking space. (1) The responsibility for locating legal parking space rests with the operator of the motor vehicle. Lack of space will not be considered a valid excuse for violating any parking rule.

(2) The fact that a person may park or observe others parked in violation of rules without receiving a citation does not mean that the rules ((~~is~~)) are no longer ((~~in effect~~)) enforced.

AMENDATORY SECTION (Amending WSR 92-09-055, filed 4/13/92, effective 5/14/92)

WAC 132Y-100-066 Carpool parking permit ((~~for students~~)). ((~~Students who qualify for a carpool permit shall be allowed to park in the designated lot for carpools. To qualify for a carpool permit, the individual must designate two other regular riders in addition to the driver. This permit may be renewed each quarter. The permit can be obtained from the campus security office.~~)) Carpool permits are available to staff and students who qualify. To qualify for a carpool permit, the individual must designate at least one other regular rider in addition to the driver. This permit must be renewed each quarter and allows the holder to park in designated carpool lots/areas. The permit can be obtained from the security office.

NEW SECTION

WAC 132Y-100-067 Motorcycle parking. Motorcycles shall only be parked in spaces reserved for motorcycles and are not allowed to park in four-wheeled vehicle spaces, on grassed areas, sidewalks, or immediately adjacent to or within buildings.

AMENDATORY SECTION (Amending Resolution No. 81-8-1, filed 8/14/81)

WAC 132Y-100-068 Bicycle parking and traffic regulations. ((~~No bicycle shall be parked inside a building, near a building exit, or on a path or sidewalk. Bicycles must be secured to racks as provided and shall be regulated under the traffic rules of the Edmonds Community College. No parking permit is required.~~)) (1) The primary aim of the bicycle control program is safety, and this aim will be achieved by keeping bicycles out of buildings, away from building exits, and parked off paths and sidewalks. Bicycles must never be parked in stairwells, hallways, or any place which will create a safety hazard or hinder exit from buildings.

(2) Bicycles must be parked in racks. At times, rack space may not be available; parking near the racks is permitted provided the parked bicycles do not interfere with pedestrian traffic.

(3) The following specific regulations must be observed while operating bicycles on campus:

(a) Do not ride bicycles inside buildings at any time.

(b) Do not lean or park bicycles near or against windows.

(c) Pedestrians have the right of way on all mall and sidewalk areas of the college. At all times and places of congested pedestrian traffic, the bicycle rider must proceed slowly and yield to pedestrians.

(d) Bicyclists must observe the ten mph speed limit on malls and service drives.

(e) Bicyclists must ride in designated lanes where such lanes exist.

(4) Impoundment policy:

(a) Bicycles parked on paths or sidewalks, in buildings, or near building exits may be impounded. Bicycles left unattended on campus more than twenty-one days may be impounded.

(b) Impounded bicycles will be stored in a location determined by the director of safety and security. The owner will be notified as soon as possible upon impoundment and the owner must reclaim the bicycle within fourteen days.

(5) Abandoned, lost or found bicycles that have been impounded shall be subject to disposal in accordance with the laws of the state of Washington.

NEW SECTION

WAC 132Y-100-070 Alternative transportation regulations. The use of electric bicycles, nonmotorized and electric scooters shall not be allowed on pedestrian malls, sidewalks, and walkways of Edmonds Community College. Anyone using an electric bicycle, nonmotorized or electric scooter on Edmonds Community College property shall give the right of way to any pedestrian and shall travel at a reasonable, safe, and prudent speed, and all wheels shall remain on the ground. The use of electric bicycles, nonmotorized or motorized scooters shall not be permitted inside any building or within twenty feet of a building entrance or exit. Under no circumstances will skateboarding or in-line skating be allowed on ramps, curbs, benches, steps, stairs or other such structures.

AMENDATORY SECTION (Amending Resolution No. 83-10-2, filed 11/1/83)

WAC 132Y-100-080 Regulatory signs and directions. Edmonds Community College will erect and place signs, barricades, and other structures and paint marks and other directions upon the streets and roadways for the regulation of traffic and parking upon state lands devoted mainly to the educational or research activities of Edmonds Community College. Such signs, barricades, structures, markings, and directions shall be so made and placed as to be legible and in the opinion of the president or his/her designee will best effectuate the objectives stated in ((~~section 001 of these rules~~)) WAC 132Y-100-001.

NEW SECTION

WAC 132Y-100-082 Disabled or inoperative vehicles. No disabled or inoperative vehicle shall be parked on campus without permission from the security office. Vehicles which have been parked in excess of forty-eight hours and which appear to be inoperative or abandoned may be impounded and stored at the expense of either/or the owner and operator thereof.

AMENDATORY SECTION (Amending Resolution No. 81-8-1, filed 8/14/81)

WAC 132Y-100-084 Speed. No vehicle shall be operated on ((~~the~~)) designated campus roadways or parking lots at a speed in excess of ten miles per hour ((~~or such lower speed as is posted~~)). No vehicle of any type shall at any time use the campus and/or lands devoted to educational, research, recreational, or parking for Edmonds Community College for testing, racing, or other unlawful activities.

AMENDATORY SECTION (Amending Resolution No. 81-8-1, filed 8/14/81)

WAC 132Y-100-088 Pedestrian's right of way. (1) The operator of a vehicle shall yield to any pedestrian, but no pedestrians shall leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible or unsafe for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such ((~~a~~)) vehicle ((~~which has slowed or stopped to yield to pedestrian traffic~~)).

(3) Where a sidewalk is provided, pedestrians shall proceed upon such sidewalk.

AMENDATORY SECTION (Amending Resolution No. 83-10-2, filed 11/1/83)

WAC 132Y-100-096 Special traffic/parking rules. ((~~Upon~~)) During special occasions ((~~and during~~)) or emergencies, ((~~the president~~)) causing additional and/or heavy traffic, the director of safety and security is authorized to impose additional traffic and parking ((~~rules for the achieve-~~

~~ment of objectives in WAC 132-100-004 of these rules~~)) regulations to achieve the specified objectives of this chapter.

AMENDATORY SECTION (Amending WSR 92-09-055, filed 4/13/92, effective 5/14/92)

WAC 132Y-100-100 ((~~Issuance of traffic citations.~~)) Enforcement of parking and traffic rules and regulations. ((~~Upon the violations of any of the rules contained in this document the campus security officers are authorized to issue traffic citations, setting forth the date, the approximate time of violations, permit number, license number, infraction and name of officer. Such traffic citations may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the operator.~~)) The vice-president of finance and operations is responsible for parking and traffic management on campus and delegates the authority to enforce the parking and traffic regulations to the director of safety and security.

NEW SECTION

WAC 132Y-100-106 Fines, penalties and impounding. (1) The current schedule of fines shall be published by the college and made available for review in the security office.

(2) In addition to imposing fines, the director of safety and security and duly appointed security officers are authorized to issue citations, impound, immobilize, and take to such place of storage as the director of safety and security selects, any vehicles parked on college property in violation of these regulations. The expenses of such impounding, immobilization, and storage shall be charged to the owner/operator of the vehicle and must be paid prior to the vehicle's release.

(a) The college shall not be liable for loss or damage of any kind resulting from such impounding, immobilization, or storage.

(b) Impoundment of a vehicle does not remove the obligation for any fines associated with the violation itself.

(c) Vehicles left unattended on college property for a period greater than seventy-two hours may be impounded.

(d) Grounds for impounding vehicles shall include, but not be limited to, the following:

(i) Blocking a roadway so as to impede the flow of traffic;

(ii) Blocking a walkway so as to impede the flow of pedestrian traffic;

(iii) Blocking a fire hydrant or fire lane;

(iv) Creating a safety hazard in the opinion of a campus security officer;

(v) Blocking another legally parked vehicle; or

(vi) Parking in a marked "tow-away" zone.

(3) All fines must be paid within twenty calendar days from the date of the citation. All fines are payable as designated on the citation.

(a) If any citation remains unpaid after twenty calendar days from the date of the citation, the following action may be taken by Edmonds Community College:

(i) Degrees, transcripts, grades, refunds, or credits may be withheld until all fines are paid;

(ii) Registration for the following quarter may be delayed;

(iii) Faculty, students, and staff may be denied future parking privileges.

(b) An accumulation of parking and/or traffic tickets that are not responded to by payment or appeal may be sent to collections after such notification is provided to the registered owner of the vehicle cited.

AMENDATORY SECTION (Amending Resolution No. 83-10-2, filed 11/1/83)

WAC 132Y-100-108 Appeal of fines and penalties. Appeal of fines and penalties must be made in writing, within ((~~forty-eight hours~~)) five calendar days, to ((~~a person appointed specifically for this purpose by the president of the college~~)) the director of safety and security department. The owner of the vehicle shall be entitled to a hearing with the director of the safety and security department or designee within ((~~forty-eight hours~~)) two business days of any impoundment pursuant to WAC ((~~132Y-100-104~~)) 132Y-100-106. The owner may recover the vehicle before hearing by posting a bond in the amount of the sum of any past due fines plus any fine due for the impoundment infraction plus impoundment cost. In the event that the owner is determined at hearing to be not liable for the impoundment infraction, the amount of the sum of the impoundment fine plus impoundment costs will be returned.

NEW SECTION

WAC 132Y-100-114 Parking of trailers, campers, and similar purpose vehicles on campus. It is unlawful for any individual, firm or corporation to park any type of vehicle on the grounds of Edmonds Community College for the purpose of using such vehicle as a living unit. Any exception must be approved, in writing, by the director of safety and security.

NEW SECTION

WAC 132Y-100-115 Damage to state property. The cost of repair/replacement of college property damaged by negligent operations or as the result of indiscriminate acts must be paid in addition to assessed fines.

AMENDATORY SECTION (Amending WSR 92-09-055, filed 4/13/92, effective 5/14/92)

WAC 132Y-100-116 ((~~Liability of college.~~)) Prohibition of literature on vehicles. ((~~The college assumes no liability for vehicles parked on campus.~~)) Distribution of literature by placement on motor vehicles parked on Edmonds Community College campus is hereby prohibited. Literature includes but is not limited to:

(1) Pamphlets;

(2) Flyers; and/or

(3) Stickers.

NEW SECTION

WAC 132Y-100-118 Liability of college. Except for college owned and/or operated vehicles, the college assumes no liability for vehicles parked on campus.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-100-016	Transfer of permits.
WAC 132Y-100-104	Fines and penalties.
WAC 132Y-100-112	Enforcement for students.