

**WSR 07-15-037**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 07-05—Filed July 12, 2007, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-055.

Title of Rule and Other Identifying Information: Chapter 173-900 WAC, Electronic product recycling program and the following sections from the dangerous waste regulations, WAC 173-303-040 Definitions and 173-303-071 Excluded categories of waste.

Hearing Location(s): Washington State Department of Labor and Industries, 15 West Yakima Avenue, Suite 100, Yakima, WA, on August 21, 2007, at 1:30 p.m.; and at Washington State Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA, on August 23, 2007, at 1:30 p.m.

Date of Intended Adoption: September 26, 2007.

Submit Written Comments to: Jay Shepard, Department of Ecology, Solid Waste and Financial Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail WA-recycles-electronics@ecy.wa.gov, fax (360) 407-6102, by 5:00 p.m., August 30, 2007.

Assistance for Persons with Disabilities: Contact Michelle Payne, voice (360) 407-6109, TTY (360) 407-6006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule proposal includes the following amendments to chapter 173-900 WAC:

- Electronic product recycling plan content and submission requirements;
- Performance standards for electronic product processors used directly by plan operators, collectors and transporters;
- Recycling service level standards;
- Reporting processes and requirements for plan operators, local governments, local communities, processors, collectors and transporters;
- Registration requirements and process for processors;
- Collector standards;
- Process for establishing return share and equivalent share of responsibility for manufacturers;
- A sampling methodology to be used by all plan operators to provide ecology data to establish return shares;
- Requirements for the materials management and finance authority;
- Warnings, penalties, and violations, associated with these requirements; and
- Other requirements necessary to implement chapter 70.95N RCW.

The rule proposal includes the following amendments to chapter 173-303 WAC:

- Amendments to include an exemption for cathode ray tubes (CRTs) in televisions and monitors from chapter 173-303 WAC if the requirements are met.

Statutory Authority for Adoption: Chapter 70.95N RCW, Electronic product recycling; chapter 70.105 RCW, Hazardous waste management; and chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act.

Statute Being Implemented: Chapter 70.95N RCW, Electronic product recycling.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Jay Shepard, Lacey, Washington, (360) 407-7040; Implementation and Enforcement: Peter Lyon, Lacey, Washington, (360) 407-6107.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Conclusion:** Based on research and analysis required by the Regulatory Fairness Act (RCW 19.85.011), ecology has determined that the proposed amendments to chapter 173-900 WAC have a disproportionate impact on small business. Therefore, we must include cost-minimizing features in the rule where it is legal and feasible to do so.

*Note to readers:* This proposed rule is unusual in that it transfers the cost of disposal from Washington citizens, businesses, and government bodies to manufacturers of TVs, computers, and monitors. There is a net income effect for Washington businesses.

**Purpose of this Analysis:** The Washington state department of ecology (ecology) is proposing to amend the electronic product recycling program rule, chapter 173-900 WAC. The Regulatory Fairness Act (RCW 19.85.011) requires ecology to show we have considered the impacts of the rule on small businesses in comparison to large businesses. This report provides the results of these analyses and shows the potential impacts associated with the proposed rule.

#### Background

**2004 Recommendations to Legislature:** At the request of Washington lawmakers in 2004, ecology and the solid waste advisory committee (SWAC) developed recommendations for how the state can implement and finance a program to collect, recycle, and reuse electronic products. Ecology and the SWAC worked with these representatives: Electronic product manufacturers, electronic product retailers and waste haulers, electronics recyclers, charities, cities, counties, environmental organizations, public interest organizations, and other interested parties.

**2006 Electronic Product Recycling Law:** Based on the 2004 recommendations from ecology and the SWAC, Washington lawmakers approved a new law - chapter 70.95N RCW, Electronic product recycling, that became effective July 1, 2006.

This new law requires computer and television manufacturers to provide consumer-convenient recycling of their covered electronic products throughout our state.

The rule defines covered electronic products (CEPs) as computers (including portable or laptop computers), televi-

sions, and computer monitors used by households, charities, school districts, small businesses, or small governments, located in Washington. Manufacturers must make these services available to these groups by January 1, 2009.

**Reason for this Rule Proposal:** There are toxic substances in CEPs that can come out of them when they are thrown away in a landfill. Because of this, many landfills and transfer stations across the state have started to reject CEPs to prevent the contamination. This has caused a rapid increase in the number of CEPs coming into recyclers to over 22 million pounds<sup>1</sup> per year.

Ecology estimates that between 2003 and 2010 the number of obsolete CEPs in Washington state will be:

- 4.5 million personal computers,
- 3.5 million CRT monitors, and
- 1.5 million flat panel monitors.

Ecology expects the amount of recycled CEPs to increase to 56.5 million pounds after we implement the proposed rule.<sup>2</sup> This rule proposal will also allow recyclers to treat CEPs that come from households (small quantities) separate from those that come from businesses (large quantities). Without this rule, recyclers would have to merge the waste streams and they would be required, under the dangerous waste rule, to treat all of them as dangerous waste.

This rule proposal will also take advantage of a federal exemption for CRTs allowed to the states and will allow recycling of CRTs to continue and increase.

Without this rule, recycling will be an increased financial burden on Washington citizens and landfills. This rule implements the law and the law transfers the cost of recycling CEPs to the companies that manufacture the CEPs. The law and the rule provide a net savings for Washington.

**Scope of Analysis:** This analysis covers the first twenty years of program costs including the costs of Phase 1 and Phase 2 of this rule-making process. The analysis covers both capital and annual costs. Capital costs are annualized on a twenty-year basis.

### Comparison of the Current and Proposed Rules

**Current Rule Requirements:** Ecology is writing the rule in two phases. For Phase 1 of the rule making ecology adopted rules that:

- Require manufacturers, collectors, and transporters of CEPs to register with ecology.
- Sets a fee structure and payment schedule for manufacturers.
- Require mandatory brand labeling of all CEPs.

**Description of Proposed Changes:** For Phase 2 of the rule making ecology is proposing to adopt the rest of the requirements of the new law. This includes: Recycling plan submittal, plan review and content, program implementation, return share and equivalent share calculations, direct processor registration and standards, registration and performance standards for collectors and transporters, exemption from the dangerous waste rule for recycled CRTs.

**Baseline for Analysis:** The law, chapter 70.95N RCW, Electronic product recycling, and the existing electronic product recycling rule (chapter 173-900 WAC) and the existing dangerous waste rule (chapter 173-303 WAC) form the

baseline for this analysis. Existing federal and state laws and rules regarding disposal of solid waste, dangerous waste, and electronics also form part of the baseline.

**Law - Chapter 70.95N RCW, Electronic product recycling:** The law includes many detailed requirements. Most of the rule is drawn word for word from the law.

**Existing rule - Chapter 173-900 WAC:** The existing rule outlines the definitions for words within the rule, registration process for manufacturers, transporters, and collectors; and administrative fees.

**Existing dangerous waste rule - Chapter 173-303 WAC:** The current dangerous waste rule would require generators to designate CEPs as dangerous waste if they are large quantity generators.

**Analysis of Compliance Costs for Business:** This small business economic impact statement (SBEIS) is atypical in that the total costs to all the affected sectors are going to be borne by the plans and the manufacturers who are members of the plans. Therefore, for each major requirement in the proposed rule the total costs are calculated. The plans will be responsible for paying for their total return share. Therefore, this SBEIS uses the return shares for each manufacturer multiplied by the total cost to estimate the cost per employee for small and large business. A more typical measure is provided for one small company that is no longer going to continue processing.

**Costs for Collectors:** Ecology analyzed the cost for collectors based on the assumption that there are eighty-eight collection sites throughout Washington state. The law requires there must be at least one service in each county of the state as well as in cities with a population of greater than ten thousand.

Collection facilities reported they would need the plans to pay them at the rate of \$0.26 per pound for their collections. It is not clear what rates the plans will negotiate with their collectors.

This rule proposal will not allow collection facilities to charge for drop offs or to disassemble the CEPs for recycling. This will be lost revenue for these facilities. Therefore, collection facilities also reported how much revenue they currently get from the fees for taking the CEPs (\$4.6 million) and the sales of parts and recyclable materials (\$630,000). This means they are actually requesting an increase of \$10.1 million from the plans over what they currently receive to offset this loss (see below).

**Staffing Collection Site During Operating Hours:** Only one collection site reported they had an honor system for dropping off CEPs. All other facilities staff their collection sites during operating hours. However, this one facility recently decreased its hours of operation instead of adding more staff. They therefore meet the requirement without added costs.

**Storage Facilities:** Ecology requires every collection site to have enclosed storage areas that are protected from the weather and have impervious floors or they must place the CEPs in a container designed to reduce the risk of contamination from glass and other fine solids from the CEPs. Currently, about 7% of collection sites do not have this type of storage area. Ecology estimates it will cost those facilities a total of \$31,000 to install the proper type of storage.

**Annual Registration:** Ecology estimates it will cost collectors about \$95 each to submit their annual registration using the electronic registration process. This is a total of about \$8,000 for all facilities.

**Registration Updates:** The rule requires collectors to notify ecology within fourteen days when there is a change to the information provided with their registration. Ecology estimates, on average, that each collector will have about five registration updates each year. If ecology assumes a cost of \$50 per hour<sup>3</sup> and thirty minutes to submit these changes, ecology estimates a total of \$9,400 a year for collector registration updates.

**Documentation of CEPs:** Ecology requires that the plans must collect data on what county each CEP comes from and then provide this information to ecology. For this analysis ecology assumes this cost will accrue to the plans via activity undertaken at the collection sites. Ecology expects it will cost an average of \$9,000 per site and a total cost of \$795,000 for all facilities to meet this requirement.

**Posting Information at Collection Sites:** Recycling plans are required to provide information to collectors for them to post in a visible location at their sites. This is to inform covered entities of how and where CEPs received into the program are recycled. The cost of this is minimal.

**Lost Revenue from Charges to drop off CEPs:** When ecology implements this rule, collection sites will no longer be allowed to charge consumers for dropping off unwanted CEPs. This will affect 88% of the collectors that currently charge to take CEPs. Prices now range from: \$5.00-\$19.00 or \$0.35-\$1.00/lb for monitors and \$0.40/lb for laptops and \$20 and up for televisions. This is a loss of \$56,500 per year, per facility, and total of \$4.6 million.

**Lost Revenue from Foregone Sales of Recycled Components:** This rule will require collectors to stop stripping components from CEPs for recycling to participate in the program. 40% of these collectors currently do this. Ecology estimates a \$20,000 loss for each of these collectors and a total of about \$630,000. The income is not lost to Washington because the rule transfers this income from the collectors to the processors.

**Plan Participation:** The plans will hire and pay the collectors to do their collections for them. Thus, a cost to the collectors will become a cost to the plan. Collection sites will be reimbursed to participate in a plan; the respondents estimated that they want to be reimbursed \$0.26/lb. With an estimate of one million units weighing 56.5 million pounds to be collected in the first year, ecology expects the total reimbursement the collectors will ask for, including the income transfer, will be \$14.6 million.

Note that it is unlikely that the collectors will be able to extract this much from the plans. The plans will be unwilling to pay over \$.50 per pound for collection, transport, and processing because that is all they would have to pay if they collect too little. Thus, the collectors will have to share the \$.50 per pound with the transporters and processors. Further, once a plan has collected and processed its share of CEPs they will be unwilling to pay more than \$.45 because that is all that they will be reimbursed by the other plans. In practice what this limit means is that this estimated \$14.6 million cost will have to come down to under \$11.5 million in order to meet

the maximum rate that the plans will be willing to pay. Since this is the maximum that the plans would be willing to pay, given the lowest possible costs of transport and recycling, ecology assumes that this will be the cost.

**Costs for Transporters:** The plans will hire transporters to move CEPs from collection sites to processing. Therefore, costs to the transporters will become costs to the plans. Ecology surveyed transporters and found that very few companies plan on transporting electronics. Additionally, those that were planning on this type of transport found it hard to estimate how much per pound they would have to be reimbursed to participate in a plan.

In another approach, the Washington utilities and transportation commission estimated that it would cost between \$70 and \$83 per hour to transport electronics, an average of \$76.50/hour and therefore \$1.28/minute.

Ecology then estimated the distance from each of the eighty-eight mandatory collection sites to the closest of eight cities with known processors; this was then doubled to account for a roundtrip. The average roundtrip distance from a collection site to the nearest processor was one hundred fourteen miles, or one hundred thirty-eight minutes.<sup>4</sup> Multiplying the one hundred thirty-eight minutes/roundtrip by \$1.28/minute gave an average cost of \$176.50/trip.

According to the three surveys ecology did receive, the respondents estimated an average load of 11,833 pounds per truck load. Dividing the average per trip (\$176.50) by the average weight per trip (11,833 pounds) gave a reimbursement of \$0.02 per pound for transporting electronics. Ecology estimates that transporters will transport over one million units weighing 56.5 million pounds, for a total cost of \$1.1 million.

**Costs for Processors:** The plans will hire processors to recycle materials for them. Therefore costs to the processors will become costs to the plans.

Ecology surveyed processors. Most processors currently working in Washington do more than simple processing. They offer collection or transportation services too.

There are three sets of costs which require analysis.

- The first is the cost of continuing the processing operation as they have in the past.
- The second is the incremental added costs of meeting requirements that are new for the processor.
- The third is foregone revenue for activities that the processor may be giving up if they do not get a contract with a plan.

Ecology estimated the cost of continuing operations based on current charges. Survey results<sup>5</sup> indicate a wide range of charges for processing. The reported costs range from \$0.43 per pound for one company that collects, transports, and processes down to \$0.16 per pound for another company that only does partial processing but will not continue to process under the proposed rule.

Facilities that collect and process have a different cost for collection than most collectors. If you subtract the collector costs above from their collection and processing costs, the cost runs into negative territory. They are open for business for other reasons such as repair, reuse, refurbishing, or sales of new items. Therefore, their marginal cost per unit of collection is lower and there are no costs for transportation. This

makes it difficult to decide what portion of their costs to attribute to the processing activity alone. Because of this, ecology took their cost for collection and processing and subtracted out the \$0.02 per pound for transportation and then divided the remainder of the costs for these facilities in half, arbitrarily splitting the remaining cost between collection and processing. This produced a range from \$0.11 to \$0.22 per pound and an average cost of \$0.207 per pound for processing.

The potential for export of CEPs to China provides the cap on costs against which most of these companies compete. The estimated cost for transporting to, and processing in, China is about \$0.23 per pound. The existing costs above are just within this limit.

Most processors already do most of the items required in the proposed rule. However, the rule does add new requirements for direct processors and some of these requirements were not included in the above costs for some of the processors.

For each processor the potential compliance cost is different. The items of concern included costs for: Registration, reporting, sampling, environmental health and safety management systems, buying scales, more space to operate their business.

These costs did not apply to every processor but produced a range of added costs from \$0.018 to \$0.05 per pound with an average cost of \$0.019. When we add this to the \$0.207 above, the cost rises to \$0.226 per pound.

There is a limit to what the processors can charge the plans. This cost comes close to matching the cost of transporting to, and processing in, China. Given this some plans may ship to China. Thus, not all the new or existing flow of business will come to the American processors. This does not affect the cost of the program here in Washington but may affect the unquantified cost of contamination affecting China.

Existing processors report twenty-two million pounds of recycled CEPs. Ecology has extrapolated from the pounds reported by the smaller processors to an estimated five additional collector/processors that may exist in repair shops. This would bring the total pounds currently being processed to twenty-three million. The current cost of processing these pounds is about \$5.3 million (\$0.226/lb). Ecology believes this is less than half of the total pounds of CEPs that will be processed under the rule. The estimated total pounds of recycling under the rule are expected to be 56.5 million. The cost of processing these pounds is about \$12.8 million.

These costs are comparable to costs reported by other states.<sup>6</sup>

**Table 1**

Cost Data from Other States				
State	Collectors	Transporters	Recyclers	All
California	\$0.20		\$0.28	\$0.48
Maine	\$0.12	\$0.06	\$0.19	\$0.37
Minnesota	\$0.17	\$0.05	\$0.04	\$0.27
Maryland: Computers only			\$0.05	

One processor does not expect to be able to comply with one of the components of the processor standards. They will therefore be unable to obtain a contract and this will cause a loss of approximately \$50,000.

**Costs for Sampling:** RCW 70.95N.110 requires statistically significant sampling to determine the percentage return share by brand name. The plans are required to do the sampling with an independent third party or an ecology staff member. The proposed rule includes the following:

- Ecology will develop a quarterly schedule for when sampling is done at the facilities of direct processors used by plans.
- Plans will incur costs for sampling and they must make sure that the processor's staff or their own supplemental staff are available to perform sampling with minimal disruption to normal operations.
- A third party, selected from an ecology-approved list, will observe sampling.

**Sample allocation and days:** The total necessary number of samples per year to get a 95% confidence interval and a 0.005 significance level is 10,070 units. Ecology assumes that four plans will be conducting sampling, and that six processors may handle material for plans.<sup>7</sup> Based on the proposed sampling method the total required days of sampling to get the sample size will be one hundred eight days each year.

**Staff labor costs:** Ecology assumes a sampling crew of five members will be required for each sampling day, including one manager and four staff.

Mean wage in Washington for first line supervisors/managers: \$22.29/hr<sup>8</sup>

Employer cost for benefits, management: \$13.43/hr

Total: \$35.72/hr

Mean wage in Washington for material movers, hand: \$12.39/hr<sup>9</sup>

Employer cost for benefits, material moving: \$7.31/hr

Total: \$19.70/hr

Total crew cost is \$114.60 per hour. Thus the total labor cost per 8-hour sampling day is \$916.80 per day. The cost of one hundred eight sampling days is \$99,014.40 annually.

**Third party labor costs:** Plans will also need to employ one third-party observer per sampling day. Ecology expects the plans will compensate this person similarly to a professional statistician.

Mean wage in Washington for statisticians: \$31.55/hr<sup>10</sup>

Employer cost for benefits, professional: \$13.43/hr

Total: \$44.98/hr

The total labor cost per sampling day for third-party observers is \$359.84 per day. The cost of one hundred eight sampling days is \$38,862.72 per year.

**Equipment costs:** Conducting sampling will require specialized equipment, including:

- Scale (registered with department of licensing, four hundred pound capacity) - \$1500.
- Dollies or other appropriate equipment for moving units - \$500.
- Programmable (wireless) bar code readers, printers, stickers - \$1000.
- Computer capable of running a sampling database program provided by ecology - \$700.

- Digital camera for photographing unidentifiable units - \$200.
- Maintenance and replacement costs after the first year - 10% per year.

Each plan will be required to supply equipment. Since these are sunk costs for each contractor, ecology will estimate total costs assuming four plans must purchase and maintain equipment. Total annualized<sup>11</sup> equipment costs are \$875 each year per plan, or a total of \$3500 each year.

Total sampling costs: \$141,000 per year.

**Costs for CEP Recycling Plans:** The rule requires that manufacturers participate in a plan and sets up a standard plan.

The proposed rule will allow manufacturers to opt out of the standard plan if they receive ecology approval to use an independent plan. Ecology assumes that manufacturers will only use an independent plan if it costs less. Therefore, the cost of the standard plan would be the highest cost option.

The plans must cover the cost of collection, transportation, processing, recycling and sampling for their manufacturers. These costs are included in the sections above. Plans must also submit a plan, pay a fee for review of the plan, do record keeping, participate in public outreach, and submit reports.

At the time of this writing work on the standard plan has not begun. The costs of the plan, plan review fee, record keeping, public outreach, and reports will be included in a revised SBEIS if they are larger than the place holder estimate below. The plans may have other costs, however, these are not required by the rule. As a place holder ecology assumes these requirements will cost \$100,000 per year.

**Registration Costs:** Ecology has tried to develop a simple registration process for the transporters, collectors, direct processors, and manufacturers. Ecology estimates it will take between five minutes and two hours for each company to fill out the registration form. If ecology assumes a cost of \$50 per hour, then it will cost between \$4 and \$200 for transporters, collectors, direct processors, and manufacturers to register. Manufacturers who have many brands and collectors running more than one site will need more time to fill out the form. If 200 companies require \$75 worth of time to fill out the forms this will cost \$15,000.

**Uncertainty and Analysis Results:** *Ecology Requests Comments on these Costs.*

The following variables probably generate costs that this analysis does not address.

**1. Cost of CEP recycling plan.**

The cost of collection, transportation, processing and recycling dominates all other costs. The cost is highly dependent on the number of pounds and on how competition affects the rates the collectors, transporter[s], and processors charge.

For the first five years, under the law, the maximum cost that the manufacturers will pay to the collectors, transporters and processors is \$.45 per pound because this is the reimbursement rate in the law for plans that don't collect their equivalent share. If the rates they are offered by their collectors, transporters, and processors totals more than \$0.50, then they won't collect or process very many CEPs. The range of costs reported by each component of recycling is large. Costs will shift as the market adjusts. The market should be com-

petitive if there are sufficient processors and costs could fall over the first few years. They will also pay \$.05 per pound for each pound that they under collecting administrative fees. Given that this will be an 11% increase in their recycling costs, ecology assumes the plans will try to meet their equivalent shares.

**2. Cost of Travel for Sampling:** It is unclear where the third-party observers will be traveling to observe sampling activities so we did not estimate this cost.

**Qualitative Costs:** *Ecology Requests Comments on these Costs.*

The qualitative costs of the rule include the need for many collectors and recyclers to reorganize how they do business. This is an expensive process in terms of both time and effort. For some companies their primary business is to collect and reuse parts and products. These companies also do some of the activities that constitute recycling. A few of these companies will decide to drop the recycling activity and become collectors while the rest will pay for the added requirements in the rule and will become registered direct processors. They are deciding between the added revenue from the plans for collection coupled with the loss of sales of parts for metals extraction versus the additional revenue from plan payments for recycling coupled with the cost of complying with the direct processor requirements. Two companies are trying to figure out what new niche they can fill because they don't expect the plan payments to cover their current costs and they expect they will not be able to continue to dismantle computers in order to sell parts for recycling. One of these companies has decided they will not continue processing but the other is still considering its options.

In the case of computers, more than one processor has indicated they can sell them for recycling in China for more than they receive for recycling in Washington. Some may choose to do this. As stated earlier, the downstream cost of contaminant releases in China is not known.

Retailers will have some costs because they need to look at the ecology web site before ordering CEPs to make sure the brand name is listed. At one time, ecology expected there would be some costs because some companies would not list their brands. However, compliance has been good. Retailers with new brands, who previously sold white box CEPs, will be in the program as manufacturers.

**Quantification of Costs and Ratios:** The cost of the proposed rule will be covered by manufacturers who are members of plans. The plans may find ways to reduce the costs listed above. Ecology does not know how the plans will bill their members. The costs below assume the plans will bill their manufacturers based on each manufacturers' return share. The ratio of cost per employee was calculated based on public data in Appendix 1.

<i>Comparison of Small and Large Business</i>	<i>Cost per Employee</i>	
	<i>Small Business</i>	<i>Large Business</i>
<i>Costs of the Recycling Program</i>	<i>Costs</i>	<i>Costs</i>
Costs to Plan Members	\$715.84	\$0.01
Processors dropping out	\$16,700	

**Actions Taken to Reduce the Impact of the Proposed Rule on Small Business:** Ecology considered a variety of approaches and ended with a proposed rule that sticks very closely to the requirements in the law. Most of the costs of this proposed rule are actually a transfer of costs from individuals, landfills, collectors, transporters, and processors to manufacturers. The legislature chose to require the manufacturers to internalize the costs of the recycling program in their overall costs of doing business because it would have the least impact on in-state retailers and their customers. Ecology has provided cost-minimizing features.

**(a) Reducing, modifying, or eliminating substantive regulatory requirements:**

- Processor standards evaluated early in the proposed rule development process were very costly. These have been abandoned because most plans would probably have opted to export the waste to the third world for recycling. This could have caused bankruptcies in Washington. The processor standards have been taken from the requirements in the EPA's Responsible Recycling Practices for Electronics Recyclers Facilitator Draft Strawproposal. This proposed rule is the first performance standards for electronic product processors being considered for adoption by rule in the country. By using the EPA voluntary standards we anticipate that other states that follow in Washington's footsteps will adopt similar standards. This will allow Washington's processors to compete in the national market.
- The primary locations for sampling have been shifted from collection sites to processing sites.
- The transporter standards had several costly options, which were considered. As proposed the rule does not add any additional requirements.
- Televisions and monitors would normally designate as dangerous waste. This proposed rule will allow an exemption for processors that dismantle TVs and monitors. These are granted using a federal exclusion and language from 40 C.F.R. 261.4A, 261.39A, 261.40, 261.41, and 260.10.

**(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements:**

- The forms for the application process have been simplified. The forms minimize the requirements of duplicate information.
- The companies only have to submit additional information if they are requesting placement in a different tier.
- The tier reassignment process for most small manufacturers is much less stringent than for large businesses. Manufacturers who request to be reassigned from Tier 3 or 4 do not have to provide statistically valid market share data validated by a certified public accountant.
- Ecology has attempted to minimize time and expense for all businesses by striving to allow manufacturers, collectors and transporters to register via the internet and e-mail.

**(c) Reducing the frequency of inspections:**

- There is no inspection frequency specified in the proposed rule. The primary activity prescribed in the proposed rule is third-party review of sampling that sets the return share. This activity actually protects smaller companies from entities with sufficient market share to bias the data. Ecology will select third-party sampling contractors, from which the plans can choose. The third party will become accustomed to the logos and this should speed up the sampling if questions arise. One major potential cost of the proposed rule is the possibility of moving costs from one plan to other plans by manipulating the sampling. If any plan controls more than 40% of the return share the potential gain to that plan and cost to its competitors could be over one million per year. Thus the integrity of sampling is critical. The sampling portion of the proposed rule gives the plans and processors only twenty-four hours notice. This should reduce the ability of the individual who controls throughput to the processor to game the system by manipulating the sample which arrives at the plant.

**(d) Delaying compliance timetables:**

- This would not help the companies. They need to be listed as manufacturers in order to market their product.

**(e) Reducing or modifying fine schedules for noncompliance:**

- Fine schedules are in the RCW. No modification is possible.

**(f) Any other mitigation techniques:**

- The tiered fee structure that allows companies that manufacture fewer units to contribute less for the administrative costs of this proposed rule.

The primary possible cost of this proposed rule for those who are required to comply derives from the \$0.45 per pound, which is in the law, and which must be transferred from plans that do not meet their equivalent share to plans that overmeet their equivalent share. It is unlikely that the actual cost of collection, transport, and processing will be this high. Therefore, the transfer payment has the potential to substantially raise the cost of the proposed rule to plans that underperform. By getting the data in immediately after samples are taken adjustments can be made by the plans to assure they meet their targets.

**The Involvement of Small Business in the Development of the Proposed Rule Amendments:** Ecology and the solid waste advisory committee consulted with stakeholders to gather information about the possibility of implementing and financing an electronic product collection, recycling, and reuse program. These stakeholders included small and large business that represented covered electronic product manufacturers, covered electronic product retailers, waste haulers, electronics recyclers, and charities. Other stakeholders included cities, counties, environmental organizations, public interest organizations, and other interested parties that have a role or interest in the collection, reuse, and recycling of covered electronic products.

Ecology has encouraged the participation of all entities in considering the impacts and outcomes of the proposed rules throughout the rule-making process for Phase 1 and Phase 2. Small businesses were represented on the advisory panel that helped to develop this proposed rule. This public process was open to both small and large businesses. Small businesses presented information to the committee. Further input will be encouraged during the public comment period for the proposed rule.

*Ecology requests comments on this SBEIS and any new information that may be of value in decision making.*

**The NAICS Codes of Impacted Industries:** This table lists the NAICS codes affected by the proposed rule. A more detailed listing by company is in Appendix 1.

**NAICS Codes of Affected Companies**

333293  
333313  
333315  
33411  
334111  
334113  
334119  
334210  
334220  
3343  
334310  
334413  
334419  
334613  
335110  
33993  
339932  
339999  
423410  
423430  
423620  
423990  
443112  
443120  
45211  
452112  
452910  
453310  
541511  
541512  
541519  
541618  
541840  
517110  
518210  
522298  
54511  
5614999  
811212  
811310

**Labor Impacts:** This proposed rule is unusual in that it transfers the cost of disposal from Washington citizens, businesses, and government bodies to manufacturers of TVs, computers, and monitors. There is a net income effect for Washington households, governments, and businesses.

Ecology used the 1997 OFM input output table to estimate labor impacts.<sup>12</sup> The share of the savings from not having to pay for recycling was allocated to each sector based on the share of total output. The share for education was based on the remainder of savings available. Net cost impacts for the proposed rule were included for the additional costs created by the proposed rule. The savings effect combined with the net cost impacts for specific sectors creates a net increase of approximately 343 jobs within Washington. It is likely that this effect is offset elsewhere by losses outside of Washington. This does not include any injection impact from cash flowing to Washington from outside Washington for recycling work done here because it is likely that the prices of electronics will have an offsetting increase over time.

**Note:** Due to size limitations relating to the filing of documents with the code reviser, this SBEIS does not contain the appendices that further explain ecology's analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request.

<sup>1</sup> Reported recycling total tonnage for CEPs in Washington. Survey data June 2007.

<sup>2</sup> It is unclear at this time what the relative share of CEPs from business vs. residences will be. Given that a larger share of the TVs may come from homes, ecology believes at least 45% of the pounds will be residential. However, the share for residences could be much higher.

<sup>3</sup> The mean wage in Washington for first line supervisors/managers is \$22.29/hr. We assume employer cost for benefits, management: \$13.43/hr for a total of \$35.72/hr. This is rounded up to \$50 to account for collection site overhead. This estimate may be high, however, in a setting where an office may be underutilized overhead per hour that the office is used can be higher than usual.

<sup>4</sup> [http://ops.fhwa.dot.gov/freight/freight\\_analysis/perform\\_meas/fpmtravel-time/index.htm](http://ops.fhwa.dot.gov/freight/freight_analysis/perform_meas/fpmtravel-time/index.htm) average truck speed on I-5.

<sup>5</sup> Only one known processor declined to respond.

<sup>6</sup> California data from Form 220A, <http://www.ciwmb.ca.gov/Rulemaking/EWaste/Regs061127.doc>, and <http://www.ciwmb.ca.gov/Electronics/Act2003/Retailer/Fee/>. Maine data from Consolodator data and contract information for regions 1 through 4. Minnesota data from <http://www.pca.state.mn.us/oea/plugin/ElectronicsReport.pdf>.

<sup>7</sup> Based on the plans of current processors responding to the survey.

<sup>8</sup> Bureau of Labor Statistics.

<sup>9</sup> Bureau of Labor Statistics.

<sup>10</sup> Bureau of Labor Statistics.

<sup>11</sup> Equipment cost is annualized based on a real discount rate of 2.1% and a return on capital of 8%.

<sup>12</sup> <http://www.ofm.wa.gov/economy/io/default.asp>.

A copy of the statement may be obtained by contacting Jay Shepard, Department of Ecology, Solid Waste and Financial Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7040, fax (360) 407-6102, e-mail [WA-recycles-electronics@ecy.wa.gov](mailto:WA-recycles-electronics@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jay Shepard, Department of Ecology, Solid Waste and Financial Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7040,

fax (360) 407-6102, e-mail WA-recycles-electronics@ecy.wa.gov.

July 11, 2007  
Polly Zehm  
Deputy Director

## PART I GENERAL REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-020 Applicability.** This chapter applies to:

- (1) Any manufacturer, as defined in this chapter.
- (2) The authority or authorized party for a covered electronic product (CEP) recycling plan.
- (3) Any person who collects ~~((or transports))~~ covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.
- ~~((3))~~ (4) Any person who transports covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.
- (5) Any person who directly processes covered electronic products (CEPs) for a CEP recycling plan approved under this chapter.
- (6) Any retailer that offers for sale or sells electronic products and covered electronic products (CEPs) in or into Washington state.
- (7) Any local government where covered electronic product (CEP) recycling services are provided.
- (8) Any nonprofit charitable organization that collects covered electronic products (CEPs) in Washington state.
- (9) Any household, charity, school district, small business, or small government (covered entities) that wants to recycle unwanted covered electronic products (CEPs).

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-030 Definitions.** "Authority" means the Washington materials management and financing authority.

"Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

"Board" means the board of directors of the Washington materials management and financing authority.

"Brand" means a name used to identify an electronic product in the consumer marketplace which attributes the electronic product to the owner of the name as the manufacturer.

"Brand label" typically includes but is not limited to name, logos, trademarks, and other visual elements including fonts, color schemes, shapes, symbols, and icons, which, when set in a special typeface or arranged in a particular way, differentiate electronic products by their manufacturers and brand owners.

"Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Certified" means certified by signature on a form or other "hard copy," or by electronic signature or certification by a means implemented and approved by ecology, to be sent by mail or faxed or otherwise submitted to ecology.

"Collection services" include drop-off collection sites or alternative collection services such as residential at-home pick-up services, curbside collection, or premium services such as those provided when performing system up-grades at small businesses.

"Collector" means an entity that is licensed to do business in Washington state and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets ~~((minimum standards that may be developed by ecology))~~ the registration and collector performance standards requirements in Part IV of this chapter.

"Computer" means a machine, used by one user at a time, designed for manipulating data according to a list of instructions known as a program, and are generally known as desktops, laptops, and portable computers. "Computer" does not include any of the following:

- (a) A machine capable of supporting two or more work stations simultaneously for computing;
- (b) Computer servers marketed to professional users; or
- (c) Retail store terminals or cash registers, used at customer checkout in the retail industry.

"Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, processing and recycling services, in whole or in part, that will be provided to the citizens of Washington state within service areas as described in the approved standard plan.

"Covered electronic product" or "CEP" includes any one of the following four types of products that has been used in Washington state by any covered entity, regardless of original point of purchase:

- (a) Any monitor having a viewable area greater than four inches when measured diagonally;
- (b) A desktop computer;
- (c) A laptop or a portable computer; or
- (d) Any video display device having a viewable area greater than four inches when measured diagonally.

"Covered electronic product" does not include:

- (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;
- (b) Monitoring and control instruments or systems;
- (c) Medical devices;
- (d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;



(e) Equipment used in the delivery of patient care in a health care setting;

(f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or

(g) Hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

**"Covered entity"** means any household, charity, school district, small business, or small government located in Washington state.

**"Curbside service"** means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

**"Desktop"** is a computer designed for nonportable use.

**"Direct processor"** means a processor contracted with a CEP recycling plan to provide processing services for the plan.

**"Ecology"** means the department of ecology.

**"Electronic product"** includes any monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or portable computer; or any video display device having a viewable area greater than four inches when measured diagonally.

**"Equivalent share"** means the weight in pounds of covered electronic products identified for an individual manufacturer as described in this chapter.

**"Existing manufacturers"** are those entities whose covered electronic products are offered for sale or sold in or into Washington state, through any sales method, as of ~~(the effective date of this chapter)~~ December 8, 2006.

**"Household"** means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

**"Implement"** or **"plan implementation"** means that collection, transportation, processing, and recycling services and other plan requirements are fully operational as described in the approved CEP recycling plan.

**"Independent plan"** means a plan for the collection, transportation, processing and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

**"Laptop"** is a computer.

**"Manufacturer"** means the person who:

(a) Has legal ownership of the brand, brand-name or cobrand of covered electronic products sold in or into Washington state;

~~(b) ((Imports, or sells at retail, electronic products and meets (a) of this subsection; or~~

~~(e)) Imports, or sells at retail~~ an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America~~((-)); or~~

~~((d) A retailer may elect to register, in lieu of the importer, as the manufacturer when the manufacturer does~~

~~not have a physical presence in the United States;)) (c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer.~~

**"Manufacturers ((who have never sold CEPs)) whose CEPs are not directly sold in or into Washington state"** are those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose CEP brand names ~~((of covered electronic products are represented in the Washington state return share))~~ are identified on the return share list or their CEPs are returned for recycling by a covered entity.

**"Manufacturers who previously manufactured"** are those entities that previously manufactured covered electronic products but no longer do so and whose brand names of CEPs are ~~((represented in the Washington state return share))~~ identified on the return share list or their CEPs are returned for recycling by a covered entity.

**"Monitor"** is a video display device without a tuner that can display pictures and sound and is used with a computer.

**"New entrant"** means:

(a) A manufacturer of televisions that have been sold in Washington state for less than ten consecutive years; or

(b) A manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in Washington state for less than five consecutive years;

(c) However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is ~~((not))~~ considered an existing manufacturer and not a new entrant for purposes of this chapter.

**"New manufacturers to Washington state"** are those entities whose covered electronic products are offered for sale or sold in or into Washington state for the first time after ~~((the effective date of this chapter))~~ December 8, 2006. These manufacturers become existing manufacturers for all program years after participation the first year.

**"Offering for sale"** means providing electronic products for purchase, in or into Washington state, regardless of sales method.

**"Orphan product"** means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest, or is a brand for which ecology cannot identify an owner.

**"Person"** means any individual, business, manufacturer, transporter, collector, processor, retailer, charity, non-profit organization, or government agency.

**"Plan"** means a CEP recycling plan.

**"Plan's equivalent share"** means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

**"Plan's return share"** means the sum of the return shares of each manufacturer participating in that plan.

**"Portable computer"** is a computer.

**"Premium service"** means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households or any handling

requirements imposed by the CEP owner or collector in excess of those required in this chapter. **"Premium service"** does not include curbside service.

**"Processing facility"** means a facility where the processing of CEPs for a plan is conducted by a direct processor.

**"Processing services"** means disassembling, dismantling, or shredding electronic products to recover materials contained in the CEPs received from registered collectors or transporters and prepare those materials for reclaiming, reuse, or refurbishment in accordance with processing standards established by this chapter.

**"Processor"** means an entity:

(a) Engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming ~~((or))~~, reuse, or refurbishment in new products in accordance with processing standards established by this chapter ~~((and ecology. A processor may also))~~;

(b) Prepares materials originating from CEPs for market as a commodity; and

(c) May salvage ~~((parts))~~ components to be used in new or refurbished products.

**"Product type"** means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

**"Program"** means the collection, transportation, processing and recycling activities conducted to implement an independent plan or the standard plan. Programs can vary for different areas of the state.

**"Program year"** means each full calendar year after the program has been initiated.

**"Recycling"** means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. **"Recycling"** does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

**"Refurbish"** means to repair a used CEP in order to restore or improve it so that it may be used for the same purpose for which it was originally designed.

**"Residual"** means leftover materials from processing CEPs that are sent by a processor to a disposal facility.

**"Retailer"** means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is either reused products or a wholesale transaction with a distributor or a retailer.

**"Return share"** means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by ecology.

**"Reuse"** means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used, as is, for the same purpose for which it was originally purchased.

**"Sell"** or **"sold"** means an electronic product is purchased regardless of sales method.

**"Small business"** means a business employing less than fifty people.

**"Small government"** means a city in Washington state with a population less than fifty thousand, a county in Washington state with a population less than one hundred twenty-five thousand, and special purpose districts in Washington state.

**"Standard plan"** means the plan for the collection, transportation, processing and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

**"Television"** is an enclosed video display device with a tuner able to receive and output frequency waves or digital signals to display pictures and sounds.

**"Transporter"** means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

**"Unwanted electronic product"** means a covered electronic product that has been discarded or is intended to be discarded by its owner.

**"White box manufacturer"** means a person who manufactured unbranded covered electronic products offered for sale in Washington state within ten consecutive years prior to a program year for televisions or within five consecutive years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

**"Video display devices"** include units capable of presenting images electronically on a screen, with a viewable area greater than four inches when measured diagonally, viewed by the user and may include cathode ray tubes, flat panel computer monitors, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that exist or may be developed. Televisions and monitors are video display devices.

## PART II

### MANUFACTURER REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-200 Manufacturers ~~((registration))~~ who must register and participate in a CEP recycling plan. ~~((Registration:~~**

~~(1) A manufacturer is registered under this chapter when:~~  
~~(a) Ecology has determined the manufacturer's registration form is complete and accurate; and~~

~~(b) The manufacturer has paid their required administrative fee.~~

~~(2) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.~~

~~(3) The following manufacturers must register with ecology:~~

<b>Type of Manufacturer</b>		<b>Initial Registration Due Date</b>
<b>Existing manufacturers</b>	Those entities whose CEPs are offered for sale or sold in or into Washington state, as of the effective date of this chapter.	On or before January 1, 2007.
<b>New manufacturers to Washington state</b>	Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after the effective date of this chapter.	Prior to the offering for sale of their CEPs for sale in/intro WA.
<b>Manufacturers who have never sold CEPs</b>	Those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose brand names of covered electronic products are represented in the Washington state return share.	Within sixty days of ecology sending notice that their brand names were found in the return share.
<b>Manufacturers who previously manufactured</b>	Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are represented in the Washington state return share.	Within sixty days of ecology sending notice that their brand names were found in the return share.

(4) **Manufacturer registration form:** The manufacturer must use the manufacturer registration form provided by ecology which must include all of the following:

- (a) The name, contact, and billing information of the manufacturer;
- (b) The manufacturer's brand names of CEPs, including:
  - (i) All brand names sold in Washington state in the past, including "years sold";
  - (ii) All brand names currently being sold in Washington state, including the year the manufacturer started using the brand name; and
  - (iii) All brand names the manufacturer manufactures but does not have legal ownership of the brand;

(e) When a word or phrase is used as the label the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

(d) When a logo, mark, or image is used as a label, the manufacturer must include a graphic representation of the logo or image and a general description of the different ways in which it may appear on the manufacturer's electronic products;

(e) The method or methods of sale used in or into Washington state;

(f) Recycling plan participation information; and

(g) Signature of the responsible individual. The registration form must be signed by the individual responsible for implementing the manufacturer's requirements under this chapter. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.

(5) **Submitting the registration form:** The manufacturer must either submit the:

(a) Form via e-mail or internet service; or

(b) Original of the registration form to one of the following addresses:

For U.S. Postal Service:  
 Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 P.O. Box 47600  
 Olympia, WA 98504-7600  
 Or

For Courier:  
 Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 300 Desmond Drive  
 Lacey, WA 98503

(6) **Administrative fee:**

(a) All manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-210 Administrative fee).

(b) Starting in 2007, ecology will send out billing statements by November 1 of each year to all registered manufacturers. The billing statement will include the amount of the administrative fee owed by the manufacturer.

(c) New manufacturers must send ecology the required administrative fee so that ecology receives the fee within sixty days of the date on the billing statement.

(7) **Submitting the administrative fee:**

(a) The manufacturer must send ecology the appropriate administrative fee so that ecology receives it no later than January 1 of each calendar year.

(b) The manufacturer must send payment to the following address:

Department of Ecology  
 Electronic Product Recycling Program  
 P.O. Box 5128  
 Lacey, WA 98509-5128

~~(8) **Registration review and status:** Within five business days of receiving a manufacturer registration form and the required administrative fee, ecology will post the manufacturer's name on a list called "Manufacturer Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of manufacturers, their brand names and their registration status. Each manufacturer on the list will be assigned to one of the following registration status categories:~~

~~(a) **Pending** means ecology has received the appropriate manufacturer's administrative fee and is reviewing the manufacturer's registration form. The manufacturer's CEPs are allowed to be sold or offered for sale in or into Washington state while in "pending" status.~~

~~(i) If the form is complete and accurate, ecology will change the manufacturer's status from "pending" to "in compliance."~~

~~(ii) If the form is not complete and accurate, ecology will send notice, via certified mail, to the manufacturer identifying what corrections and additional information is needed, and requesting a revised form. The manufacturer will have thirty days from receipt of the notice to submit to ecology a revised registration form. If the form is corrected and the required additional information is submitted, ecology will change the manufacturer's status from "pending" to "in compliance."~~

~~(iii) If the form is not corrected, or the required additional information is not submitted, within thirty days, ecology will change the manufacturer's status from "pending" to "in violation."~~

~~(b) **Registered** or "in compliance" means ecology has reviewed the manufacturer registration form and determined the form is complete and accurate and the manufacturer has paid the required administrative fee. The manufacturer's CEPs are allowed to be sold or offered for sale in or into Washington state.~~

~~(c) **In violation** means the manufacturer is in violation of this chapter.~~

~~(9) **Annual registration:** Manufacturers must submit their annual registration renewal form and required adminis-~~

~~trative fee to ecology no later than January 1 of each calendar year.~~

~~(10) **Registration updates:** A manufacturer must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.~~

~~(11) **Registration violation:** As of January 1, 2007, it is a manufacturer violation if either a manufacturer or retailer offers for sale or sells the manufacturer's CEPs in or into Washington state and the manufacturer is not registered as required above. When a manufacturer registration violation occurs:~~

~~(a) Ecology will assign the manufacturer to the "in violation" category on the "Manufacturer Registration List for the Electronic Product Recycling Program";~~

~~(b) The manufacturer's CEPs cannot be sold or offered for sale in Washington state; and~~

~~(c) The manufacturer is subject to penalties under WAC 173-900-600.~~

~~(12) **Corrective actions:**~~

~~(a) If a manufacturer is in "in violation" status, ecology will not return them to "pending" status while the manufacturer corrects the violations.~~

~~(b) If ecology changes a manufacturer to "in violation" as a result of a violation, then in order to once again be listed as "in compliance" on the "Manufacturer Registration List for the Electronic Product Recycling Program," the manufacturer must:~~

~~(i) Submit their registration form and ecology must determine the form is complete and accurate;~~

~~(ii) Pay their appropriate administrative fee;~~

~~(iii) Correct any other violations; and~~

~~(iv) Pay or settle any penalties due to ecology (WAC 173-900-600).~~

~~(13) **Notification to retailers:** A manufacturer may notify retailers, in writing, if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.) (1) The following manufacturers must register with ecology and participate in a CEP recycling plan:~~

<u>Type of Manufacturer</u>		<u>Initial Registration Due Date</u>	<u>Must be Listed as a Plan Participant By:</u>
<u>Existing manufacturers</u>	<u>Those entities whose CEPs are offered for sale or sold in or into Washington state, as of December 8, 2006.</u>	<u>On or before January 1, 2007.</u>	<u>No later than February 1, 2008.</u>
<u>New manufacturers to Washington state</u>	<u>Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after December 8, 2006.</u>	<u>Prior to the offering for sale of their CEPs for sale in or into WA.</u>	<u>Within thirty days of ecology approving registration.</u>
<u>Manufacturers whose CEPs are not directly sold in or into Washington state</u>	<u>If a CEP brand is identified in the Washington state return share list or is returned for recycling by a covered entity, a manufacturer must register even if that manufacturer has never sold or offered for sale the identified brands directly in or into Washington state.</u>	<u>Within sixty days of receiving notice from ecology that the manufacturer must register.</u>	<u>Within thirty days of ecology approving registration.</u>

<u>Type of Manufacturer</u>		<u>Initial Registration Due Date</u>	<u>Must be Listed as a Plan Participant By:</u>
<u>Manufacturers who previously manufactured</u>	<u>Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are identified in the Washington state return share list or their CEPs are returned for recycling by a covered entity.</u>	<u>Within sixty days of receiving notice from ecology that the manufacturer must register.</u>	<u>Within thirty days of ecology approving registration.</u>

(2) A manufacturer is registered under this chapter when:

(a) Ecology has determined the manufacturer's registration form is complete and accurate; and

(b) The manufacturer has paid the required administrative fee (see WAC 173-900-280).

(3) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

(4) A manufacturer must participate in either the standard plan or, if approved, an independent plan.

(5) In the event that the plan fails to meet the manufacturers' obligations under this chapter, each manufacturer participating in the plan retains responsibility and liability, including financial liability, for the collection, transportation, processing, and recycling of the manufacturer's equivalent share of CEPs as described in this chapter.

NEW SECTION

**WAC 173-900-205 Manufacturer's brands of CEPs that can be offered for sale or sold in or into Washington state.** (1) In order for a manufacturer's brands of CEPs to be offered for sale or sold in or into Washington state, the manufacturer's name and brand names must be listed on the "manufacturer registration list" as "in compliance" or "pending" status.

(2) To be in "in compliance" status a manufacturer must:

(a) **As of January 1, 2007:**

(i) Register annually with ecology;

(ii) Update registration information if it changes;

(iii) Label the manufacturer's CEPs with the manufacturer's brand name(s) included in the manufacturer's registration information.

(b) **As of February 1, 2008:**

(i) Register annually with ecology;

(ii) Update registration information if it changes;

(iii) Label the CEPs with the manufacturer's brand name(s) included in the manufacturer's registration information; and

(iv) Participate in a CEP recycling plan approved, or submitted for approval, by ecology.

<u>Manufacturer Status</u>	<u>Can the manufacturer's brands of CEPs be offered for sale or sold in or into Washington state?</u>	<u>Explanation</u>
Pending	Yes	"Pending" means ecology has received the manufacturer's registration form and administrative fee and ecology is reviewing the form.
In compliance	Yes	"In compliance" means ecology has approved the manufacturer's registration, the manufacturer is participating in a plan, and is complying with the requirements in this chapter.
In violation	No	"In violation" means the manufacturer is in violation of the requirements in this chapter.
Manufacturer's <b>brand name</b> is not on the "manufacturer registration list"	No	If a manufacturer's brand name is not on the "manufacturer registration list," that brand must not be offered for sale or sold in or into Washington state.

Manufacturer Status	Can the manufacturer's brands of CEPs be offered for sale or sold in or into Washington state?	Explanation
Manufacturer's name is not on the "manufacturer registration list"	No	If a manufacturer's name is not on the "manufacturer registration list," none of the manufacturer's brands of CEPs can be offered for sale or sold in or into Washington.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-210 ((Administrative fee.)) Required brand labeling for manufacturers.** (1) ~~((Legislative mandate.))~~ The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans:

**(2) Data:**

(a) Ecology will use data collected to extrapolate Washington market shares, and to calculate manufacturer unit sales. Ecology will use market share and/or CEP unit sales to assign each manufacturer to an administrative fee tier. Ecology may use any of, or a combination of, the following data:

- (i) Generally available market research data;
- (ii) CEP unit data supplied by manufacturers about brands they manufacture or sell; or
- (iii) CEP unit data supplied by retailers about brands they sell.

(b) Ecology may put the data directly into the data base. Ecology will aggregate the data in sets of at least three companies for confidentiality when published.

**(3) Distribution:**

(a) Ecology will establish a fee schedule to distribute administrative fees on a sliding scale, based on tiers, that are representative of annual sales of CEPs in Washington state.

(b) Fees will be distributed to each tier in order to spread costs based on the estimated unit sales given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(c) Tier 7 will have no fee amount associated with it, but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-200).

Tiers	Manufacturer's Market Share
Tier 1	5% or greater
Tier 2	1% to < 5%
Tier 3	0.1% to < 1%

Tiers	Manufacturer's Market Share
Tier 4	0.03% to < 0.1%
Tier 5	0.01% to < 0.03%
Tier 6	0% but < 0.01%
Tier 7	Manufacturers who previously manufactured

**(4) Calculating the administrative fee:** Ecology will calculate the tiers based on the combined unit sales of CEPs sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state.

**(a) Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recycling program by the legislature. Year one includes start-up costs and funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.

**(b) Administrative fee tier calculations for program year 2008 and future years:**

(i) For administrative fees due January 1, 2008, and thereafter, ecology will base the fee on the expenditure authority for the electronic product recycling program which for program year 2008 is two hundred twenty-one thousand five hundred dollars.

(ii) The total administrative fee amount will be adjusted biannually by the FGF as calculated under chapter 43.135 RCW (Fee<sub>FGF</sub>):

**(5) Tier placement:**

(a) **Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received by ecology. If ecology has no data, ecology will place the manufacturer in Tier 4.

(b) **New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. Ecology will assign these manufacturers to Tier 4 for the second and future program years unless ecology has CEP unit data.

(c) **Manufacturers who have never sold CEPs:** Ecology will assign these manufacturers to Tier 6.

(d) **Manufacturers who previously manufactured:** Ecology will assign these manufacturers to Tier 7.

**(6) Publication of tier assignment:**

(a) **Tiers for fees due January 1, 2007:** Ecology will publish the final tier schedule on ecology's web site by November 15, 2006, for fees due January 1, 2007. The tiers will be based on data available to ecology and received from manufacturers and retailers prior to November 9, 2006. When providing data to ecology, manufacturers must meet the requirements of subsection (7)(a) of this section prior to November 9, 2006.

(b) **Tiers for fees due January 1, 2008, and future years:** For administrative fees for 2008, and future years, ecology will publish a preliminary tier schedule for review and a final tier schedule.

(i) **Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.

(A) This preliminary tier schedule will include the tiers and a list of manufacturers assigned to each tier.

(B) Ecology will also publish the estimated total percentage share of the market attributable to each tier and a list of the brand names for each manufacturer, which form the basis for the estimates used in the tier assignment.

(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)

(ii) ~~Final tier schedule:~~ Ecology will publish the agency's final decision on the final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

**(7) Tier reassignment requests:**

(a) ~~Requests for tier reassignment submitted for fees due January 1, 2007.~~ Manufacturers may request to be assigned to a different tier for fees due January 1, 2007.

(i) To submit a request for tier reassignment the manufacturer must, on or before November 9, 2006, do one of the following:

(A) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior year, in or into Washington state;

(B) Send a written letter to ecology including the number of units of CEPs sold in the prior year in or into Washington state; or

(C) Submit a complete tier request form available on ecology's web site.

(ii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iii) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

(b) ~~Requests for tier reassignment for fees due after January 1, 2007.~~ If submitting a tier reassignment request:

(i) ~~Existing manufacturers~~ must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.

(ii) ~~New manufacturers~~ may not submit a tier reassignment request for their first program year. Requests for tier reassignment for future program years must follow the process for existing manufacturers.

(iii) ~~Manufacturers who have never sold CEPs~~ may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(iv) ~~Manufacturers who previously manufactured~~ may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(e) ~~Submitting the request:~~ To request tier reassignment, the manufacturer must do one of the following:

(i) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior calendar year, in or into Washington state; or

(ii) Send a written letter to ecology including the number of units of CEPs, sold in the prior calendar year, in or into Washington state.

(iii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in or into Washington state unless the electronic product is labeled with the manufacturer's brand.

(2) The label must be permanently affixed and readily visible.

(3) In-state retailers in possession of unlabeled, or white box, electronic products on January 1, 2007, may exhaust their stock through sales to the public.

NEW SECTION

**WAC 173-900-215 Initial CEP manufacturer registration.**

**Step 1: Complete the manufacturer registration form.**

(1) CEP manufacturers must use the on-line or paper manufacturer registration form provided by ecology.

(2) A manufacturer must provide all of the following information to ecology:

(a) The name, contact, and billing information of the manufacturer;

(b) The manufacturer's brand names of CEPs, including:

(i) All brand names sold in Washington state in the past, including the years each brand was sold;

(ii) All brand names currently being sold in Washington state, including the year the manufacturer started using the brand name;

(c) All brand names of electronic products for which the registrant assembles but does not have legal ownership of the brand name placed on the product;

(d) When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

(e) When a logo, mark, or image is used as a label, the manufacturer must include either a graphic representation of the logo, mark, or image and a general description of the logo, mark, or image as it appears on the manufacturer's electronic products;

(f) The method or methods of sale used in or into Washington state; and

(g) CEP recycling plan participation information.

**Step 2: Submit the manufacturer registration form.**

(3) The individual responsible for implementing the manufacturer's requirements under this chapter must sign the

form. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.

(4) The manufacturer must submit the form using one of the three options below:

(a) The on-line registration form;

(b) The original paper version through the U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

(c) The original paper version through a courier:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

### Step 3: Pay the administrative fee.

(5) The following manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-280 and ecology's web site for administrative fee schedule):

(a) Existing manufacturers;

(b) New manufacturers.

(6) Starting in 2007, ecology will send out billing statements by November 1 of each year to all registered manufacturers. The billing statement will include the amount of the administrative fee owed by the manufacturer.

(7) **New manufacturers** must send ecology the required administrative fee so that ecology receives the fee within sixty days of the date on the billing statement.

(8) **Existing manufacturers** must send ecology the appropriate administrative fee so that ecology receives it no later than January 1 of each calendar year.

(9) The manufacturer must send payment to one of the following addresses:

For U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling Program  
P.O. Box 5128  
Lacey, WA 98509-5128

For Courier to:

Department of Ecology  
Attn: Fiscal Cashiering  
300 Desmond Drive  
Lacey, WA 98503

### NEW SECTION

**WAC 173-900-220 How manufacturers know if they are registered.**

**Step 1: Ecology review of the manufacturer registration form.**

(1) Within five business days of ecology receiving a manufacturer registration form and the required administrative fee (see WAC 173-900-280), ecology will:

(a) Place the manufacturer in "pending" status on the "manufacturer registration list"; and

(b) Place the manufacturer's "currently owned and manufactured" brand names included on the form on the "manufacturer registration list."

(2) The manufacturer's brands of CEPs included on the "manufacturer registration list" can be sold or offered for sale in or into Washington state.

(3) Ecology will review the form to decide if the form is complete and accurate.

(4) If the form is not complete and accurate, or the manufacturer has not paid the required administrative fee, ecology will contact the manufacturer to request one or both of the following:

(a) A revised form that contains the complete and missing information;

(b) The unpaid administrative fee.

(5) The manufacturer must submit the administrative fee and all requested information within thirty days from the day ecology contacted the manufacturer.

**Step 2: Approval or denial of manufacturer registration.**

(6) **Approval.**

(a) Approval means that ecology has received the manufacturer's administrative fee and has decided the registration form is complete and accurate.

(b) If ecology approves the manufacturer's registration:

(i) Ecology will change the manufacturer's status from "pending" to "in compliance" on the "manufacturer registration list"; and

(ii) The manufacturer's registered brands of CEPs can be offered for sale or sold in or into Washington state.

(7) **Denial.**

(a) Denial means that ecology either did not receive the administrative fee or ecology has decided the form is not complete and accurate and the manufacturer has not submitted the revised information as requested.

(b) If ecology denies a manufacturer's registration:

(i) Ecology will either change the manufacturer's status from "pending" to "in violation" on the "manufacturer registration list" or remove the manufacturer's name from the list;

(ii) Ecology will notify the transporter of the denial; and

(iii) The manufacturer's brands of CEPs are not allowed to be offered for sale or sold in or into Washington state.

### NEW SECTION

**WAC 173-900-230 Annual manufacturer registration.** (1) After initial registration, to remain registered, manufacturers must submit a registration form and required administrative fee to ecology each year.

(2) Annual registration is due no later than January 1 of each calendar year for the next program year.

(3) The manufacturer must submit the annual registration form using one of the options below:

(a) Submit the manufacturer's on-line registration form;



(b) Submitting a paper version through:

U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Courier Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(4) Ecology will review manufacturer registration forms submitted for annual registration under the process described in WAC 173-900-220.

#### NEW SECTION

**WAC 173-900-240 Updates to manufacturer registration.** (1) If there are any changes to the information on the manufacturer's registration approved by ecology, a registered manufacturer must submit an updated form within fourteen days of when any change occurs.

(2) The manufacturer must submit updates using one of the options below:

- (a) Updating the manufacturer's registration information using the on-line form;
- (b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(3) Ecology will review manufacturer's updated registration forms under the process described in WAC 173-900-220.

#### NEW SECTION

**WAC 173-900-250 Ecology determination of manufacturer compliance.** (1) Beginning January 1, 2007, ecology may inspect any retailer's CEP inventory offered for sale in or into Washington state to determine if the requirements in this chapter are met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedure in Part II (for manufacturers) and Part VII (for retailers) of this chapter.

(2) Beginning January 1, 2007, ecology may check any retailer's CEP inventory offered for sale in or into Washington state to determine if brand labeling requirements in WAC 173-900-210 have been met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedure in Part II (for manufacturers) and Part VII (for retailers) of this chapter.

#### NEW SECTION

**WAC 173-900-255 Manufacturer violations.** (1) A manufacturer is in violation of this chapter when there is a:

- (a) Registration violation;
- (b) Labeling violation;
- (c) Plan violation; or
- (d) Return share violation.

#### **Manufacturer registration violations:**

(2) A manufacturer is in "registration violation" of this chapter if any of the following occurs:

(a) The manufacturer does not submit an updated registration form within fourteen days of changes in the registration information.

(b) A manufacturer offers for sale or sells its brand of CEPs in or into Washington state and:

(i) The manufacturer's brand is not listed as in "in compliance" or "pending" status on the "manufacturer registration list"; or

(ii) The manufacturer's brand name is not listed as part of the manufacturer's registration.

(c) A retailer offers for sale or sells a manufacturer's brand of CEP in or into Washington state and on the date the products were ordered from the manufacturer or their agent:

(i) The manufacturer's brand was not listed as in "in compliance" or "pending" status on the "manufacturer registration list";

(ii) The brand name of the CEP was not listed as in "in compliance" or "pending" status on the "manufacturer registration list."

(3) A manufacturer may notify retailers, in writing, if the manufacturer's brand of CEPs cannot be offered for sale or sold in or into Washington state. The manufacturer must provide ecology a copy of this notice to avoid a registration violation.

(4) Each unregistered CEP unit offered for sale or sold is a separate violation by the manufacturer.

#### **Manufacturer labeling violation:**

(5) A manufacturer is in "labeling violation" of this chapter if any of the following occurs:

(a) The manufacturer offers for sale or sells a manufacturer's electronic product in or into Washington state that does not have a permanently affixed or readily visible label with the manufacturer's brand name.

(b) A retailer offers for sale or sells the manufacturer's electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

(6) Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation by the manufacturer.

**Manufacturer plan violation:**

(7) Starting February 1, 2008, a manufacturer is in "plan violation" of this chapter if any of the following occurs, the manufacturer:

- (a) Has not met the manufacturer's financial obligations to its plan; or
- (b) Is not participating in a plan or complying with the manufacturer's responsibilities as described in their ecology approved plan; or
- (c) Is participating in a plan that is not fully implemented and the authority or authorized party has not taken action approved by ecology to correct violations.

**Return share violation:**

(8) It is a "return share violation" when the manufacturer's brands of CEPs are identified on ecology's return share list and:

- (a) Within sixty days of receiving notice from ecology, the manufacturer has not registered with ecology; or
- (b) Within thirty days of registering is not participating in a plan.

NEW SECTION

**WAC 173-900-260 Warnings and penalties for manufacturer violations.**

**Table 260  
Manufacturer Warning and Penalties**

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Registration Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Labeling Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Plan Violation	Warning Letter	Up to \$10,000	Up to \$10,000
Return Share Violation	Warning Letter	Up to \$10,000 plus the percentage of their return share of the costs of operating the standard plan.	Up to \$10,000 plus the percentage of their return share of the costs of operating the standard plan.

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail, for any violation, the warning will include a copy of the requirements to let the manufacturer know what the manufacturer must do to be in compliance status.

**Penalties:**

(2) **First penalties:** If the manufacturer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a

first penalty, as defined in Table 260 above and do one of the following:

- (a) Change the manufacturer's status to "in violation";
- (b) Add the manufacturer to the "manufacturer registration list" and put them in "in violation."
- (3) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 260 no more often than every thirty days for the same violation.
- (4) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(5) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-270 Corrective actions for manufacturer violations.** (1) If a manufacturer is in "in violation" status, ecology will not return them to "in compliance" status until the manufacturer corrects the violation.

**Corrective actions for manufacturer registration violations:**

- (2) To correct a registration violation the manufacturer must:
  - (a) Provide evidence that the violation has been corrected; and
  - (b) Pay or settle any penalties to ecology.

**Corrective actions for manufacturer labeling violations:**

- (3) To correct a labeling violation the manufacturer must:
  - (a) Meet the requirements in WAC 173-900-210;
  - (b) Correct any other violations; and
  - (c) Pay or settle any penalties due to ecology.

**Corrective actions for plan violations:**

- (4) To correct a plan violation a manufacturer must:
  - (a) Join and participate in an approved plan or a plan currently under review for approval;
  - (b) Correct any other violations; and
  - (c) Pay or settle any penalties due to ecology.

**Corrective actions for return share violations:**

- (5) To correct a return share violation the manufacturer must:
  - (a) Join and participate in an approved plan or a plan currently under review for approval;
  - (b) Correct any other violations; and
  - (c) Pay or settle any penalties due to ecology.

NEW SECTION

**WAC 173-900-280 Administrative fee.** (1) **Legislative mandate.** The administrative fee covers ecology's administrative costs related to implementing the electronic product

recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.

**(2) Data.**

(a) Ecology will use data collected to extrapolate Washington market shares, and to calculate manufacturer unit sales. Ecology will use market share and/or CEP unit sales to assign each manufacturer to an administrative fee tier. Ecology may use any of, or a combination of, the following data:

- (i) Generally available market research data;
- (ii) CEP unit sales data supplied by manufacturers for brands they manufacture or sell; or
- (iii) CEP unit sales data supplied by retailers for brands they sell.

(b) Ecology may put the data directly into the data base. Ecology will aggregate the data in sets of at least three companies for confidentiality when published.

**(3) Distribution:**

(a) Ecology will establish a fee schedule to distribute administrative fees on a sliding scale, based on tiers, that are representative of annual sales of CEPs in Washington state.

(b) Fees will be distributed to each tier in order to spread costs based on the estimated unit sales given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(c) Tier 7 will have no fee amount associated with it, but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-215) and join a plan.

Tiers	Manufacturer's Market Share
Tier 1	5% or greater
Tier 2	1% to < 5%
Tier 3	0.1% to < 1%
Tier 4	0.03% to < 0.1%
Tier 5	0.01% to < 0.03%
Tier 6	< 0.01%
Tier 7	Manufacturers who previously manufactured Manufacturers whose CEPs are not directly sold in or into Washington state

**(4) Calculating the administrative fee:** Ecology will calculate the tiers based on the combined unit sales of CEPs sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state.

**(a) Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recycling program by the legislature. Year one includes start-up costs and it funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.

**(b) Administrative fee tier calculations for program year 2008 and future years:**

(i) For administrative fees due January 1, 2008, and thereafter, ecology will base the fee on the expenditure authority for the electronic product recycling program which for program year 2008 is two hundred twenty-one thousand five hundred dollars.

(ii) The total administrative fee amount will be adjusted biannually by the fiscal growth factor (FGF) as calculated under chapter 43.135 RCW (Fee<sub>FGF</sub>).

**(5) Tier placement:**

**(a) Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received as described in subsection (2) of this section. If ecology has no data, ecology will place the manufacturer in Tier 4.

**(b) New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. Ecology will assign these manufacturers to Tier 4 for the second and future program years unless CEP unit sales data indicates another tier is appropriate.

**(c) Manufacturers whose CEPs are not directly sold in or into Washington state:** Ecology will assign these manufacturers to Tier 7.

**(d) Manufacturers who previously manufactured:** Ecology will assign these manufacturers to Tier 7.

**(6) Publication of tier assignment:**

**(a) Tiers for fees due January 1, 2007:** Ecology will publish the final tier schedule on ecology's web site by November 15, 2006, for fees due January 1, 2007. The tiers will be based on data available to ecology and received from manufacturers and retailers prior to November 9, 2006. When providing data to ecology, manufacturers must meet the requirements of subsection (7)(a) of this section prior to November 9, 2006.

**(b) Tiers for fees due January 1, 2008, and future years:** For administrative fees for 2008, and future years, ecology will publish a preliminary tier schedule for review and a final tier schedule.

**(i) Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.

(A) This preliminary tier schedule will include the tiers and a list of manufacturers assigned to each tier.

(B) Ecology will also publish the estimated total percentage share of the market attributable to each tier and a list of the brand names for each manufacturer, which form the basis for the estimates used in the tier assignment.

(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)

**(ii) Final tier schedule:** Ecology will publish the agency's final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

**(7) Tier reassignment requests:**

**(a) Requests for tier reassignment submitted for fees due January 1, 2007.** Manufacturers may request to be assigned to a different tier for fees due January 1, 2007.

(i) To submit a request for tier reassignment the manufacturer must, on or before November 9, 2006, do one of the following:

(A) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior year, in or into Washington state;

(B) Send a written letter to ecology including the number of units of CEPs sold in the prior year in or into Washington state; or

(C) Submit a complete tier request form available on ecology's web site.

(ii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iii) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

(b) **Requests for tier reassignment for fees due after January 1, 2007.** If submitting a tier reassignment request:

(i) **Existing manufacturers** must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.

(ii) **New manufacturers** to Washington state may not submit a tier reassignment request for their first program year. Requests for tier reassignment for future program years must follow the process for existing manufacturers.

(iii) **Manufacturers whose CEPs are not directly sold in or into Washington state** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(iv) **Manufacturers who previously manufactured** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(c) **Submitting tier reassignment requests:** To request tier reassignment, the manufacturer must do one of the following:

(i) Submit or update their on-line manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior calendar year, in or into Washington state; or

(ii) Send a written letter to ecology including the number of units of CEPs sold in the prior calendar year in or into Washington state.

(iii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

#### NEW SECTION

**WAC 173-900-290 Successor duties.** Any person acquiring a manufacturer, or brand, or who has acquired a manufacturer, or brand, shall have all responsibility for the acquired company's CEPs, including CEPs manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase agreement and the acquiring

manufacturer provides ecology with a letter from the other entity accepting responsibility for the CEPs. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify ecology of the results of their negotiations.

### **PART III**

#### **((TRANSPORTERS AND COLLECTORS)) THE AUTHORITY, AUTHORIZED PARTIES, AND COVERED ELECTRONIC PRODUCT (CEP) RECYCLING PLANS**

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-300 ((Transporter and/or collector registration:)) Covered electronic product (CEP) recycling plans. ((1) As of September 1, 2007, all transporters and collectors must be registered with ecology in order to transport or collect CEPs.**

(2) To confirm the registration status of a transporter and/or collector, a person must check the "Transporter/Collector Registration List for the Electronic Product Recycling Program" displayed on ecology's web site.

(3) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

(4) ~~Transporter and/or collector registration:~~ Each transporter and/or collector must submit an annual registration form to ecology.

(a) ~~Existing transporters and/or collectors:~~ Transporters and/or collectors who transport or collect CEPs in Washington state on the effective date of this chapter and who plan to continue doing so, must register with ecology no later than September 1, 2007.

(b) ~~New transporter and/or collector registration:~~ Transporters and/or collectors who begin to transport or collect CEPs in Washington state after September 1, 2007, may submit their registration form to ecology at any time prior to beginning to transport or collect CEPs.

(5) ~~Transporter and/or collector annual registration:~~ Transporters and/or collectors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year.

(6) ~~Registration updates:~~ A transporter and/or collector must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.

(7) ~~Transporter and/or collector registration form:~~ Each transporter and/or collector must use the registration form provided by ecology and must include all of the following:

- (a) Contact and location information;
- (b) Business license information;
- (c) Permit information;
- (d) Description of services provided;
- (e) Geographic areas where services are provided; and
- (f) Signature of responsible individual.

The registration form must be signed by the individual responsible for implementing the requirements under this chapter for the transporter and/or collector. Signing the form means the company has provided accurate and complete information on the form.

**(8) Submitting the transporter and/or collector registration form:** The transporter and/or collector must either submit the:

- (a) Form via e-mail or internet service; or
- (b) Original of the registration form to one of the following addresses:

For U.S. Postal Service:  
Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600

Olympia, WA 98504-7600

Or

For Courier:  
Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

**(9) Registration review and status:** After receiving a registration form, ecology will post the transporter's and/or collector's name on a list called "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of transporters and collectors and their registration status. Each transporter/collector on the list will be assigned to a registration status category:

(a) **Pending** means ecology is reviewing the transporter's and/or collector's registration form. The transporter and/or collector is allowed to transport or collect CEPs in Washington state while in "pending" status.

(i) If ecology determines the registration form is complete and accurate, ecology will change the transporter's/collector's status from "pending" to "in compliance."

(ii) If ecology determines the form is not complete or accurate or additional information is needed, ecology will send notice, via certified mail, to the transporter and/or collector identifying what corrections and additional information is needed, and request a revised form. The transporter and/or collector will have thirty days from receipt of the notice to submit to ecology a revised registration form.

(iii) If the corrections are not made, or additional information is not provided within thirty days, ecology will change the transporter and/or collector's status from "pending" to "in violation."

(b) **Registered** or "in compliance" means ecology determined the registration form was complete and accurate. The transporter and/or collector is allowed to transport or collect CEPs in Washington state while in "in compliance" status.

(c) **In violation** means the transporter and/or collector is in violation of this chapter (see WAC 173-900-630 and 173-900-620). The transporter and/or collector must not transport or collect CEPs in Washington state while in the "in violation" category.

**(10) Registration violation:** If a transporter and/or collector does not submit their registration form as required above:

(a) Ecology will assign the transporter and/or collector to the "in violation" category on the "Transporter/Collector Registration List for the Electronic Product Recycling Program";

(b) A transporter must not transport CEPs in Washington state;

(c) A collector must not collect CEPs in Washington state;

(d) The transporter is subject to penalties under WAC 173-900-630; and

(e) The collector is subject to penalties under WAC 173-900-620.

**(11) Corrective action:** In order for ecology to change a transporter and/or collector from the "in violation" status to "in compliance" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" the transporter and/or collector must:

(a) Submit their registration form and ecology must determine the form is complete and accurate; and

(b) Pay or settle any penalties to ecology.) (1) CEP recycling plans (plans) must provide a program for the collection, transportation, processing, and recycling of CEPs from covered entities in Washington state.

(2) The authority or authorized party of a plan must:

(a) Provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled.

(b) Ensure that any CEP that is reused or refurbished after being received by the processor is not included in any weight counts or used to satisfy an equivalent share.

(3) Collection, transportation, processing, and recycling systems and services for a plan:

(a) To implement the program described in the CEP recycling plan the authority or authorized party must only use the services of registered collectors, transporters, and processors that are in "in compliance" status.

(b) Processing services: The authority shall accept and use any processor that:

(i) Meets the requirements of this chapter; and

(ii) Meets any requirements described in the authority's operating plan or through contractual arrangements.

(c) Collection services: The authority of the standard plan must accept CEPs from registered collectors who meet the requirements of this chapter. The authority must compensate registered collectors for the reasonable costs associated with collection of CEPs. If a collector offers premium or curbside services, the compensation paid by the standard plan does not have to cover additional costs associated with those services.

(d) A plan must provide for the processing of large quantities of CEPs at no charge to the small businesses, small governments, charities, and school districts.

## NEW SECTION

**WAC 173-900-305 The standard plan.** A manufacturer must participate in the standard plan administered by

the authority unless the manufacturer has approval to participate in an ecology approved independent plan.

(1) The authority is responsible for collecting, transporting, processing, and recycling the sum of the equivalent shares of all manufacturers participating in the standard plan.

(2) The "authority" is the Washington materials management and financing authority and is authorized to submit the standard plan for the participating manufacturers.

#### NEW SECTION

**WAC 173-900-310 An independent plan.** (1) A single manufacturer or a group of manufacturers may submit an independent plan to ecology for approval if:

(a) The manufacturers participating in the proposed plan represent at least five percent return share of CEPs; and

(b) No manufacturer participating in the proposed plan is a new entrant or a white box manufacturer.

(2) If an independent plan does not represent five percent return share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

(3) **Individual independent plan:** A single manufacturer submitting an independent plan to ecology is responsible for collecting, transporting, processing, and recycling its equivalent share of CEPs.

(4) **Collective independent plan:** Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, processing, and recycling the sum of the equivalent shares of all manufacturers participating in the collective independent plan.

(5) Individual or collective groups of manufacturers submitting an independent plan must designate an "authorized party" that is responsible for submitting the independent plan to ecology. A letter of certification from each of the manufacturers designating the authorized party must be submitted to ecology together with their independent plan.

(6) Prior to beginning implementation of an independent plan, the authorized party for that plan must receive plan approval from ecology.

#### NEW SECTION

**WAC 173-900-320 CEP recycling plan content.** (1) All plans must contain all of the following sections and required information:

- (a) Binding agreement;
- (b) Standard plan participant assessment of charges or apportionment of costs (standard plan only);
- (c) Letter of certification (independent plan only);
- (d) Use of Washington businesses;
- (e) Collection services;
- (f) Collectors;
- (g) Transporters;
- (h) Direct processors;
- (i) Direct processor audit reports;
- (j) Design for recycling;
- (k) Direct processor contract face sheet;
- (l) Recordkeeping;
- (m) Implementation timeline;
- (n) Public outreach and marketing requirements; and
- (o) Fair compensation.

(2) **A binding agreement:** Each plan must include a written statement binding the authority or authorized party to the use of the plan.

(a) The binding agreement must be signed by:

(i) The person(s) designated by the board of the standard plan to sign such agreements on behalf of the authority; or

(ii) The person(s) designated by the authorized party for independent plans to sign such agreements on behalf of the authorized party.

(b) The binding agreement must include:

(i) Contact information for the authority or authorized party, including name, address, and phone number;

(ii) A list of all manufacturers participating in the plan, manufacturer electronic product registration (EPR) numbers issued by ecology, and their contact information of the responsible official, including their location address, mailing address (if different), phone number and e-mail address;

(iii) A statement that the plan members will comply with the terms and conditions of their ecology approved plan; and

(iv) A statement that in the event the plan fails to meet the manufacturers' obligations under this chapter, the manufacturers retain responsibility and liability, including financial liability, for the collection, transportation, processing, and recycling of their equivalent share of CEPs as described in this chapter.

(3) **Standard plan participant assessment of charges or apportionment of costs:** For the standard plan only, the plan must include a plan for assessing charges and apportioning costs for manufacturers participating in the standard plan. This must include a description of what information or data the authority used to determine the charge or cost. This section of the plan may be submitted separate from the rest of the plan (see WAC 173-900-325).

(4) **Letter of certification:** For independent plans only, the plan must include a sworn letter from each of the manufacturers participating in the independent plan designating the authorized party.

(5) **Use of Washington state businesses:** A description of how the authority or authorized party has sought the use of businesses within the state, including retailers, charities, processors, and collection and transportation services.

(6) **Collection services:** A description of how the plan will meet the collection service requirements in WAC 173-900-355. At a minimum the authority or authorized party for each plan must work with the local government entities responsible for preparing local solid waste management plans.

(7) **Collectors:** Information about collectors providing collection services in subsection (6) of this section must include:

(a) Collector names and collector electronic product registration (EPR) numbers issued by ecology;

(b) Collection sites: Location and contact number for collection sites;

(c) Days and hours of operation for each site; and

(d) Types of CEPs collected.

(8) **Transporters:** Information about transporters providing transportation services for CEPs and their components for the plan including:

(a) Transporter names and transporter electronic product registration (EPR) numbers issued by ecology;

(b) Counties and cities where the transporter provides service for the plan; and

(c) Types of CEPs transported.

(9) **Direct processors:** Information about direct processors of CEPs participating in the plan including:

(a) Direct processor names;

(b) Physical location of processing facilities;

(c) Contact information and mailing addresses for the processing facilities;

(d) Types of CEPs processed at each facility;

(e) A description of the processes and methods that each processor will use to recycle CEPs; and

(f) A written statement from the direct processor ensuring that the direct processor will comply with the performance standards for direct processors in WAC 173-900-650.

(10) **Direct processor compliance audit reports:** For each direct processor used by the plan include a compliance audit report that meets the requirements in WAC 173-900-365.

(11) **Design for recycling:** A description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage the design of electronic products that are less toxic and contain components that are more recyclable.

(12) **Direct processor contract face sheet:**

(a) Copies of the contract face sheet and signature sheet for each direct processor used by the plan; and

(b) If not included on the face sheet and signature sheet, the date of the start of the contract and the date of the conclusion of the contract.

(13) **Recordkeeping:** Procedures for how the authority or authorized party will collect and maintain records to meet and demonstrate compliance with the requirements of this chapter. Recordkeeping must include a description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share.

(14) **Implementation timeline:** A timeline describing start-up, implementation, and progress toward milestones with anticipated results.

(15) **Public outreach and marketing requirements:** A description of how the plan will meet the public outreach requirements in WAC 173-900-980.

(16) **Fair compensation:** Substantiate that fair compensation is paid to service providers and that payments to service providers will be made within thirty days net from date of shipment or other time frame defined in contractual arrangements.

## NEW SECTION

### **WAC 173-900-325 CEP recycling plan submittal, approval, and implementation.**

#### **Step 1: Format of the CEP recycling plan.**

(1) All plans must use the "CEP recycling plan template" provided by ecology.

(2) The authority or authorized party must submit paper copies of their plan in a three-ring binder so that individual

pages can be submitted and replaced when updates or revisions are required.

#### **Step 2: Submit the CEP recycling plan.**

(3) The authority or authorizing party must submit two paper copies and one usable electronic copy of their plan to ecology.

(4) All plans intending to begin implementation on or before January 1, 2009, must be submitted to ecology no later than February 1, 2008.

(a) The two paper copies must be submitted by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

For Courier:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(b) The electronic copy may be submitted by e-mail or other electronic format usable by ecology that allows electronic editing and commenting by ecology.

(5) The following sections of a plan may be submitted to ecology for review and approval separate from the rest of the plan: Standard plan participant assessment of charges or apportionment of costs. When submitting a section separate from the rest of the plan, the authority must follow the process described in this section.

#### **Step 3: Approval process.**

(6) Within ninety days after receipt of a complete plan, ecology will determine whether the plan complies with this chapter. Ecology will determine if the plan is:

(a) **Approved.** If approved, ecology will send a letter of approval to the authority or authorized party via certified mail. The approval letter will include an expiration date for the plan.

(b) **Disapproved.** If disapproved, ecology will send a letter of disapproval to the authority or authorized party via certified mail. The disapproval letter will provide ecology's reasons for not approving the plan.

(i) The authority or authorized party must submit a new or revised plan within sixty days after receipt of the disapproval letter.

(ii) Ecology then has an additional ninety days to review the new or revised plan.

(c) Ecology will approve plans for no more than five years. If an independent plan does not represent five percent return share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

(7) **Approval criteria:** Ecology will consider the following when reviewing a plan for approval:

- (a) The plan submittal dates were met;
- (b) The plan meets the requirements in this chapter;
- (c) The plan contains all of the information required in this chapter and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;
- (d) When reviewing a plan for service level, ecology may contact the local government or community identified in the plan; and
- (e) The plan, when implemented, would meet or exceed required collection service levels (see WAC 173-900-355).
- (8) Ecology may ask for additional information or clarification during the review of a plan.
- (9) Ecology will post all plans on the agency web site.
- (10) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

**NEW SECTION**

**WAC 173-900-330 Implementation of the CEP recycling plan.** (1) Plans approved for program year 2009 must be implemented no later than January 1, 2009.

(2) All manufacturers registered as of January 1, 2009, must be participating in a fully operational, ecology approved, plan as of January 1, 2009.

(3) The authority or authorized party must notify ecology if any of the manufacturers listed as a participant in the plan are not meeting the requirements described in the ecology approved plan (see WAC 173-900-350).

(4) If the plan fails to provide service in each county in Washington state or meet other plan requirements, the authority or authorized party must submit an updated plan to ecology within sixty days of failing to provide service.

**NEW SECTION**

**WAC 173-900-335 Updates and revisions to CEP recycling plans.** (1) The authority or authorized party must update or revise the plan in the following situations:

- (a) For five-year renewal;
- (b) The plan has failed to provide services; and
- (c) Plan updates or revisions are required.

(2) **Five-year renewal:** The authority or authorized party must:

- (a) Review and update their plan every five years;
- (b) Submit the plan to ecology at least one hundred twenty days prior to the expiration date on the plan approval letter.

(3) **Failure to provide service:**

- (a) Failure to provide service means the plan fails to do any of the following:
  - (i) Provide service in each county in the state;
  - (ii) Provide service in each city or town with a population of ten thousand or greater; or
  - (iii) Meet other plan requirements.
- (b) If a plan fails to provide services, the authority or authorized party must submit an updated plan to ecology within sixty days of failing to provide service.
  - (i) The updated plan must address how the program will be adjusted to meet the program geographic coverage and

collection service requirements established in WAC 173-900-355.

(ii) When determining if a plan fails to provide service, ecology will consider the collection services requirements in WAC 173-900-355 and the local government and community satisfaction reports submitted under Part VIII of this chapter.

(4) **Revisions or updates to the plan:** The authority or authorized party must submit a plan revision, including non-significant and significant plan revisions, to ecology within fourteen days of any changes to the plan or receiving notice from ecology that an update is required.

(a) When submitting a plan revision, the authority or authorized party may submit only the sections or chapters related to the revision.

(b) **Nonsignificant revisions not needing ecology approval:** Nonsignificant revisions to CEP recycling plans are identified in Table 335 below. Ecology does not need to approve the nonsignificant revision prior to implementation.

(c) **Significant revisions needing ecology approval:** Significant revisions to CEP recycling plans are identified in Table 335 below. Ecology must approve the significant revisions prior to implementation.

**Table 335  
CEP Recycling Plan Revisions**

<b>Plan Content</b>	<b>Nonsignificant Revisions</b> Means no approval required to implement	<b>Significant Revisions</b> Means approval required to implement
<b>Binding agreement</b>	Changes to manufacturers participating in the plan or changes to contact information for manufacturers already included in the plan.	No revisions requiring approval.
<b>Standard plan participant assessment of charges or apportionment of costs</b>	No nonsignificant revisions.	Any changes to the assessment of charges or apportionment of costs.
<b>Letter of certification</b>	Changes to the contact information included for manufacturers already participating in the plan.	Addition or withdrawal of manufacturers participating in an independent plan.
<b>Use of Washington businesses</b>	Any changes to the use of Washington state businesses.	No changes requiring approval.



<b>Plan Content</b>	<b>Nonsignificant Revisions</b> Means no approval required to implement	<b>Significant Revisions</b> Means approval required to implement
<b>Collection services</b>	Addition of collection site(s) or services without eliminating or changing existing services.	Changes to the level of services provided by the plan other than additional services.
<b>Collectors</b>	Any addition or change to registered collectors used by the plan.	No changes requiring approval.
<b>Transporters</b>	Adding, changing or removing registered transporters used by the plan.	No revisions requiring approval.
<b>Direct processors</b>	Any additions or changes to direct processors used by the plan.	No revisions requiring approval.
<b>Direct processor compliance audit report</b>	Submission of copies of audit reports for any direct processor the plan uses after the plan was last approved or the plan's annual report was last submitted.	No revisions requiring approval.
<b>Design for recycling</b>	Any changes to the description of design for recycling included in the plan.	No revisions requiring approval.
<b>Direct processor contract face sheet</b>	Submission of copies of the contract face sheet as required in WAC 173-900-320(12) for any direct processor the plan uses after the plan was last approved or the plan's annual report was last submitted.	No revisions requiring approval.
<b>Recordkeeping</b>	Any changes to recordkeeping.	No revisions requiring approval.

<b>Plan Content</b>	<b>Nonsignificant Revisions</b> Means no approval required to implement	<b>Significant Revisions</b> Means approval required to implement
<b>Implementation timeline</b>	No nonsignificant revisions.	Any changes to the implementation timeline.
<b>Public outreach and marketing requirements</b>	Additional public outreach and marketing efforts.	Any changes to the public outreach plan, other than additional public outreach and marketing.
<b>Fair compensation</b>	Any changes to fair compensation.	No changes requiring approval.

(5) **Approval process:** Within sixty days after receipt of a plan revision or update requiring approval, ecology will determine whether the plan complies with this chapter. Ecology will determine if the revision or update is:

(a) **Approved.** If approved, ecology will send a letter of approval to the authority or authorized party via certified mail. The approval letter will include an expiration date for the plan.

(b) **Disapproved.** If disapproved, ecology will send a letter of disapproval to the authority or authorized party via certified mail. The disapproval letter will provide ecology's reasons for not approving the plan.

(i) The authority or authorized party must submit a plan revision or plan update within sixty days after receipt of the letter of disapproval.

(ii) Ecology then has an additional sixty days to review the revised revision or plan update.

(6) **Approval criteria:** Ecology will consider the following when reviewing a plan revision or update for approval:

(a) The updated plan submittal dates were met;

(b) The plan meets the requirements in this chapter;

(c) The updated plan contains all of the information required in WAC 173-900-320 and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;

(d) The updated plan, when implemented, would meet or exceed required service levels; and

(e) Additional information or clarification needed by ecology during the review of a revised or updated plan to determine if the plan is compliant with these rules and chapter 70.95N RCW.

(7) Ecology will post all plans on the agency web site.

(8) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION**WAC 173-900-340 CEP recycling plan review fee.** (1)

Ecology shall review and approve plans. The authority or authorized party will pay ecology's plan review and approval costs.

(2) Plan review and approval includes ecology's costs for:

- (a) Review;
- (b) Approval; and
- (c) Update and plan revision review and approval.

(3) Ecology shall base the plan review fee on actual costs as follows:

Plan Review Fee = Direct Costs + Indirect Costs

Where:

(a) **Direct costs** include ecology staff hourly time and other costs related to accomplishing the activities identified in subsection (2) of this section for each plan. Direct staff costs are the costs of hours worked, including salaries and benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of ecology staff working on the plan including, for example, costs of: Travel related to plan review, printing and publishing of documents about the plan, and other work, contracted or otherwise, associated with plan review and approval, as necessary.

(b) **Indirect costs** are those general management and support costs of ecology. Ecology applies them using the agency's approved federal indirect cost rate.

(4) **Plan review fee invoicing and payment.** Invoices are generally sent about the last week of the month, for the previous month's activity. Payment is expected within thirty days after the date that ecology has issued the invoice. Ecology will grant final approval of plans and post approved plans on ecology's web site, when all outstanding invoices have been paid by the authority or authorized party for the activities delineated in subsection (2) of this section.

NEW SECTION

**WAC 173-900-345 Changing CEP recycling plan participation.** (1) After February 1, 2008, no manufacturer may change CEP recycling plans for program year 2009.

(2) For program year 2010 and thereafter, registered CEP manufacturers may change participation in plans if the manufacturer meets the requirements in this section.

The following is the process for changing plan participation:

(3) The plan the manufacturer is joining must, by August 1 prior to the program year for which the change will take effect, submit:

(a) For an existing plan, an update or revision under WAC 173-900-335; or

(b) For a new independent plan, a plan that meets the requirements of WAC 173-900-310.

(4) Ecology will review the plan under the process described in WAC 173-900-325 or 173-900-335, as appropriate. If approved, ecology will send notice, via certified mail, to:

(a) The manufacturer requesting the change; and

(b) The authorized party(ies) and the authority affected by the change.

(5) If ecology does not approve the submitted plan or plan update by January 1 of the program year for which the change was submitted, the change cannot be implemented that program year. Ecology may still review the plan or plan update for approval for the following program year.

(6) Within fourteen days of receiving plan approval notice from ecology, the manufacturer must submit an updated registration form to ecology (see Part II).

(7) Within sixty days of receiving the notice, the plan the manufacturer left must submit a plan revision to ecology that meets the requirements in WAC 173-900-335.

(8) If an independent plan does not represent five percent return share after the manufacturer leaves the plan, the independent plan has until the end of the following program year to increase participation to represent the five percent return share. If the independent plan does not represent five percent return share at that time, the remaining members will then become members of the standard plan (see WAC 173-900-360).

NEW SECTION**WAC 173-900-350 CEP recycling plan compliance.****(1) Financial obligations of manufacturers:**

(a) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology within sixty days that the manufacturer is no longer participating in the standard plan.

(b) Manufacturers who do not meet their financial obligations in their plan are in plan violation and will be placed in "in violation" status (see WAC 173-900-255).

**(2) Noncompliance with plan responsibilities:**

(a) It is the responsibility of the authority or the authorized party to notify ecology within sixty days if a manufacturer, who is participating in their plan, is not complying with the manufacturer's responsibilities as described in the ecology approved plan.

(b) Manufacturers who do not comply with the responsibilities identified and agreed to in their plan are in plan violation and will be placed in "in violation" status (see WAC 173-900-255).

(3) **Noncompliance with laws and regulations:** The authority or authorized party must notify ecology within thirty days if a direct processor used by the plan has notified the plan of any penalties, violations, or regulatory orders related to processing activities that the direct processor received from national, state or local government agencies.

(a) Within five days of receipt, ecology will send the direct processor a warning letter and follow warning and penalty procedures in WAC 173-900-680.

(b) Within sixty days of providing notice to ecology, the authority or authorized party:

(i) May continue using the direct processor if they are listed as "in compliance" on the "processor registration list"; or

(ii) Must submit a plan update removing that direct processor from plan and making necessary changes if another direct processor must be added.

(iii) If the plan continues to use a direct processor in "in violation" status, it is a "plan violation." Ecology will follow the violation, warning, and penalty procedures in Part III of this chapter.

**(4) Notifications to ecology:**

(a) The notification to ecology about manufacturers in the plan must include:

(i) Name of manufacturer and EPR number issued by ecology;

(ii) Description of noncompliance; and

(iii) Date of notice submittal.

(b) The notification to ecology about direct processors in the plan must include:

(i) Name of direct processor and facility address;

(ii) Description of noncompliance; and

(iii) Date of notice submittal.

**NEW SECTION**

**WAC 173-900-355 Collection services.** (1) Each plan must include a description of the method(s) for the reasonably convenient collection of all types of CEPs in rural and urban areas throughout the state at no cost to the covered entities according to the requirements in this section.

(2) **County:** The plan must provide collection services in each county of the state.

(3) **Urban, city or towns with a population greater than ten thousand:** The plan must provide at least one collection site or alternate collection service or a combination of sites and alternate service that together provide at least one collection opportunity for all product types for every city or town in the state with a population of greater than ten thousand. A collection site for a county may be the same as a collection site for a city or town in the county.

(4) **Rural areas:** For rural areas without commercial centers, or areas with widely dispersed population, a plan may provide collection at the nearest commercial centers or solid waste sites, collection events, mail-back systems, or a combination of these options.

(5) **Collectors:** The plan must use only registered collectors that are listed on the "collector registration list" as in "in compliance" status.

(6) **Standard plan:** The standard plan must accept CEPs from any collector that is listed on the "collector registration list" as in "in compliance" status.

(7) **Large quantities:** If a plan provides specific collection services or restrictions for large quantities, the plan must include a definition of "large quantity."

(8) **Limiting CEPs collected:** A plan may limit the number of CEPs or CEPs by product type accepted per customer per day or per delivery at a collection site or by an alternative collection service. All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the approved plans.

(9) **Providing joint services:** A plan may provide collection sites and services jointly with another plan or plans.

**(10) Collection sites:**

(a) Collection sites must be:

(i) Staffed during operating hours;

(ii) Open to the public at a frequency adequate to meet the needs of the area being served; and

(iii) Open regularly scheduled hours.

(b) Collection sites may include electronics recyclers and repair shops, recyclers of other commodities, reuse organizations, charities, retailers, government recycling sites, or other suitable locations.

**(11) Alternatives to collection sites:**

(a) A plan may provide alternative collection services to covered entities in forms different than collection sites if those alternative collection services provide:

(i) Equal or better convenience than a collection site; and

(ii) Equal or increased recovery of unwanted CEPs than would be achieved through a collection site.

(b) If a plan provides alternative services at a cost, the plan must also provide free collection service to covered entities in that county and for cities or towns with a population greater than ten thousand.

(c) These alternatives must be included in the plan as required under Part III of this chapter.

(d) To use an alternative collection service in lieu of a collection site a plan must provide ecology documentation that demonstrates the alternative service meets (a)(i) and (ii) of this subsection.

(e) Alternative services may include curbside collection services and premium services:

(i) Curbside collection services may be used to collect CEPs from households and other covered entities in small quantities. Those providing curbside collection services may charge an additional fee to the covered entity that uses the service to cover the costs not paid by the standard or independent plans.

(ii) Premium services are services that are adjunct to simple collection and are provided on-site such as at-location system upgrade or replacement services provided to covered entities or at-home pickup services offered to households. Those providing premium services may charge an additional fee to the householder to cover the costs not paid by the standard or independent plans.

**(12) Alternatives for collecting large quantities of CEPs:**

(a) A program may provide alternate collection services to small businesses, small governments, charities, and school districts that may have large quantities of CEPs that cannot be handled at collection sites or through curbside services.

(b) Alternative collection services for large quantities of CEPs must be described in the plan.

**(13) Approval criteria for collection services:** Ecology will use the following criteria to approve a plan's collection services. Collection services are:

(a) Reasonably convenient;

(b) Available to all citizens of Washington state;

(c) Provided in both rural and urban areas;

(d) Provided in every county of the state; and

(e) Provided for each city or town with a population of greater than ten thousand.

NEW SECTION

**WAC 173-900-360 Dissolving an independent plan.**

(1) If an independent plan does not represent five percent return share for two consecutive program years, ecology will dissolve the independent plan.

(2) After August 1 but prior to the start of the next program year, ecology will dissolve any independent plan that does not meet the independent plan criteria in WAC 173-900-310.

(a) Ecology will send notice, via certified mail, informing all participants in the plan that they must join the standard plan and update their manufacturer registration form (see Part II).

(b) If a manufacturer does not submit their updated registration form within fourteen days of receiving the notice, it is a registration violation (see WAC 173-900-255) and ecology will follow the warning and penalty procedures in Part II of this chapter.

(3) If ecology determines that this change may significantly alter the program described in the standard plan, the authority must submit an updated plan to ecology (see WAC 173-900-335).

NEW SECTION

**WAC 173-900-365 Annual compliance audit reports for direct processors.**

(1) For each direct processor used by the plan, the authority or authorized party must provide an annual compliance audit report to ecology. These reports must demonstrate and certify that the direct processors meet either the minimum performance standards in WAC 173-900-650 or are in conformance with ecology's "Environmentally Sound Management and Performance Standards for Electronic Product Recycling Processors."

(2) The authority or authorized party must submit the compliance audit report with their plan submittal (WAC 173-900-320) and as part of the annual report (WAC 173-900-800).

**Minimum performance standards.**

(3) For demonstration of compliance with the minimum standards in WAC 173-900-650, the compliance audit must be conducted by an auditor not employed by the processor.

(4) Each annual compliance audit report submitted to ecology to demonstrate compliance with the minimum standards must include:

(a) A list of all the minimum performance standards;

(b) Confirmation that the direct processor meets each of the performance standards, including a list of all applicable national, state, and local laws, rules, and ordinances, related to processing activities;

(c) Documentation of conflict: When a conflict with the minimum direct processor performance standards occurs, documentation of the conflict and of compliance with the national, state, or local laws or rules that apply;

(d) Documentation of the auditor's qualifications as described in subsection (5) of this section for the auditor signing the report;

(e) Certification from the auditor certifying whether or not the processor meets the standards in this section;

(f) Signature of the auditor certifying the accuracy of the report.

(5) This annual compliance audit must be completed by an auditor who through professional training, work experience and certification has appropriate knowledge to evaluate the environmental compliance of the processing facility.

**Preferred performance standards.**

(6) For demonstration of conformity with the "Environmentally Sound Management and Performance Standards for Electronic Product Recycling Processors," the annual compliance audit report must meet the requirements in the environmentally sound management and performance standards document.

**Proprietary information.**

(7) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION

**WAC 173-900-370 Authority or authorized party violations.** (1) The authority or authorized party is in violation of this chapter when there is:

(a) A plan violation; or

(b) An annual report violation.

(2) **Plan violation:** As of January 1, 2009, it is a plan violation if the authority or authorized party:

(a) Does not implement the plan so that the plan meets the requirements in this chapter (see Part III of this chapter);

(b) Uses a collector, transporter, or direct processor that is not in "in compliance" status; or

(c) Does not implement return share sampling as required in WAC 173-900-900.

(3) **Annual report violation.**

As of March 1, 2010, it is an authority or authorized party violation if the plan's annual report is not submitted to ecology and approved under WAC 173-900-800.

NEW SECTION

**WAC 173-900-380 Authority and authorized party violation notice and penalties.**

**Table 380  
Authority and Authorized Party Penalties**

Type of Violation	Written Notice	First Penalty	Second and Subsequent Penalties
Plan Violation	Penalty Notice	Up to \$5,000	Up to \$10,000
Annual Report Violation	Warning Letter	Up to \$1,000	Up to \$2,000

**Penalty notice for plan violations.**

(1) When ecology issues a penalty notice for a "plan violation," ecology will send the penalty notice to the authority

or authorized party by certified mail, with a copy to each manufacturer listed as a plan participant. The penalty notice will include:

- (a) A first penalty assessment as defined in Table 380;
- (b) The requirements that need to be corrected; and
- (c) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the notice or the plan will no longer be approved.

(2) If after thirty days, the authority or authorized party fails to make the required corrections and implement the plan or submit a plan update as described in WAC 173-900-335, ecology:

- (a) Must then assess a second penalty as defined in Table 380; and
- (b) May inform the authority or authorized party that the plan is no longer approved; and
- (c) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(3) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

**Warning letter for annual report violations.**

(4) When ecology issues a warning letter for an "annual report violation," ecology will send the letter to the authority or authorized party by certified mail, with a copy to each manufacturer listed in the plan. The warning letter will include:

- (a) The requirements that need to be corrected; and
- (b) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the warning letter.

(5) If after thirty days, the authority or authorized party fails to make the required corrections, ecology must:

- (a) Then assess a first penalty as defined in Table 380; and
- (b) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(6) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

(7) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals.**

(8) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-390 Corrective actions for authority or authorized party.**

**Corrective actions for plan violations.**

- (1) The authority or authorized party must:
  - (a) Meet the plan requirements in Part III of this chapter;
  - (b) Correct any other violations; and
  - (c) Pay or settle any penalties due to ecology.

**Corrective actions for annual report violations.**

- (2) The authority or authorized party must:
  - (a) Submit their annual report to ecology or correct any deficiencies in the report and submit to ecology;
  - (b) Correct any other violations; and
  - (c) Pay or settle any penalties due to ecology.

**PART IV  
(~~WARNING, VIOLATIONS, AND PENALTIES~~)  
COLLECTORS FOR CEP RECYCLING PLANS**

NEW SECTION

**WAC 173-900-400 What collectors need to know to collect CEPs for a CEP recycling plan.** (1) To collect CEPs for a plan under this chapter the collector must:

- (a) Submit an initial registration;
- (b) Update the registration information if it changes;
- (c) Renew registration annually;
- (d) Meet the collector performance standards; and
- (e) Be in "in compliance" status on the "collector registration list" on ecology's web site.

Collector's Status	Can a collector collect CEPs for a plan?	Definition
In compliance	Yes	"In compliance" means the collector is registered and meets the collector performance standards in this chapter.
In violation	No	"In violation" means the collector is in violation of the requirements in this chapter.
Collector's name is not on the "collector registration list"	No	Collectors who collect CEPs or other electronic products and do not want to participate in this program do not need to register to continue doing business. If a collector is not registered, the collector must not receive payment for CEPs from a plan.

**(2) Collection services:**

(a) The only CEPs a collector can collect and submit to a plan are those CEPs submitted for recycling by covered entities (households, charities, school districts, small businesses, and/or small governments located in Washington state).

(b) Plans are not required to compensate collectors for CEPs collected prior to January 1, 2009.

(3) Registration under this chapter is only for purposes of administering the electronic product recycling program and does not constitute endorsement by ecology of a particular registrant.

(4) The authority of the standard plan must accept CEPs from registered collectors in "in compliance" status.

(5) The authority must compensate registered collectors, in "in compliance" status for the reasonable costs associated with collection of CEPs submitted by a collector to the plan.

(6) The standard plan will not pay for additional costs associated with premium or curbside services, unless a prior written agreement has been made between the authority and the service provider.

**NEW SECTION****WAC 173-900-410 Initial registration as a CEP collector.****Step 1: Complete the collector registration form.**

(1) Each collector must complete the on-line or paper registration form provided by ecology and must include all of the following:

- (a) Name of individual responsible for implementing the collector requirements;
- (b) Contact and location information;
- (c) Business license information;
- (d) Permit information, when applicable;
- (e) Description of services provided; and
- (f) Geographic areas where services are provided.

**Step 2: Submit the collector registration form.**

(2) The individual responsible for implementing the collector requirements must sign the form. Signing the form means the collector has provided accurate and complete information on the form and will comply with the collector performance standards in WAC 173-900-450.

(3) The collector must submit the form using one of the following options:

- (a) On-line registration;
- (b) Submitting the original paper version through:

U.S. Postal Service to:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program

300 Desmond Drive  
Lacey, WA 98503

**NEW SECTION****WAC 173-900-420 How collectors know if their registration is approved.****Step 1: Ecology review of collector registration forms.**

(1) After receiving a form, ecology will review the form to decide if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the collector to:

(a) Tell the collector what information is missing or inaccurate; and

(b) Request a revised form.

(3) The collector must submit a revised form within thirty days from the day ecology contacted the collector.

**Step 2: Approval or denial of collector registration forms.****(4) Approval.**

(a) Approval means that ecology has decided the form is complete and accurate.

(b) If ecology approves the collector's registration, ecology will post the collector's name on the "collector registration list" and place the collector in "in compliance" status. The collector is allowed to collect CEPs for a plan.

**(5) Denial.**

(a) Denial means that ecology has decided the form is not complete and accurate and the collector did not revise information as requested.

(b) If ecology denies a collector's registration, ecology will remove the collector's name from the "collector registration list" if listed, and will notify the collector of the denial.

(c) The collector must not collect CEPs for a plan.

**NEW SECTION**

**WAC 173-900-430 Annual renewal of collector registration.** (1) A collector must submit its annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a collector does not submit a renewal registration form, ecology will remove the collector from the "collector registration list."

(3) The collector must submit their annual registration form using one of the options below:

(a) Submit the on-line registration form;

(b) Submit a paper version of a form through:

U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Courier Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(4) Ecology will review collector registration forms submitted for annual registration under the process described in WAC 173-900-420.

#### NEW SECTION

##### **WAC 173-900-440 Updates to collector registration.**

(1) A registered collector must submit an updated registration form to ecology within fourteen days of any change to the information provided in its registration form.

(2) The collector must submit updates to its registration form by using one of the options below:

(a) Updating the collector's registration information using the on-line form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(3) Ecology will review collector updated registration forms under the process described in WAC 173-900-420.

#### NEW SECTION

**WAC 173-900-450 Performance standards for collectors.** (1) CEPs collected for a plan must be collected from covered entities free of charge except for the following services:

(a) Premium services as described in an approved plan;

(b) Curbside collection services to cover the costs not paid by the standard or independent plans; or

(c) Collection of large quantities of CEPs from small businesses, small governments, charities, and school districts as defined in WAC 173-900-355(7).

(2) A registered collector may dismantle or disassemble CEPs for the purpose of removing components for reuse in refurbished electronic products.

(3) A registered collector must not dismantle CEPs for purposes of recycling components unless they also meet the direct processor performance standards and are a registered direct processor under this chapter.

(4) In addition to the requirements in this chapter, all registered collectors must comply with all applicable environmental laws, rules, and local ordinances.

(5) When providing collection services for a plan, the registered collector must:

(a) Staff the site during operating hours.

(b) Notify the authority and/or authorized party of any changes in hours and days of operation and types of CEPs accepted if the collection services provided are identified in an ecology approved plan.

(c) Cooperate with CEP sampling efforts conducted by CEP recycling programs approved under this chapter.

(d) Provide enclosed storage areas with impervious floors so that the CEPs collected and their components are protected from the weather.

(e) Collectors must post, in a readily visible location, at the collection site information that can be shared with covered entities about how and where CEPs received into the program are recycled. This information is provided by the plan(s) for which the collector is providing services.

(6) A registered collector must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.

(7) A registered collector must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

#### NEW SECTION

**WAC 173-900-460 Ecology determination of collector compliance.** (1) Beginning January 1, 2009, ecology may inspect any collector used by a plan for compliance with this chapter.

(2) If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in Part IV of this chapter.

#### NEW SECTION

**WAC 173-900-470 Collector violations.** Collector violations are described in Table 470.

**Table 470  
Collector Violations**

<b>Starting</b>	<b>If</b>	<b>Then</b>	<b>and Ecology Will</b>
September 1, 2007	A collector has collected CEPs for a plan and is not registered.	It is a <b>collector registration violation</b> .	List the collector's name on the "collector registration list" and place the collector in "in violation" status.
Effective date of this chapter	A collector does not update its registration information within fourteen days of a change.	It is a <b>collector registration violation</b> .	List the collector's name on the "collector registration list" and place the collector in "in violation" status.
January 1, 2009	A collector collecting CEPs for a plan is out of compliance with the collector standards in WAC 173-900-450.	It is a <b>collector standards violation</b> .	List the collector's name on the "collector registration list" and place the collector in "in violation" status.

NEW SECTION

**WAC 173-900-480 Warnings and penalties for collector violations.**

**Table 480  
Collector Warning and Penalties**

<b>Type of Violation</b>	<b>Written Warning</b>	<b>First Penalty</b>	<b>Second and Subsequent Penalties</b>
Collector Registration Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Collector Standards Violation	Warning Letter	Up to \$1,000	Up to \$2,000

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail to a collector, for any collector violation the warning will include a copy of the requirements to let the collector know what must be done to be in compliance.

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

**Penalties:**

(3) **First penalties:** If the collector does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 480 above and ecology will:

(a) Either change the collector's status to "in violation" or add the collector to the "collector registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the collector (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 480 no more often than every thirty days for the same violation.

(5) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(6) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-490 Corrective action for collector violations.** For ecology to change a collector from the "in violation" status to "in compliance" status on the "collector registration list," the collector must:

(1) Provide evidence that the violation has been corrected; and

(2) Pay or settle any penalties to ecology.

**PART V**

**TRANSPORTERS FOR CEP RECYCLING PLANS**

NEW SECTION

**WAC 173-900-500 What transporters need to know to collect CEPs for a CEP recycling plan.** (1) To transport CEPs for a plan under this chapter a transporter must:

(a) Submit an initial registration;

(b) Update the registration information if it changes;

(c) Renew registration annually;

(d) Meet the transporter performance standards in WAC 173-900-550; and

(e) Be in "in compliance" status on the "transporter registration list" on ecology's web site.

<b>Transporter's Status</b>	<b>Can a transporter transport CEPs for a plan?</b>	<b>Definition</b>
In compliance	Yes	<b>"In compliance"</b> means the transporter is registered and meets the transporter performance standards in this chapter.



Transporter's Status	Can a transporter transport CEPs for a plan?	Definition
In violation	No	<b>"In violation"</b> means the transporter is in violation of the requirements in this chapter.
Transporter's name is not on the "transporter registration list"	No	Transporters who transport CEPs or other electronic products and do not want to participate in this program do not need to register to continue doing business. If a transporter is not registered, the transporter must not receive payment for CEPs from a plan.

(2) Registration under this chapter is only for purposes of administering the electronic product recycling program and does not constitute endorsement by ecology of a particular registrant.

NEW SECTION

**WAC 173-900-510 Initial registration as a CEP transporter.**

**Step 1: Complete the transporter registration form.**

(1) Each transporter must use the form provided by ecology and must include all of the following:

- (a) Contact and location information;
- (b) Business license information;
- (c) Permit information;
- (d) Description of services provided; and
- (e) Geographic areas where services are provided.

**Step 2: Submit the registration form.**

(2) The individual responsible for implementing the transporter requirements must sign the form. Signing the form means the transporter has provided accurate and complete information on the form and will comply with the transporter standards in WAC 173-900-550.

(3) The transporter must submit the form using one of the options below:

- (a) On-line registration;
- (b) The original paper version through:

U.S. Postal Service:

Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 P.O. Box 47600  
 Olympia, WA 98504-7600

Courier Service:

Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 300 Desmond Drive  
 Lacey, WA 98503

NEW SECTION

**WAC 173-900-520 How transporters know if their registration is approved.**

**Step 1: Ecology review of transporter registration form.**

(1) After receiving a form, ecology will review the form to decide if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the transporters to:

- (a) Tell the transporter what information is missing or inaccurate; and
- (b) Request a revised form.

(3) The transporter must submit a revised form within thirty days from the day ecology contacted the transporter.

**Step 2: Approval or denial of transporter registration forms.**

**(4) Approval.**

(a) Approval means that ecology has decided the form is complete and accurate.

(b) If ecology approves the transporter's registration, ecology will post the transporter's name on a list called "transporter registration list" and place the transporter in "in compliance" status. The transporter is allowed to transport CEPs for a plan.

**(5) Denial.**

(a) Denial means that ecology has decided the form is not complete and accurate and the transporter did not revise information as requested.

(b) If ecology denies a transporter's registration, ecology will remove the transporter's name from the "transporter registration list" if listed, and will notify the transporter of the denial.

(c) The transporter must not transport CEPs for a plan.

NEW SECTION

**WAC 173-900-530 Annual renewal of transporter registration.** (1) A transporter must submit its annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a transporter does not submit a renewal registration form, ecology will remove the transporter from the "transporter registration list."

(3) The transporter must submit its annual registration form using one of the options below:

- (a) Submit the on-line registration form;
- (b) Submit a paper version through:

U.S. Postal Service to:

Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 P.O. Box 47600  
 Olympia, WA 98504-7600

Courier Service to:

Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 300 Desmond Drive  
 Lacey, WA 98503

(4) Ecology will review transporter registration forms submitted for annual registration under the process described in WAC 173-900-520.

NEW SECTION

**WAC 173-900-540 Updates to transporter registration.** (1) A registered transporter must submit an updated registration form to ecology within fourteen days of a change to the information provided in a registration form.

(2) The transporter must submit updates to its registration form by using one of the options below:

(a) Updating the transporter's registration information using the on-line form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 P.O. Box 47600  
 Olympia, WA 98504-7600

Courier Service to:

Department of Ecology  
 Electronic Product Recycling  
 Solid Waste and Financial Assistance Program  
 300 Desmond Drive  
 Lacey, WA 98503

(3) Ecology will review transporter updated registration forms under the process described in WAC 173-900-520.

NEW SECTION

**WAC 173-900-550 Performance standards for transporters.** (1) All registered transporters must comply with all applicable environmental and transportation laws, rules, and local ordinances.

(2) A registered transporter must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.

(3) A registered transporter must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

NEW SECTION

**WAC 173-900-560 Ecology determination of transporter compliance.** (1) Beginning January 1, 2009, ecology may inspect any transporter used by a plan for compliance with this chapter.

(2) If ecology determines a violation occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in Part V of this chapter.

NEW SECTION

**WAC 173-900-570 Transporter violations.** Transporter violations are described in Table 570.

**Table 570  
 Transporter Violations**

<b>Starting</b>	<b>If</b>	<b>Then</b>	<b>and Ecology Will</b>
September 1, 2007	A transporter has transported CEPs for a plan and is not registered.	It is a <b>transporter registration violation.</b>	List the transporter's name on the "transporter registration list" and place the transporter in "in violation" status.
Effective date of this chapter	A transporter does not update its registration information within fourteen days of a change.	It is a <b>transporter registration violation.</b>	List the transporter's name on the "transporter registration list" and place the transporter in "in violation" status.
January 1, 2009	A transporter transporting CEPs for a plan is out of compliance with the transporter standards in WAC 173-900-550.	It is a <b>transporter standards violation.</b>	List the transporter's name on the "transporter registration list" and place the transporter in "in violation" status.

NEW SECTION

**WAC 173-900-580 Warnings and penalties for transporters.**

**Table 580  
Transporter Warning and Penalties**

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Transporter Registration Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Transporter Standards Violation	Warning Letter	Up to \$1,000	Up to \$2,000

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail to a transporter, for any transporter violation the warning will include a copy of the requirements to let the transporter know what must be done to be in compliance.

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

**Penalties:**

(3) **First penalties:** If the transporter does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 580 above and ecology will:

(a) Either change the transporter's status to "in violation" or add the transporter to the "transporter registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the transporter (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 580 no more often than every thirty days for the same violation.

(5) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(6) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-590 Corrective actions for transporter violations.** For ecology to change a transporter from the "in violation" status to "in compliance" status on the "transporter registration list," the transporter must:

(1) Provide evidence that the violation has been corrected; and

(2) Pay or settle any penalties to ecology.

PART VI

DIRECT PROCESSOR REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-600 ((~~Manufacturer Warning, violations, and penalties.~~) What direct processors need to know to process CEPs for a CEP recycling plan. ((~~1~~) As of January 1, 2007, all manufacturers of CEPs must register with ecology in order to offer for sale or sell, or have a retailer offer for sale or sell, their products in or into Washington state.**

(2) Ecology will place a manufacturer in "in violation" status if a violation, as described in this chapter, is committed by the manufacturer.

**(3) Types of violations:**

(a) **Registration violation:** As of January 1, 2007:

(i) It is a manufacturer violation if a manufacturer offers for sale or sells CEPs in or into Washington state and is not registered under this chapter.

(ii) It is also a manufacturer violation if, on the date the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status and the retailer offers for sale or sells those CEPs.

**Notification to retailers:** A manufacturer may notify, in writing, retailers if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.

(iii) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, each unit offered for sale or sold is a separate violation for the manufacturer.

**(b) Unlabeled electronic products violations:** As of January 1, 2007, it is a manufacturer violation if a manufacturer, or a retailer, offers for sale or sells the manufacturer's electronic product in or into Washington state that is not labeled with the manufacturer's brand name. Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation for the manufacturer.

**(4) Warnings and penalties:**

(a) **Notice of violation:** Ecology will issue a written warning, via certified mail, for the first violation of subsection (3) of this section. The written warning will include a copy of the requirements to let the manufacturer know what is needed for them to be in compliance.

(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:

(i) Of up to one thousand dollars for the first violation; and

(ii) Of up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for the same violation.

(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.)

(1) To be a direct processor and

process CEPs for a plan under this chapter the direct processor must:

- (a) Submit an initial registration form;
- (b) Update registration information if it changes;
- (c) Renew registration annually;
- (d) Be identified as a direct processor in an ecology approved plan;
- (e) Be in "in compliance" status on the "direct processor registration list" on ecology's web site; and
- (f) Meet the minimum or preferred performance standards, throughout the program year, assigned to the direct processor on the "direct processor registration list."

(2) At least sixty days prior to receiving CEPs for processing, the direct processor must submit a registration form to ecology and may not begin processing until ecology places the direct processor in "in compliance" status on the "direct processor registration list" on ecology's web site.

<u>Direct Processor's Status</u>	<u>Can a direct processor process CEPs for a plan?</u>	<u>Definition</u>
<u>In compliance</u>	<u>Yes</u>	<u>"In compliance" means the direct processor is registered and complies with the requirements in WAC 173-900-650.</u>
<u>In violation</u>	<u>No</u>	<u>"In violation" means the direct processor is in violation of the requirements in this chapter and the plan cannot use the services of the direct processor until compliance is achieved.</u>
<u>Processor's name is not on the "processor registration list"</u>	<u>No</u>	<u>If the direct processor's name is not on the "direct processor registration list," that processor must not provide processing services to a plan or receive compensation from a plan for processing services.</u>

(3) The authority shall contract with any processor that meets the direct processor performance standards in this

chapter and meets any requirements described in the authority's operating plan or through contractual arrangements with the authority.

- (a) Processors used by the standard plan shall:
  - (i) Provide documentation to the authority at least annually regarding how they are meeting the performance standards in WAC 173-900-650, including enough detail to allow the standard plan to meet the plan's annual reporting requirements (see annual reporting in WAC 173-900-800); and
  - (ii) Submit to annual compliance audits meeting the audit requirements in WAC 173-900-365 conducted by or for the authority.

(b) The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products.

(c) Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters and provide other documentation, as may be required by the authority.

(4) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-610 ((Retailer—Warning, violations, and penalties.)) How to register as a direct processor. ((4) Types of violations:**

(a) **Registration violation:** As of January 1, 2007, it is a retailer violation if a retailer "offers for sale" or "sells" CEPs if, at the time the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status.

(i) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, or a manufacturer in "in violation" status, each unit offered for sale or sold is a separate violation for the retailer.

(ii) If the retailer can prove that the products were ordered from the manufacturer or their agent prior to January 1, 2007, the offering for sale, or selling, of those products is not a violation even if the manufacturer fails to register.

(b) **Unlabeled electronic products violations:** As of January 1, 2007, a retailer must not "offer for sale" or "sell" an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

(i) Each unlabeled unit offered for sale or sold is a separate violation for the retailer.

(ii) If the retailer can demonstrate to ecology that the retailer was in possession of the unlabeled electronic products prior to January 1, 2007, the "offering for sale" or "sale" of these electronic products is not a violation.

**(2) Warning and penalties:**

(a) **Notice of violation:** Ecology will issue a written warning, via certified mail, to the retailer for the first violation for either subsection (1)(a) or (b) of this section. The written warning will include a copy of the requirements to let the retailer know what is needed for them to be in compliance.

(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:

(i) Of up to one thousand dollars for the first violation; and

(ii) Of up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(e) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.)

<u>Type of Registration</u>	<u>Definition</u>	<u>Due Date</u>
<u>New registration</u>	<u>Direct processor is not currently registered with ecology under this chapter.</u>	<u>Submit registration form to ecology at any time.</u>
<u>Annual renewal</u>	<u>Direct processor is currently registered with ecology under this chapter.</u>	<u>Submit renewal form to ecology between July 1 and September 1.</u>

**Step 1: Complete a direct processor registration form.**

(1) Each direct processor must complete a registration form which includes all the following:

(a) Contact and location information;

(b) Business license information;

(c) Documentation of any necessary operating permits issued as required by local, state, or national authorities;

(d) Description of services provided;

(e) Geographic areas from which electronic products are accepted; and

(f) The names of plans the direct processor is contracted to provide processing services to meet the requirements of this chapter.

**Step 2: Submit the direct processor registration form.**

(2) The person responsible for implementing the direct processor requirements under this chapter must sign the registration form. The signature certifies the company has provided accurate and complete information on the form and is complying with all applicable state, local, and national laws and regulations.

(3) The person must submit the form to ecology. When mailing in an original paper copy, the person must use one of the addresses below:

U.S. Postal Service:

Department of Ecology

Electronic Product Recycling

Solid Waste and Financial Assistance Program

P.O. Box 47600

Olympia, WA 98504-7600

Courier Service:

Department of Ecology

Electronic Product Recycling

Solid Waste and Financial Assistance Program

300 Desmond Drive

Lacey, WA 98503

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-620 ((Collector—Warning, violations, and penalties.)) How direct processors know if their registration is approved.** ((1) Ecology will place a collector in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the collector. For a collector, "in violation" status means the collector must not collect CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.

**(2) Collection of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for collectors to collect CEPs in Washington state if the collector is not registered with ecology.

**(3) Collector warning and penalties:**

(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the collector for the first violation of this section. The written warning will include a copy of the requirements to let the collector know what is needed for them to be in compliance.

(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:

(i) Of up to one thousand dollars for the first violation; and

(ii) Of up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(e) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.)

**Step 1: Ecology review of direct processor registration forms.**

(1) After receiving a registration form, ecology will review the form to decide if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the direct processor to:

(a) Tell the direct processor what information is missing or inaccurate; and

(b) Request a revised form within thirty days from the day ecology contacted the direct processor.

**Step 2: Approval or denial of direct processor registration.**

**(3) Approval.**

(a) Approval means that ecology has decided the form is complete and accurate.

(b) If ecology approves the direct processor's registration, ecology will:

(i) Place the direct processor's name on the "direct processor registration list"; and

(ii) Place the direct processor in "in compliance" status.

(c) The direct processor may process CEPs for a plan.

**(4) Denial.**

(a) Denial means that ecology has decided the form is not complete and accurate.

(b) If ecology denies a direct processor's registration, ecology will notify the direct processor of the denial and either:

(i) Remove the direct processor's name from the "direct processor registration list"; or

(ii) For renewals and updates, change the direct processor's status to "in violation" on the "direct processor registration list."

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

**WAC 173-900-630 ((Transporter—Warning, violations, and penalties.)) Annual renewal of direct processor registration.** ((1) Ecology will place a transporter in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the transporter.

For a transporter, "in violation" status means the transporter must not transport CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.

**(2) ~~Transportation of CEPs without being registered with ecology violation:~~** As of September 1, 2007, it is a violation for transporters to transport CEPs in Washington state if the transporter is not registered with ecology.

**(3) ~~Transporter warning and penalties:~~**

(a) ~~Notice of violation:~~ Ecology will issue a written warning, via certified mail, to the transporter for the first violation of this section. The written warning will include a copy of the requirements to let the transporter know what is needed for them to be in compliance.

(b) ~~If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

(i) ~~Of up to one thousand dollars for the first violation; and~~

(ii) ~~Of up to two thousand dollars for the second and each subsequent violation.~~

(iii) ~~Ecology will issue a penalty no more often than every thirty days for each violation.~~

(e) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130:)) (1) Direct processors must submit their annual renewal registration form to ecology between July 1 and September 1 of each calendar year for the next program year.

(2) If an annual renewal registration form is not received during this time period, and subsequently approved by ecology, the direct processor will be removed from the "direct

processor registration list" and must not process CEPs for a plan until a registration form is submitted and approved.

(3) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Courier Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(4) Ecology will review direct processor registration forms submitted for annual renewal under the process described in WAC 173-900-620.

NEW SECTION

**WAC 173-900-640 Updates to direct processor registration.** (1) A direct processor must submit an updated registration form to ecology sixty days prior to providing new or additional processing services for a plan.

(2) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Courier Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(3) Ecology will review direct processor updated registration forms under the process described in WAC 173-900-620.

NEW SECTION

**WAC 173-900-650 Performance standards for direct processors.** (1) This section includes performance standards for environmentally sound handling and management of CEPs by direct processors to protect human health and the environment. There are two levels of performance standards:

(a) Minimum standards;

(b) Preferred standards.

(2) Ecology will list all registered direct processors on the agency web site and indicate which level of performance standards, minimum or preferred, the processor meets.

(3) Each registered direct processor used by a plan must meet the minimum performance levels in this section to provide processing services for a plan.

**Minimum performance standards for direct processors.**

(4) Minimum performance standards for direct processors include the following requirements:

Prioritized hierarchy of responsible management strategies.

Legal requirements.

Environmental, health, and safety, management systems.

Recordkeeping.

On-site requirements.

Materials recovery and materials disposal.

Transport.

Prison labor.

Facility access.

Notification of penalties and violations.

Conflict with minimum performance standards.

**(5) Prioritized hierarchy of responsible management strategies.**

(a) A direct processor should adhere to a hierarchy of responsible management strategies for end-of-life CEPs and CEP components which calls for, in order of preference:

(i) **Reuse** - Directing CEPs and CEP components to reuse, and refurbishment as appropriate to enable shipment for reuse.

(ii) **Recycling** -

(A) Direct processors must take all practicable steps to manually and/or mechanically dismantle, separate, and when appropriate process CEPs and CEP components to enable materials recovery.

(B) Direct processors must dismantle and separate CEPs and CEP components into separate "streams" based on the risks they may pose and how they can most effectively be managed in conformity with subsection (10)(a) of this section, including removing and, as appropriate, placing in separate streams components or materials that may pose risks to worker safety, public health, or the environment in conformity with subsection (9)(d) of this section; and then

(iii) **Disposal** - Direct processors must manage any residual that cannot safely or technically be recycled in accordance with (a)(ii) of this subsection, by:

(A) If necessary, further dismantling and separating of CEPs and their components into separate streams based on the risks they may pose and how they can most effectively be managed in conformity with subsection (10)(a) of this section.

(B) When residual materials cannot be recycled, they must be disposed of in conformance with applicable laws and regulations.

(b) A direct processor must periodically evaluate its management strategies to assure it takes advantage of new more effective technologies and is otherwise continuously improving its practices and processes.

**(6) Legal requirements.**

(a) A direct processor must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries, that are applicable to the operations and transactions in which it engages related to the processing of CEPs. These include but are not limited to applicable legal requirements relating to:

(i) Waste and recycling processing, storage, handling, and shipping; and

(ii) Air emissions and waste water discharge, including storm water discharges; and

(iii) Worker health and safety; and

(iv) Transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

(b) Upon request by a customer, a direct processor must make available information about any financial penalties, regulatory orders, or violations the direct processor received in the previous three years. If the direct processor receives subsequent penalties or regulatory orders, the direct processor must make that information available within sixty days after any subsequent penalties or regulatory orders are issued.

**(7) Environmental, health, and safety management systems (EHSMS).**

(a) A direct processor must develop, document, fully implement, and update at least annually a written EHSMS that includes all of the following:

(i) Written goals and procedures that require the direct processor to systematically manage its environmental, health, and safety matters.

(ii) Utilization of a "plan, do, check, act" model that identifies environmental aspects, implements operational controls, and provides corrective action procedures. Elements of this model must include:

**(A) Plan**

(I) Identification of environmental impacts, and legal and regulatory requirements;

(II) Establishment of environmental goals, objectives and targets;

(III) Plan actions that work toward achieving identified goals;

(IV) Plan for emergency preparedness and response; and

(V) Commitment of management support.

**(B) Do**

(I) Establish roles and responsibilities for the EMS and provide adequate resources;

(II) Assure that staff are trained and capable of carrying out responsibilities; and

(III) Establish a process for communicating about the EMS within the business.

**(C) Check**

(I) Monitor key activities and track performance;

(II) Identify and correct problems and prevent recurrence; and

(III) Provide a measurement system that quantifies the application of the model.

**(D) Act**

(I) Conduct annual progress reviews;

(II) Act to make necessary changes to the EMS; and

(III) Create and implement an action plan for continual improvement.

(iii) A worker safety and health management plan that conforms to a consensus-based standard covering worker health and safety such as ANSI Z10 or to a similarly rigorous in-house standard.

(iv) A plan for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment. Such releases include emergencies such as accidents, spills, fires, and explosions. The direct processor must submit this plan to all appropriate emergency responders, e.g., police, fire department, hospitals.

(v) Is conformable with ISO 14001, Institute of Scrap Recycling Industries' Recycling Industry Operating Standards ("RIOS"), the International Association of Electronic Recyclers' ("IAER's") standard, or other standards designed at a level appropriate for the processing of CEPs at the facility.

(b) A direct processor must ensure all employees understand and follow the portions of the EMS relevant to the activities they perform.

**(8) Recordkeeping.**

(a) A direct processor must maintain documentation such as commercial contracts, bills of lading, or other commercially accepted documentation for all transfers of equipment, components, and materials into and out of its facilities.

(b) A direct processor must retain the documents required in this subsection (8) for at least three years.

**(9) On-site requirements.**

**(a) General**

(i) A direct processor must have the expertise and technical capability to process each type of CEP and CEP component it accepts in a manner protective of worker safety, public health, and the environment.

(ii) A direct processor must use materials handling, storage and management practices, including keeping all work and storage areas clean and orderly.

(iii) Speculative accumulation:

(A) "Speculative accumulation" means holding, storing or accumulating electronic equipment or materials derived therefrom for more than one hundred eighty days.

(B) Generators and facilities holding, storing, or accumulating electronic equipment or materials derived therefrom for more than one hundred eighty days will be considered holding, storing, accumulating solid or hazardous waste and subject to applicable treatment, storage or disposal regulations or equivalent.

(iv) A direct processor must use a certified scale to weigh CEPs and their components counted towards a plan's equivalent share.

**(b) Disposal**

(i) These practices relate to CEPs that are generated, transported, collected, accumulated, stored, and physically dismantled (demanufactured) for recovery and recycling of useable materials.

(ii) Electronic equipment that is intended to be disposed of (rather than recycled) at any point in the process and residues from these activities must be properly designated and managed under applicable laws.

**(c) Use constituting disposal**

(i) Material that is used in a manner constituting disposal must comply with the applicable solid or hazardous waste requirements where disposal occurs.

(ii) Use constituting disposal means the use of material derived from electronic equipment in a manner that renders the material incapable of performing the function for which it was originally created.

**(d) Materials separation and processing**

(i) A direct processor must remove from CEPs and CEP components destined for material recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing.

(ii) "Materials of concern" include each of the following:

(A) Any devices, including fluorescent tubes, containing mercury or PCBs;

(B) Batteries;

(C) CRTs and leaded glass; and

(D) Whole or shredded circuit boards.

(ii) A direct processor must remove materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with the regulatory requirements that apply to the items, or any substances contained in them, in a secured, sheltered enclosure with an appropriate catchment system. To prevent short circuiting, direct processors must cover or otherwise effectively separate battery terminals during storage and shipment.

**(e) Storage**

A direct processor must store materials of concern removed from equipment and components in accordance with (b) of this subsection in a manner that:

(i) Protects them from adverse atmospheric conditions and floods and, as warranted, includes a catchment system;

(ii) Is secure from unauthorized entrance; and

(iii) Is in clearly labeled containers and/or storage areas.

**(f) Exceptional releases posing risks**

A direct processor must be prepared to immediately implement the practices set forth in its EMS for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment, including emergencies such as accidents, spills, fires, and explosions.

**(10) Materials recovery and materials disposal.**

(a) A direct processor should use the hierarchy of management strategies in subsection (5) of this section for each type of equipment, component, and material that is not directed to reuse.

(b) Types of equipment, components, and materials are placed in separate streams as necessary to assure the risks posed by each stream are adequately addressed.

(c) A direct processor must direct streams, that are not directed to reuse, to materials recovery unless doing so poses unacceptable risk or is not technically feasible.

(e) A direct processor must send each stream destined for disposal to a facility designed to safely handle all the contents of the stream.

**(11) Materials that cannot be recovered.**

(a) A direct processor must identify and utilize effective and safe energy recovery or disposal strategies for all equipment, components, and materials that are not technically or economically feasible to recover.



(b) A direct processor must separate equipment, components, and materials destined for energy recovery or disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment.

(c) A direct processor may direct streams with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternative management strategies.

(d) A direct processor must not send materials of concern to incinerators or solid waste landfills if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.

**(12) Transport.**

A direct processor must ensure that all CEPs and CEP components to be transported are packaged in compliance with all applicable transport laws and rules.

**(13) Prison labor.**

Direct processors may not use federal or state prison labor for processing.

**(14) Facility access.**

Direct processors must allow access to the facility and the documentation required in this section for the purposes of assessing compliance with the requirements in this chapter and for sampling to:

- (a) Ecology and ecology's designee(s);
- (b) Third-party observer for the purposes of sampling;
- (c) For processors used by the standard plan:
  - (i) The authority;
  - (ii) The authority's designee(s);
- (d) For processors used by independent plans:
  - (i) The plan's authorized party;
  - (ii) The authorized party's designee(s).

**(15) Notification of penalties and violations.**

Each direct processor must notify the authority or authorized party of the plan(s) for which the direct processor provides services if the direct processor receives any penalties, violations or regulatory orders related to processing activities.

**(16) Conflict with minimum performance standards.**

To the extent that the minimum processor performance standards in this section conflict with laws applicable to a processor in another state or country, the processor may comply with the applicable national, state, or local laws and rules if the following is included in the annual compliance audit report (see WAC 173-900-365(4)):

- (a) Documentation of the conflict; and
- (b) Documentation of compliance with the national, state, or local laws or rules applicable to the processor.

**Preferred performance standards.**

(17) In addition to meeting the minimum performance standards in this section, a processor may receive preferred status from ecology if the processor conforms with the standards in ecology's "*Environmentally Sound Management and Performance Standards for Electronic Product Recycling Processors*."

NEW SECTION

**WAC 173-900-660 Ecology determination of direct processor violations.** (1) Beginning January 1, 2009, ecology may:

- (a) Inspect any direct processor used by a plan to determine the status of the direct processor.
  - (b) Use a processor annual compliance audit report submitted to ecology by the plan to confirm a direct processor is meeting the performance standards in this chapter.
- (2) If ecology determines a violation occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in this chapter.

(3) Ecology will use the annual compliance audit report for a direct processor to determine if the direct processor is listed as meeting the minimum standards in this chapter or as conforming with ecology's "*Environmentally Sound Management and Performance Standards for Electronic Product Recycling Processors*." If a compliance audit report reflects a change in status, ecology will update the "processor registration list."

NEW SECTION

**WAC 173-900-670 Direct processor violations.**

**Table 670  
Direct Processor Violations**

<b>Starting</b>	<b>If</b>	<b>Then</b>	<b>and Ecology Will</b>
January 1, 2009	A direct processor provides processing services to a plan and is not registered.	It is a <b>direct processor registration violation.</b>	List the direct processor's name on the "direct processor registration list" and place the direct processor in "in violation" status.
January 1, 2009	A direct processor does not update its registration information within fourteen days of a change.	It is a <b>direct processor registration violation.</b>	List the direct processor's name on the "direct processor registration list" and place the direct processor in "in violation" status.

Starting	If	Then	and Ecology Will
January 1, 2009	A direct processor is providing processing services to a plan and is out of compliance with the direct processor performance standards in WAC 173-900-650.	It is a <b>direct processor standards violation</b> .	List the direct processor's name on the "direct processor registration list" and place the direct processor in "in violation" status.

NEW SECTION

**WAC 173-900-680 Warning and penalties for direct processor violations.**

**Table 680  
Direct Processor Warning and Penalties**

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Direct Processor Registration Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Direct Processor Standards Violation	Warning Letter	Up to \$1,000	Up to \$2,000

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail to a direct processor, for any direct processor violation the warning will include a copy of the requirements to let the direct processor know what must be done to be in compliance.

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

**Penalties:**

(3) **First penalties:** If the direct processor does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 680 above and ecology will:

(a) Either change the direct processor's status to "in violation" or add the direct processor to the "direct processor registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the direct processor (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 680 no more often than every thirty days for the same violation.

(5) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(6) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-690 Corrective action for direct processor.** For ecology to change a direct processor from "in violation" status to "in compliance" status on the "direct processor registration list," the processor must:

- (1) Provide evidence that the violation has been corrected; and
- (2) Pay or settle any penalties to ecology.

**PART VII  
RETAILER REQUIREMENTS**

NEW SECTION

**WAC 173-900-700 Retailer—Offering for sale or selling CEPs in or into Washington state.** In order for a retailer to offer for sale or sell a CEP in or into Washington state, on the date the product was ordered:

- (1) The brand name on the CEP must be on the "manufacturer registration list" posted on ecology's web site; and
- (2) The manufacturer must be in "pending" or "in compliance" status.

NEW SECTION

**WAC 173-900-710 CEP required brand labeling.** (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in Washington state unless the electronic product is labeled with the manufacturer's brand.

(2) The label must be permanently affixed and readily visible.

(3) In-state retailers in possession of unlabeled, or white box, electronic products on January 1, 2007, may exhaust their stock through sales to the public.

NEW SECTION

**WAC 173-900-720 Ecology determination of compliance for retailers. Retailers:**

(1) Beginning January 1, 2007, ecology may inspect any retailer's CEP inventory offered for sale in or into Washington state to determine if the requirements in this chapter are met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedure in WAC 173-900-730.

(2) Beginning January 1, 2007, ecology may check any retailer's CEP inventory offered for sale in or into Washington state to determine if brand labeling requirements in WAC 173-900-710 have been met. If ecology determines a violation has occurred, ecology will document each violation and

follow the warning, violations, and penalties procedure in WAC 173-900-730.

NEW SECTION

**WAC 173-900-730 Retailer violations.** (1) A retailer is "in violation" of this chapter when one or more of the following retailer violations occurs:

- (a) Offering for sale or selling violation;
- (b) Labeling violation; or
- (c) Public outreach violation.

**(2) Retailer offering for sale or selling violation.**

A retailer is in "offering for sale or selling violation" of this chapter when a retailer offers for sale or sells CEPs and:

(a) On the date the electronic products are ordered from the manufacturer or their agent, the manufacturer's name or brand name does not appear on ecology's "manufacturer registration list."

(i) This means that brand of the manufacturer's electronic products must not be sold in or into Washington state.

(ii) Each unit offered for sale or sold is a separate violation by the retailer.

(iii) If the retailer can prove that the retailer ordered the electronic products from the manufacturer or their agent prior to January 1, 2007, the offering for sale, or selling, of those products is not a retailer violation.

(b) On the date the electronic products were ordered from the manufacturer or their agent, the manufacturer was in "in violation" status on ecology's "manufacturer registration list."

(i) Each unit offered for sale or sold is a separate violation for the retailer.

(ii) If the retailer can prove that the products were ordered from the manufacturer or their agent when the brand and manufacturer name was on ecology's "manufacturer registration list" and was in "in compliance" or "pending" status, the offering for sale, or selling, of those products is not a violation.

**(3) Retailer labeling violations.**

(a) It is a retailer "labeling violation" when a retailer offers for sale or sells an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

(b) Each unlabeled unit offered for sale or sold is a separate violation by the retailer.

(c) If the retailer can demonstrate to ecology that the retailer was in possession of the unlabeled electronic products prior to January 1, 2007, the offering for sale or selling of these electronic products is not a violation.

**(4) Retailer public outreach violation.**

It is a retailer violation if the retailer does not meet the public outreach requirements in WAC 173-900-980.

NEW SECTION

**WAC 173-900-740 Warning, penalties, and corrective action for all retailer violations.**

**Table 740  
Retailer Warning and Penalties**

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Offering for Sale or Selling Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Labeling Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Public Outreach Violation	Warning Letter	Up to \$1,000	Up to \$2,000

**Warning letter:**

(1) When ecology issues a written warning letter via certified mail to a retailer, for any violation, the warning will include a copy of the requirements to let the retailer know what the retailer must do to be in compliance.

**Penalties:**

(2) **First penalties:** If the retailer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 740 above.

(3) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 740 no more often than every thirty days for the same violation.

(4) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

**Appeals:**

(5) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

**WAC 173-900-750 Corrective action for all retailer violations.** (1) For offering for sale and selling violations, the retailer must stop offering for sale or selling CEPs until the manufacturer is listed as "pending" or "in compliance" status on ecology's "manufacturer registration list."

(2) For a labeling violation, the retailer must meet the requirements in WAC 173-900-710;

(3) For a public outreach violation, the retailer must meet the requirements in WAC 173-900-980; and

(4) The retailer must pay or settle any penalties.

**PART VIII  
REPORTING REQUIREMENTS**

NEW SECTION

**WAC 173-900-800 CEP recycling plan annual reports.** (1) By March 1, 2010, and each program year thereafter, the authority and each authorized party must file an annual report with ecology for the preceding year's program. Ecology will review the report and notify the authority or authorized party of any deficiencies that need to be addressed.

(2) The annual report must include the following information:

(a) The total weight in pounds of CEPs, including orphans, for the preceding program year including documentation verifying collection and processing of that material for:

(i) CEPs collected, reported by county, not including CEPs gleaned for reuse or refurbishment;

(ii) CEPs recycled;

(iii) Nonrecycled residual from CEPs; and

(iv) Final destination for the processing of CEPs and their components and final destination for disposal of residuals.

(b) The total weight in pounds of CEPs received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan;

(c) The total weight in pounds of CEPs that were received in large quantities from small businesses, small governments, charities and school districts;

(d) The collection services provided in each county and for each city with a population greater than ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(e) Processor information:

(i) A list of all direct processors used;

(ii) The weight of CEPs processed by each direct processor;

(iii) A description of the processes and methods used by each direct processor to recycle the CEPs including a description of the processing and facility locations; and

(iv) A compliance audit report meeting the requirements in WAC 173-900-365 for each direct processor listed in the authority or authorized party's ecology approved plan;

(f) A list of subcontractors used by the direct processor including their facility addresses;

(g) Educational and promotional efforts that were undertaken to inform covered entities about where and how to reuse and recycle their CEPs;

(h) The results of sampling as required in WAC 173-900-900;

(i) The amount of unwanted electronic products, electronic components, and electronic scrap that have been exported from Washington state to countries that are not members of the organization for economic cooperation and development or the European Union;

(j) The list of manufacturers that are participating in the plan;

(k) Signature of the authority or the authorized party; and

(l) Any other clarifying information deemed necessary by ecology to determine compliance with this chapter.

(3) **Submission:** The authority or authorized party must submit:

(a) One electronic copy in a format usable by ecology that allows electronic editing and commenting; and

(b) Two paper copies to one of the following addresses:

For U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(c) Faxes are not accepted.

(4) All reports must use the "CEP recycling report template" provided by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program or the report.

(a) Within five business days of receipt of the report ecology will notify the authority or authorized party that the report has been received and it is under review.

(b) If ecology determines that there are no deficiencies in the report, a written notice of approval will be sent via certified mail.

(c) If ecology determines that additional information is needed, the authority or authorized party must submit the additional information to ecology within thirty days of receipt of the notice.

(d) If ecology determines that there are deficiencies in the authority's or authorized party's program, the authority or authorized party must submit an updated plan to ecology following the process in WAC 173-900-335.

(6) Ecology will post all reports on the agency web site.

(7) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION

**WAC 173-900-810 Local government and community satisfaction reports.** (1) Starting January 1, 2010, local governments and local communities are encouraged to submit an annual satisfaction report to ecology by March 1 of each calendar year.

(2) The entity responsible for preparing the solid waste management plan for an area is responsible for submitting the satisfaction report to ecology.

(3) The report must include information about local government and community satisfaction with the services provided by plans in their community including:

- (a) Accessibility and convenience of services;
- (b) How services are working in their community;
- (c) What services are not working and why;
- (d) Suggestions for improvements to the services being provided by plans;
- (e) Description of public outreach and education; and
- (f) Any other information the local government determines is important to include.

(4) **Submittal:** When submitting a report, the submitting entity must submit:

- (a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; and
- (b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(5) All reports must use the "local government satisfaction report template" prescribed by ecology.

(6) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the submitting entity of any need for additional information or documentation.

(a) Within five business days of receipt of the report, ecology will notify the submitting entity that the satisfaction report has been received and it is under review.

(b) If ecology determines that no additional information is needed, a written notice of approval will be sent via certified mail.

(c) If ecology determines that additional information is needed, the submitting entity must submit the additional information to ecology within thirty days of receipt of the notice.

(7) If a report is submitted, ecology will use the information provided in these reports when reviewing plan updates and revisions.

(a) Reports indicating dissatisfaction will be sent to the authority or authorized party.

(b) The authority or authorized party has sixty days to respond to the report submittee(s) and ecology addressing issues raised in the report.

(c) If based on this response, ecology determines that the plan is failing to provide service in a community, ecology

will send written notice, via certified mail, to the authority or authorized party.

(d) The authority or authorized party will have sixty days from receipt of the notice to submit an updated plan to ecology (see WAC 173-900-335).

(8) At any time, communities may submit comments to ecology about the CEP recycling programs in their area.

#### NEW SECTION

**WAC 173-900-820 Nonprofit charitable organization collection reports.** (1) Starting in 2010, and every calendar year thereafter, nonprofit charitable organizations that are primarily engaged in the business of reuse and resale that collect CEPs for a plan must submit an annual report to ecology by March 1.

(2) The report must indicate and document the weight of CEPs sent for recycling during the previous program year attributed to each plan that the nonprofit charitable organization is participating in.

(3) **Submittal:** The nonprofit charitable organization must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; and

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology  
Electronic Product Recycling  
Solid Waste and Financial Assistance Program  
300 Desmond Drive  
Lacey, WA 98503

(4) All reports must use the "nonprofit charitable organization report template" prescribed by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the nonprofit charitable organization of any need for additional information or documentation.

(a) Within five business days of receipt of the report, ecology will notify the nonprofit charitable organization that the collection report has been received and it is under review.

(b) If ecology determines no additional information is needed, a written notice of approval will be sent via certified mail.

(c) If ecology determines that additional information is needed, the nonprofit charitable organization must submit the additional information to ecology within thirty days of receipt of the notice.

(d) If a nonprofit charitable organization used by a plan does not submit their annual collection report, the plan cannot receive the five percent credit for using that organization as a collector.

**PART IX  
SAMPLING, RETURN SHARE, AND EQUIVALENT  
SHARE**

NEW SECTION

**WAC 173-900-900 Return share sampling.** (1) Each plan must implement and finance an auditable, statistically significant sampling of CEPs entering its program every program year using the method described in this section.

**(2) Third-party observer.**

(a) The sampling must be conducted in the presence of a third-party observer approved by ecology. Ecology will create a list of approved third-parties that a plan must use when conducting sampling to meet the requirements in this section. Ecology will post a list of approved third-party observers on the agency web site.

(b) The third-party observer will:

(i) Receive the sampling instructions from ecology;

(ii) Keep a sampling log for each day the third-party observer is sampling;

(iii) Notify the direct processor twenty-four hours prior to the day when sampling will occur at the processor's facility;

(iv) Verify that the sampling method in this section and the sampling instructions provided by ecology are followed during the sampling event;

(v) Certify the sampling data collected; and

(vi) Submit the data and sampling log to ecology.

(c) If the third-party observer notices that sampling is not conducted in accordance with the methods in this section or the sampling instructions provided by ecology, the third-party observer must stop sampling for that day and notify ecology.

(d) The third-party observer must not share the sampling instructions with the direct processor or the plan prior to the sampling day.

(e) The third-party observer must make a sampling log for each day the third-party observes sampling. The sampling log must include:

(i) Date and time of sampling;

(ii) Location of sampling;

(iii) Name of the manager operating the facility on that day;

(iv) Names of the members of the sampling team and role of each team member in the sampling process;

(v) A general timeline of activities throughout the day including start time for CEP sampling process, breaks taken, changes in sampling team personnel or roles, unusual events, and time when sampling process ended;

(vi) Any deviation from the sampling method in this section or sampling instructions provided by ecology;

(vii) An approximate percentage of the types of CEPs present in deliveries coming from different collectors;

(viii) Changes in rate and volume of CEPs coming into the facility;

(ix) Observations about the equipment and programs;

(x) Observations or concerns about the procedures used by the sampling team and the CEPs sampled;

(xi) When sampling is stopped, a description of why and what steps were taken to try and fix the problem;

(xii) Suggestions for improving future sampling events.

(f) If a third party fails to meet these protocols, ecology may remove the third party from the list of approved observers.

(g) A plan cannot end a contract with a third-party observer for reporting errors, concerns or discrepancies with sampling to ecology.

(3) **Observation of sampling by ecology.** Ecology may, at its discretion, observe sampling and audit the method and the results in addition to the third-party observer.

**(4) Incorrect sampling.**

(a) If the third-party observer sees that the sampling is not implemented according to the method set forth in this section or the sampling instructions provided by ecology, the third-party observer must note which samples were taken incorrectly in the sampling log and work with the sampling team to correct the problem for future samples. If the problem cannot be corrected for the next sampled unit, the third-party observer must:

(i) Stop the sampling for that day;

(ii) Notify ecology of the problem; and

(iii) Notify the authority or authorized party.

(b) If ecology observes, or is notified by a third-party, that the sampling is not implemented according to the method set forth in this section or the sampling instructions provided by ecology, ecology may:

(i) Notify the plan of the problem;

(ii) Stop sampling for that day; or

(iii) Eliminate the sample set.

(c) Ecology may also use data analysis, inspections, sworn reports or complaints from individuals to determine incorrect sampling.

(d) If any plan has more than one sample set eliminated for any reason, ecology may estimate that plan's equivalent share based on samples collected by other plans in order to ensure that bias in that plan's sample does not reduce its own return share. This adjustment may be used for three years (see subsection (5) of this section).

(e) If ecology or the third-party observer stops sampling, no alternative sampling date will be assigned to the plan.

**(5) Three year rolling average to be used to construct the statistics needed for the return share.**

(a) Ecology will construct the final average results for each plan using the most recent three years of sample data.

(b) For the first two years of sampling only the years available will be used.

(6) Review of the sampling method.

(a) After the fifth program year, ecology may reassess the sampling methods required in this section. Ecology may adjust:

(i) Who will do the sampling;

(ii) The sample size;

(iii) The frequency of sampling;

- (iv) The distribution of the sampling places;
- (v) Information collected during sampling; and
- (vi) The method for collecting the sample.

(b) Prior to making any changes, ecology must notify the public and provide a public comment period.

**(7) Method for sampling.**

<b>Steps in the sampling method</b>	
<b>Step 1:</b>	Ecology creates a third-party observer list.
<b>Step 2:</b>	Selection and payment of third party by the plans.
<b>Step 3:</b>	Ecology determines the sample size for a program year.
<b>Step 4:</b>	Ecology assigns a sample allocation to each plan.
<b>Step 5:</b>	Ecology provides quarterly sampling instructions to each third-party observer identified by the plans.
<b>Step 6:</b>	The plan conducts and records the sampling.
<b>Step 7:</b>	Reporting the sample.
<b>Step 8:</b>	Ecology must adjust for over sampling or under sampling.
<b>Step 9:</b>	Ecology tabulates sampling results quarterly.
<b>Step 10:</b>	Ecology uses sampling results to calculate return share.

**Step 1: Ecology creates a third-party observer list.**

(a) Ecology will list approved third-party observers on the agency web site.

(b) By December 1 of every other year ecology will announce:

- (i) The hourly rate, per diem, and mileage reimbursement the plan must pay to each third party used by the plan;
- (ii) The third-party qualifications; and
- (iii) The process for a third party to seek approval to be listed as a third-party observer.

(c) A third party may submit a request to be listed at any time during the year.

**Step 2: Selection and payment of a third party by a plan.**

(d) Each plan must select a third party from ecology's list to observe sampling conducted for the plan and notify ecology of the third-party observer with which they have contracted.

(e) The plans must cover the costs, including travel, of any third-party observer used by the plan to observe its sampling activities.

(f) The authority or authorized party must remit payment to the third-party observer at the rates announced by ecology. Payment must be made both for sampling in and outside of Washington state.

**Step 3: Ecology determines the sample size for a program year.**

**(g) Sample size.**

(i) The sample size will be statistically determined by applying the formula below:

$$\text{Sample Size } n = \left[ \frac{\pi(1-\pi)z^2}{d^2} \right] (m)$$

Where

$\pi$  = Maximum brand return share in the population, in the form of a fraction. For the first year this number is estimated from data collected by the National Center for Electronics Recycling from other jurisdictions where brand returns were tallied

$z$  = Standardized statistical critical value associated with the confidence level of ninety-five percent is 1.96

$d$  = The maximum margin of error which is .005 at the ninety-five percent confidence level

$m$  = Sample size increase due to unidentifiable brands. In consideration of the fact that the brand names of some units are not identifiable (e.g., white box units with no brand, or returned units where the brand is no longer legible), the sample sizes taken must be larger than those determined purely by statistical techniques. Across all product categories the incident rate for nonidentifiable samples is equal to the orphan share of CEPs sampled.

(ii) Sample size is expressed as a number of individual units of CEPs, and each unit to be sampled will be individually weighed.

**Step 4: Ecology assigns a sample allocation to each plan.**

(h) Ecology will assign the minimum sample size annually on the basis of each plan's return share.

(i) Starting in 2008, ecology will announce the total sample size and the proportionate plan share for sampling for each plan by December 1st of each year.

**Step 5: Ecology provides quarterly sampling instructions to each third-party observer identified by the plans.**

(j) Ecology will provide the contracted third-party observers with quarterly sampling instructions. Quarters begin in January, April, July, and October.

(k) The sampling instructions will include the dates for sampling, the processing facility(ies) where sampling will take place, instructions for random selection of units for sampling, and the hours of sampling.

(l) Each plan must conduct sampling for each date listed in the third-party observer's sampling instructions provided by ecology.

**Step 6: The plan conducts and records the sampling.**

**(m) Field sampling.**

(i) Once the third-party observer arrives at the processing facility, the plan or direct processor must introduce the observer to the members of the sampling team that will be conducting sampling for that day and let the third-party observer know the role of each member of the sampling team.

(ii) The third-party observer must inform the sampling team how to select CEP units based on the sampling instructions provided by ecology for that sampling day.

(iii) The sampling team must place a unique bar code sticker on every CEP entering the processing facility during the assigned sampling period, whether by truckload, walk-in, or other method. Prior to placing the bar code on the CEP, no sorting of CEPs by type must occur at the processing facility.

(iv) Before any CEP is sent for processing the sampling team must use a hand held bar code reader to scan the bar code sticker placed on that unit by the sampling team.

(v) The sampling computer program provided by ecology will identify whether a particular unit should be sampled.

(vi) Units identified as requiring sampling must be set aside for sampling, and units identified as not requiring sampling would be available for processing immediately.

(vii) Units identified as requiring sampling become part of the sample for that day and the sampling team must record the required data for each of those units even if it takes more than one day.

(viii) The sampling team must record all the data for the sample using the return share sampling computer program provided by ecology.

(n) If a brand name is not listed in the computer program, the sampling team must record a minimum of three digital images. The images must be of sufficient clarity that ecology can identify any printed information on the CEP.

(i) The first image will be of the entire front of the CEP.

(ii) The second image will be focused on the brand identification logo (if available).

(iii) The third image will be of the label on the back or bottom of the CEP (if available).

(iv) The photographs must be attached to the appropriate electronic record in the return share sampling computer program in a jpeg format.

**Step 7: Reporting the sample.**

(o) At the end of the sampling day the plan must provide the results to the third-party observer. The results must include all of the following:

(i) The data as required by the sampling program for each CEP unit;

(ii) A list of the brand names of CEPs by product type;

(iii) The number of CEPs by product type;

(iv) The weight of CEPs that are identified for each brand name;

(v) The weight of CEPs that lack a manufacturer's brand; and

(vi) The total weight of the sample by product type.

(p) The third-party observer will certify the results and submit one paper and one electronic copy of the results to ecology and the authority or authorized party.

**Step 8: Ecology must adjust for over sampling or under sampling.**

(q) If ecology determines that over or under sampling has occurred, ecology must adjust such over or under sampling as follows:

$$V_i = S_i \times \text{Sample size assigned} / \text{Sample size taken}$$

$$P_i = W_i \times \text{Sample size assigned} / \text{Sample size taken}$$

Where:

$S_i$  is the total number of units weighed for brand  $i$

$W_i$  is the total weight of units for brand  $i$ .

(r) Ecology may adjust the extrapolation of under sampling data to account for outliers that may over estimate small manufacturer returns.

**Step 9: Ecology tabulates sampling results quarterly.**

(s) Quarterly ecology will combine the sampling results required in Step 7 from all plans. If ecology observes discrepancies, ecology will follow the method in subsection (4) of this section.

**Step 10: Ecology uses sampling results to calculate return share.**

(t) Ecology will combine the sampling results from each quarter and use this data when calculating return share as described in WAC 173-900-910.

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

**NEW SECTION**

**WAC 173-900-910 Calculating return share.** (1) In order for a CEP to be counted in a plan's return share, the CEP or CEP components must go to a processor that meets the requirements in Part VI of this chapter.

**(2) Return shares issued in 2007 through 2009:**

(a) Ecology must determine return shares for all manufacturers in the standard plan or an independent plan by using all reasonable means and base those determinations on the best available information regarding return share data from other states and other pertinent data.

(b) If ecology does not have any return data on a particular manufacturer, ecology will assign that manufacturer to the lowest represented percentage of return share on the preliminary return list.

(c) Ecology will use the first return share to:



(i) Appoint five board members for the first term of appointments to the materials management board of directors from the top ten manufacturers holding the highest return share; and

(ii) Establish the first program year return share for manufacturers in a plan.

(3) **Return shares issued 2010 and later:** For the second and all subsequent program years, ecology will determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of CEPs identified for each manufacturer through the sampling methodology and protocol in WAC 173-900-900 by the total sampled weight of CEPs identified for all manufacturers in the plans. That quotient will then be multiplied by one hundred to establish a percentage share for each manufacturer.

#### NEW SECTION

#### **WAC 173-900-920 Use and publication of CEP return shares.**

##### **Return shares for program year 2009:**

(1) Ecology will announce the preliminary return share for each manufacturer and each plan by June 1 of each year.

(2) Ecology will publish the preliminary return shares on the agency web site.

(3) Ecology will notify each registered manufacturer by June 1 of each year.

(4) Manufacturers may challenge their preliminary return share by written petition to ecology. The petition must be received by ecology within thirty days of the date of publication of the preliminary return shares.

(5) The petition must contain:

(a) A detailed explanation of the grounds for the challenge;

(b) An alternative calculation, and the basis for such a calculation;

(c) Documentary evidence supporting the challenge; and

(d) Complete contact information for requests for additional information or clarification.

(6) Sixty days after the publication of the preliminary return share, ecology will make a final decision on return shares, having fully taken into consideration any and all challenges to its preliminary calculations.

(7) A written record of challenges received and a summary of the basis for the challenges, as well as ecology's response, must be published at the same time as the publication of the final return shares.

(8) By August 1, 2007, ecology shall publish the final return shares for the first program year.

##### **Return shares announced for program year 2010 and thereafter:**

(9) Ecology will announce the preliminary return share and notify each registered manufacturer by June 1 of each year.

(10) Manufacturers may challenge their preliminary return share by written petition to ecology. The petition must be received by ecology within thirty days of the date of publication of the preliminary return shares.

(11) The petition must contain:

(a) A detailed explanation of the grounds for the challenge;

(b) An alternative calculation, and the basis for such a calculation;

(c) Documentary evidence supporting the challenge; and

(d) Complete contact information for requests for additional information or clarification.

(12) Sixty days after the publication of the preliminary return share, ecology will make a final decision on return shares, having fully taken into consideration any and all challenges to its preliminary calculations.

(13) A written record of challenges received and a summary of the basis for the challenges, as well as ecology's response, must be published at the same time as the publication of the final return shares.

(14) By August 1 of each program year, ecology shall publish the final return shares for use in the coming program year.

(15) Ecology will publish the final return shares on the agency web site.

#### NEW SECTION

#### **WAC 173-900-930 Calculating the total equivalent share.**

##### **Step 1: Calculating individual manufacturer equivalent share.**

(1) Ecology must determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the sum of total weight in pounds of CEPs collected, not including any CEPs gleaned for reuse or refurbishment, for that program year and any additional credited pounds under WAC 173-900-940.

##### **Step 2: Calculating a plan's equivalent share.**

(2) A plan's equivalent share is equal to the total of the equivalent shares for all manufacturers participating in the plan.

#### NEW SECTION

**WAC 173-900-940 Equivalent share credits.** Plans that use the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501 (c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. Ecology may adjust the percentage of credit annually.

#### NEW SECTION

**WAC 173-900-950 Notification of equivalent share.** By June 1 of each program year starting in 2010, ecology will notify each:

(1) Manufacturer of the manufacturer's equivalent share of CEPs to be applied to the previous program year;

(2) Plan of the plan's equivalent share of CEPs to be applied to the previous program year;

(3) Manufacturer and plan of how its equivalent share was determined.

#### NEW SECTION

**WAC 173-900-960 Share payments.** (1) For a CEP recycling plan, if the total weight in pounds of CEPs collected by the plan and processed by a processor during a program year is less than the plan's equivalent share of CEPs for that year, then the authority or authorized party must submit to ecology a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, processing, and recycling cost for CEPs and an administrative fee.

(2) Moneys collected by ecology must be deposited in the electronic products recycling account created under RCW 70.95N.130.

(3) For a plan, if the total weight in pounds of CEPs collected during a program year is more than the plan's equivalent share of CEPs for that year, then ecology shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, processing, and recycling cost for CEPs.

(4) For purposes of this section, the initial reasonable collection, transportation, processing, and recycling cost for CEPs is forty-five cents per pound and the administrative fee is five cents per pound.

(5) Ecology may annually adjust the reasonable collection, transportation, processing, and recycling cost for CEPs and the administrative fee described in this section. Prior to making any changes ecology will:

(a) Post the proposed new amounts on the agency web site;

(b) Send notice to all registered manufacturers;

(c) Provide a thirty-day comment period;

(d) Evaluate comments and make revisions to the amounts if appropriate; and

(e) Post the new amounts on the agency web site.

(6) Ecology will notify all registered manufacturers of any changes to the reasonable collection, transportation, processing, and recycling cost or the administrative fee by January 1 of the program year in which the change is to take place.

#### NEW SECTION

**WAC 173-900-970 Collecting and paying share payments.**

##### **Billing share payments.**

(1) By June 1 of each program year, ecology will bill any authorized party or authority that has not attained its plan's equivalent share as determined in WAC 173-900-930 share payments. The authorized party or authority must remit payment to ecology within sixty days from the billing date.

##### **Ecology payment of share payments.**

(2) By September 1 of each program year, ecology must pay any authorized party or authority that exceeded its plan's equivalent share.

#### **PART X PUBLIC OUTREACH**

#### NEW SECTION

##### **WAC 173-900-980 Public outreach.**

##### **Independent and standard plans:**

(1) Public outreach and marketing requirements: An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their CEPs at the end of the product's life. At a minimum, the plan must:

(a) Describe the method or methods used to provide outreach to covered entities; and

(b) Ensure outreach throughout the state.

##### **Ecology:**

(2) Ecology will promote CEP recycling by:

(a) Posting information describing where to recycle unwanted CEPs on its web site;

(b) Providing information about recycling CEPs through a toll-free telephone service; and

(c) Developing and providing artwork for use by others in flyers, signage, web content, and other advertising mechanisms.

(3) Ecology will determine the effectiveness of the public outreach and education campaign based on information supplied in the reports required under this chapter.

##### **Local governments:**

(4) Local governments must promote CEP recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

##### **Retailers:**

(5) A retailer who sells new CEPs must provide information to consumers describing where and how to recycle CEPs and opportunities and locations for the convenient collection or return of the products at the point of sale. This outreach may include:

(a) Use of ecology's artwork in advertisements such as on flyers, shelf-tags, or brochures for this program.

(b) Providing ecology's toll-free telephone number and web site.

(c) Providing information about how to recycle CEPs in Washington either in, on, or with the packaging;

(6) Remote sellers may include the information in a visible location on their web site as fulfillment of this requirement.

##### **Collaboration:**

(7) Manufacturers, state government, local governments, retailers, and collection sites and services must collaborate in

the development and implementation of the public information campaign.

**PART XI**  
**THE MATERIALS MANAGEMENT AND FINANCE**  
**AUTHORITY (THE AUTHORITY)**

NEW SECTION

**WAC 173-900-990 Ecology's relationship to the authority.** (1) The director of the department of ecology, or the director's designee, will serve as an ex officio member of the materials management and finance authority board of directors.

(a) Ex officio designations must be made in writing and communicated to the authority director.

(b) The function of ecology's membership is advisory only and carries no voting privileges on matters brought before the board.

(2) Ecology must provide staff to assist in the creation of the authority.

(a) If requested by the authority, ecology will also provide start-up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority.

(b) Staff expenses incurred by ecology must be paid back to ecology through funds collected by the authority and must be reimbursed to ecology from the authority's financial resources within the first twenty-four months of operation.

NEW SECTION

**WAC 173-900-993 Appointing the board of the authority.** The board of directors of the authority is comprised of eleven participating manufacturers:

(1) Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products.

(2) Six board positions are reserved for representatives of other brands. At least one of these board positions is reserved for a manufacturer who is also a retailer selling their own private label.

(3) The board must have representation from both television and computer manufacturers.

(4) The board of directors is appointed by the director of the department of ecology.

(a) Manufacturers will indicate their interest in serving on the board of directors to ecology.

(b) Manufacturers expressing interest will be asked to submit the name of their representative.

(c) Ecology will select board members from the candidates that have expressed interest using the following criteria:

(i) Five from the top ten brand owners by return share of CEPs willing to participate on the board;

(ii) One retailer that is also a manufacturer;

(iii) Representation of manufacturers from eastern Washington;

(iv) Representation from small, in-state manufacturers;

(v) Balance between manufacturers whose business is primarily that of television manufacturing and those whose business is primarily that of computer manufacturing; and

(vi) At least one manufacturer that is a new market entrant.

(5) The first board will be appointed from those manufacturers expressing interest in serving on the board in the first registration of manufacturers.

(6) The first board of directors will serve a term of one year.

(7) Subsequent appointments to the board of directors will be made on intervals established in the authority by-laws created by the board.

NEW SECTION

**WAC 173-900-995 Board reimbursement for use of ecology support staff.** (1) The costs collected under this section are only for support provided during the start-up and the first twelve months of operation for the board.

(2) The board must reimburse all costs to ecology within twenty-four months of beginning operation.

(3) Ecology will calculate reimbursements based on actual costs:

Reimbursement Amount = Direct Costs + Indirect Costs

Where:

(a) **Direct costs** include ecology staff time and other costs related to accomplishing the activities identified in subsection (1) of this section. Direct staff costs are the costs of hours worked, including salaries and benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of ecology staff working with the board including, for example, costs of: Travel, printing and publishing of documents, and other work, contracted or otherwise, associated with the board.

(b) **Indirect costs** are those general management and support costs of ecology. Ecology applies them using the agency's approved federal indirect cost rate.

(4) **Cost reimbursement invoicing and payment.** Invoices are generally sent about the last week of the month, for the previous month's activity. Payment is expected within thirty days after the date that ecology has issued the invoice. If the board uses ecology support staff, the authority must reimburse ecology from the authority's financial resources within the first twenty-four months of operation.

NEW SECTION

**WAC 173-900-997 The standard plan's assessment of charges and apportionment of costs.** (1) Manufacturers participating in the standard plan must pay the authority to cover all administrative and operational costs associated with the collection, transportation, processing, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation.

(2) The authority must assess charges on each manufacturer participating in the standard plan and collect funds from

each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section.

(a) Such apportionment must be based on return share, market share, any combination of return share and market share, or any other equitable method.

(b) The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state.

(c) Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states.

(d) The authority must adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology that the manufacturer is not participating in the standard plan (see WAC 173-900-350).

(6) The authority must submit its plan for assessing charges and apportioning cost on manufacturers as part of the standard plan (see Part III of this chapter).

(7) **Appeals:** Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of cost as collected by the authority.

(a) The manufacturer must pay their charges or apportionment to the authority and submit a written petition to the director of the department of ecology within fourteen calendar days of receipt of notification of charges or apportionment. The written petition must include proof that:

(i) The authority's assessments or apportionment of costs were an arbitrary administrative decision;

(ii) An abuse of administrative discretions is proven; or

(iii) It is not an equitable assessment of apportionment of costs.

(b) Within thirty calendar days of receipt of the written petition, the director or the director's designee will review the appeal.

(c) The director will reverse any assessments of charges or apportionment of costs if the appeal is determined to be correct.

(d) If the director reverses an assessment of charges, the authority must:

(i) Redetermine the assessment or apportionment of costs and submit a plan revision as described in WAC 173-900-335, CEP recycling plan update; and

(ii) Once the revision is approved by ecology, send refunds or assess additional charges to standard plan participants per the revision.

(8) **Arbitration:** Disputes regarding the final decision by the director or the director's designee may be challenged through arbitration.

(a) The director shall appoint one member to serve on the arbitration panel.

(b) The challenging party shall appoint one member to serve on the arbitration panel.

(c) These two members shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person.

(d) The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-900-040	Required brand labeling.
WAC 173-900-050	Offering for sale or selling covered electronic products (CEPs) in or into Washington.

AMENDATORY SECTION (Amending Order 03-10, filed 11/30/04, effective 1/1/05)

**WAC 173-303-040 Definitions.** When used in this chapter, the following terms have the meanings given below.

"Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Active life" of a facility means the period from the initial receipt of dangerous waste at the facility until the department receives certification of final closure.

"Active portion" means that portion of a facility which is not a closed portion, and where dangerous waste recycling, reuse, reclamation, transfer, treatment, storage or disposal operations are being or have been conducted after:

The effective date of the waste's designation by 40 CFR Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261. (See also "closed portion" and "inactive portion.")

"Active range" means a military range that is currently in service and is being regularly used for range activities.

"Acute hazardous waste" means dangerous waste sources (listed in WAC 173-303-9904) F020, F021, F022, F023, F026, or F027, and discarded chemical products (listed in WAC 173-303-9903) that are identified with a dangerous waste number beginning with a "P", including those wastes

mixed with source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. The abbreviation "AHW" will be used in this chapter to refer to those dangerous and mixed wastes which are acute hazardous wastes. Note - the terms acute and acutely are used interchangeably.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of dangerous waste from its point of generation to a storage or treatment tank(s), between dangerous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"Batch" means any waste which is generated less frequently than once a month.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Berm" means the shoulder of a dike.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit will be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards in WAC 173-303-017(6).

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Carcinogenic" means a material known to contain a substance which has sufficient or limited evidence as a human or animal carcinogen as listed in both IARC and either IRIS or HEAST.

"Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Chemical agents and chemical munitions" are defined as in 50 U.S.C. section 1521 (j)(1).

"Cleanup-only facility" means a site, including any contiguous property owned or under the control of the owner or operator of the site, where the owner or operator is or will be treating, storing, or disposing of remediation waste, including dangerous remediation waste, and is not, has not and will not be treating, storing or disposing of dangerous waste that is not remediation waste. A cleanup-only facility is not a "facility" for purposes of corrective action under WAC 173-303-646.

"Closed portion" means that portion of a facility which an owner or operator has closed, in accordance with the approved facility closure plan and all applicable closure requirements.

"Closure" means the requirements placed upon all TSD facilities to ensure that all such facilities are closed in an acceptable manner (see also "post-closure").

"Commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient.

"Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and includes, but is not limited to, limes, gypsum, and manipulated animal manures and vegetable compost. The commercial fertilizer must be registered with the state or local agency regulating the fertilizer in the locale in which the fertilizer is being sold or applied.

"Compliance procedure" means any proceedings instituted pursuant to the Hazardous Waste Management Act as amended in 1980 and 1983, and chapter 70.105A RCW, or regulations issued under authority of state law, which seeks to require compliance, or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a notice of intention to terminate a permit

pursuant to WAC 173-303-830(5), or an application in the state superior court for appropriate relief under the Hazardous Waste Management Act. A compliance procedure is considered to be pending from the time a notice of violation or of intent to terminate a permit is issued or judicial proceedings are begun, until the department notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

"Component" means either the tank or ancillary equipment of a tank system.

"Constituent" or "dangerous waste constituent" means a chemically distinct component of a dangerous waste stream or mixture.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of WAC 173-303-695.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of dangerous waste or dangerous waste constituents which could threaten human health or environment.

"Contract" means the written agreement signed by the department and the state operator.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives CRTs for recycling, repair, resale, or donation.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

- Receiving broken or intact CRTs; and
- Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
- Sorting or otherwise managing glass removed from CRT monitors.

"Dangerous waste constituents" means those constituents listed in WAC 173-303-9905 and any other constituents that have caused a waste to be a dangerous waste under this chapter.

"Dangerous waste management unit" is a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area. Examples of dangerous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area.

A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Dangerous wastes" means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in this chapter, the words "dangerous waste" will refer to the full universe of wastes regulated by this chapter. The abbreviation "DW" will refer only to that part of the regulated universe which is not extremely hazardous waste. (See also "extremely hazardous waste," "hazardous waste," and "mixed waste" definitions.)

"Debris" means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 40 CFR Part 268 Subpart D (incorporated by reference in WAC 173-303-140 (2)(a)); process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least seventy-five percent of their original volume. A mixture of debris that has not been treated to the standards provided by 40 CFR 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

"Department" means the department of ecology.

"Dermal LD<sub>50</sub>" means the single dosage in milligrams per kilogram (mg/kg) body weight which, when dermally (skin) applied for 24 hours, within 14 days kills half of a group of ten rabbits each weighing between 2.0 and 3.0 kilograms.

"Designated facility" means a dangerous waste treatment, storage, or disposal facility that has received a permit (or interim status) in accordance with the requirements of this chapter, has received a permit (or interim status) from another state authorized in accordance with 40 CFR Part 271, has received a permit (or interim status) from EPA in accordance with 40 CFR Part 270, has a permit by rule under WAC 173-303-802(5), or is regulated under WAC 173-303-120 (4)(c) or 173-303-525 when the dangerous waste is to be recycled, and that has been designated on the manifest pursuant to WAC 173-303-180(1). If a waste is destined to a facility in an authorized state that has not yet obtained authorization to regulate that particular waste as dangerous, then the designated facility must be a facility allowed by the receiving state to accept such waste. The following are designated facilities only for receipt of state-only waste; they cannot receive federal hazardous waste from off-site: Facilities operating under WAC 173-303-500 (2)(c).

"Designation" is the process of determining whether a waste is regulated under the dangerous waste lists, WAC 173-303-080 through 173-303-082; or characteristics, WAC 173-303-090; or criteria, WAC 173-303-100. The procedures for designating wastes are in WAC 173-303-070. A waste that has been designated as a dangerous waste may be either DW or EHW.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in WAC 173-

303-573 (9)(a), (b) and (c) and 173-303-573 (20)(a), (b) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other substances.

"Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Director" means the director of the department of ecology or his designee.

"Discharge" or "dangerous waste discharge" means the accidental or intentional release of hazardous substances, dangerous waste or dangerous waste constituents such that the substance, waste or a waste constituent may enter or be emitted into the environment.

"Disposal" means the discharging, discarding, or abandoning of dangerous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned. This includes the discharge of any dangerous wastes into or on any land, air, or water.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system to a publicly owned treatment works (POTW) for treatment.

"Draft permit" means a document prepared under WAC 173-303-840 indicating the department's tentative decision to issue or deny, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate or deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as discussed in WAC 173-303-830 is not a draft permit.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drip-page from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Elementary neutralization unit" means a device which:

Is used for neutralizing wastes which are dangerous wastes only because they exhibit the corrosivity characteristics defined in WAC 173-303-090 or are listed in WAC 173-303-081, or in 173-303-082 only for this reason; and

Meets the definition of tank, tank system, container, transport vehicle, or vessel.

"Enforceable document" means an order, consent decree, plan or other document that meets the requirements of 40 CFR 271.16(e) and is issued by the director to apply alternative requirements for closure, post-closure, ground water monitoring, corrective action or financial assurance under WAC 173-303-610 (1)(d), 173-303-645 (1)(e), or 173-303-620 (8)(d) or, as incorporated by reference at WAC 173-303-400, 40 CFR 265.90(f), 265.110(d), or 265.140(d). Enforceable documents include, but are not limited to, closure plans and post-closure plans, permits issued under chapter 70.105 RCW, orders issued under chapter 70.105 RCW and orders and consent decrees issued under chapter 70.105D RCW.

"Environment" means any air, land, water, or ground water.

"EPA/state identification number" or "EPA/state ID#" means the number assigned by EPA or by the department of ecology to each generator, transporter, and TSD facility.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of dangerous waste and that is in operation, or for which installation has commenced on or prior to February 3, 1989. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

A continuous on-site physical construction or installation program has begun; or

The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

"Existing TSD facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, for wastes designated by 40 CFR Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261. A facility has commenced construction if the owner or operator has obtained permits and approvals necessary under federal, state, and local statutes, regulations, and ordinances and either:

A continuous on-site, physical construction program has begun; or

The owner or operator has entered into contractual obligation, which cannot be ~~(canceled)~~ canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncon-

trollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Extremely hazardous waste" means those dangerous and mixed wastes designated in WAC 173-303-100 as extremely hazardous. The abbreviation "EHW" will be used in this chapter to refer to those dangerous and mixed wastes which are extremely hazardous. (See also "dangerous waste" and "hazardous waste" definitions.)

"Facility" means:

- All contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them). Unless otherwise specified in this chapter, the terms "facility," "treatment, storage, disposal facility," "TSD facility," "dangerous waste facility" or "waste management facility" are used interchangeably.

- For purposes of implementing corrective action under WAC 173-303-64620 or 173-303-64630, "facility" also means all contiguous property under the control of an owner or operator seeking a permit under chapter 70.105 RCW or chapter 173-303 WAC and includes the definition of facility at RCW 70.105D.020(4).

"Facility mailing list" means the mailing list for a facility maintained by the department in accordance with WAC 173-303-840 (3)(e)(I)(D).

"Final closure" means the closure of all dangerous waste management units at the facility in accordance with all applicable closure requirements so that dangerous waste management activities under WAC 173-303-400 and 173-303-600 through 173-303-670 are no longer conducted at the facility. Areas only subject to generator standards WAC 173-303-170 through 173-303-230 need not be included in final closure.

"Fish LC50" means the concentration that will kill fifty percent of the exposed fish in a specified time period. For book designation, LC50 data must be derived from an exposure period greater than or equal to twenty-four hours. A hierarchy of species LC50 data should be used that includes (in decreasing order of preference) salmonids, fathead minnows (*Pimephales promelas*), and other fish species. For the ninety-six-hour static acute fish toxicity test, described in WAC 173-303-110 (3)(b)(i), coho salmon (*Oncorhynchus kisutch*), rainbow trout (*Oncorhynchus mykiss*), or brook trout (*Salvelinus fontinalis*) must be used.

"Food chain crops" means tobacco, crops grown for human consumption, and crops grown to feed animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Fugitive emissions" means the emission of contaminants from sources other than the control system exit point. Material handling, storage piles, doors, windows and vents are typical sources of fugitive emissions.

"Generator" means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

"Genetic properties" means those properties which cause or significantly contribute to mutagenic, teratogenic, or carcinogenic effects in man or wildlife.

"Ground water" means water which fills voids below the land surface and in the earth's crust.

"Halogenated organic compounds" (HOC) means any organic compounds which, as part of their composition, include one or more atoms of fluorine, chlorine, bromine, or iodine which is/are bonded directly to a carbon atom. This definition does not apply to the federal land disposal restrictions of 40 CFR Part 268 which are incorporated by reference at WAC 173-303-140 (2)(a). Note: Additional information on HOCs may be found in *Chemical Testing Methods for Designating Dangerous Waste*, Ecology Publication #97-407.

"Hazardous debris" means debris that contains a hazardous waste listed in WAC 173-303-9903 or 173-303-9904, or that exhibits a characteristic of hazardous waste identified in WAC 173-303-090.

"Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

"Hazardous wastes" means those solid wastes designated by 40 CFR Part 261, and regulated as hazardous and/or mixed waste by the United States EPA. This term will never be abbreviated in this chapter to avoid confusion with the abbreviations "DW" and "EHW." (See also "dangerous waste" and "extremely hazardous waste" definitions.)

"Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

"Ignitable waste" means a dangerous waste that exhibits the characteristic of ignitability described in WAC 173-303-090(5).

"Inactive portion" means that portion of a facility which has not recycled, treated, stored, or disposed dangerous waste after:

The effective date of the waste's designation, for wastes designated under 40 CFR Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261.

"Inactive range" means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and



that has not been put to a new use that is incompatible with range activities.

"Incinerator" means any enclosed device that:

Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a dangerous waste which is unsuitable for placement in a particular device or facility because it may corrode or decay the containment materials, or is unsuitable for mixing with another waste or material because the mixture might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, fumes, mists, or gases, or flammable fumes or gases.

"Independent qualified registered professional engineer" means a person who is licensed by the state of Washington, or a state which has reciprocity with the state of Washington as defined in RCW 18.43.100, and who is not an employee of the owner or operator of the facility for which construction or modification certification is required. A qualified professional engineer is an engineer with expertise in the specific area for which a certification is given.

"Industrial-furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy: Cement kilns; lime kilns; aggregate kilns; phosphate kilns; blast furnaces; smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces); titanium dioxide chloride process oxidation reactors; coke ovens; methane reforming furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; pulping liquor recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and halogen acid furnaces (HAFs) for the production of acid from halogenated dangerous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for dangerous waste burned as fuel, dangerous waste fed to the furnace has a minimum halogen content of 20% as-generated. The department may decide to add devices to this list on the basis of one or more of the following factors:

The device is designed and used primarily to accomplish recovery of material products;

The device burns or reduces secondary materials as ingredients in an industrial process to make a material product;

The device burns or reduces secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

The device burns or reduces raw materials to make a material product;

The device is in common industrial use to produce a material product; and

Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Interim status permit" means a temporary permit given to TSD facilities which qualify under WAC 173-303-805.

"Knowledge" means sufficient information about a waste to reliably substitute for direct testing of the waste. To be sufficient and reliable, the "knowledge" used must provide information necessary to manage the waste in accordance with the requirements of this chapter.

Note: "Knowledge" may be used by itself or in combination with testing to designate a waste pursuant to WAC 173-303-070 (3)(c), or to obtain a detailed chemical, physical, and/or biological analysis of a waste as required in WAC 173-303-300(2).

"Lamp," also referred to as "universal waste lamp" means any type of high or low pressure bulb or tube portion of an electric lighting device that generates light through the discharge of electricity either directly or indirectly as radiant energy. Universal waste lamps include, but are not limited to, fluorescent, mercury vapor, metal halide, high-pressure sodium and neon. As a reference, it may be assumed that four, four-foot, one-inch diameter unbroken fluorescent tubes are equal to 2.2 pounds in weight.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Landfill" means a disposal facility, or part of a facility, where dangerous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Land treatment" means the practice of applying dangerous waste onto or incorporating dangerous waste into the soil surface so that it will degrade or decompose. If the waste will remain after the facility is closed, this practice is disposal.

"Large quantity handler of universal waste" means a universal waste handler (as defined in this section) who accumulates 11,000 pounds or more total of universal waste (batteries, thermostats, mercury-containing equipment, and lamps

calculated collectively) and/or who accumulates more than 2,200 pounds of lamps at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 11,000 pounds or more total of universal waste and/or 2,200 pounds of lamps is accumulated.

"Leachable inorganic waste" means solid dangerous waste (i.e., passes paint filter test) that is not an organic/carbonaceous waste and exhibits the toxicity characteristic (dangerous waste numbers D004 to D011, only) under WAC 173-303-090(8).

"Leachate" means any liquid, including any components suspended in the liquid, that has percolated through or drained from dangerous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of dangerous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of dangerous waste into the secondary containment structure.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Liner" means a continuous layer of man-made or natural materials which restrict the escape of dangerous waste, dangerous waste constituents, or leachate through the sides, bottom, or berms of a surface impoundment, waste pile, or landfill.

"Major facility" means a facility or activity classified by the department as major.

"Manifest" means the shipping document, prepared in accordance with the requirements of WAC 173-303-180, which is used to identify the quantity, composition, origin, routing, and destination of a dangerous waste while it is being transported to a point of transfer, disposal, treatment, or storage.

"Manufacturing process unit" means a unit which is an integral and inseparable portion of a manufacturing operation, processing a raw material into a manufacturing intermediate or finished product, reclaiming spent materials or reconditioning components.

"Marine terminal operator" means a person engaged in the business of furnishing wharfage, dock, pier, warehouse, covered and/or open storage spaces, cranes, forklifts, bulk loading and/or unloading structures and landings in connection with a highway or rail carrier and a water carrier. A marine terminal operator includes, but is not limited to, terminals owned by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen and stevedores who operate port terminal facilities.

"Mercury-containing equipment" means a device or part of a device (excluding batteries, thermostats, and lamps) that

contains elemental mercury necessary for its operation. Examples of mercury-containing equipment include thermometers, manometers, and electrical switches.

"Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorous, potash, calcium, magnesium, or sulfur. Micronutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

"Military" means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: Confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include nonnuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

"Miscellaneous unit" means a dangerous waste management unit where dangerous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, temporary unit, staging pile, or unit eligible for a research, development, and demonstration permit under WAC 173-303-809.

"Mixed waste" means a dangerous, extremely hazardous, or acutely hazardous waste that contains both a non-radioactive hazardous component and, as defined by 10 CFR 20.1003, source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of dangerous waste and for which installation has commenced after February 3, 1989; except, however, for purposes of WAC 173-303-640 (4)(g)(ii) and 40 CFR 265.193 (g)(2) as adopted by reference in WAC 173-303-400(3), a new tank system is one for which construction commences after February 3, 1989. (See also "existing tank system.")

"New TSD facility" means a facility which began operation or for which construction commenced after November 19, 1980, for wastes designated by 40 CFR Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261.

"NIOSH registry" means the registry of toxic effects of chemical substances which is published by the National Institute for Occupational Safety and Health.

"Nonsudden accident" or "nonsudden accidental occurrence" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

"Off-specification used oil fuel" means used oil fuel that exceeds any specification level described in Table 1 in WAC 173-303-515.

"Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right of way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right of way which they control and to which the public does not have access, are also considered on-site property.

"Operator" means the person responsible for the overall operation of a facility. (See also "state operator.")

"Oral LD<sub>50</sub>" means the single dosage in milligrams per kilogram (mg/kg) body weight, when orally administered, which, within 14 days, kills half a group of ten or more white rats each weighing between 200 and 300 grams.

"Organic/carbonaceous waste" means a dangerous waste that contains combined concentrations of greater than ten percent organic/carbonaceous constituents in the waste; organic/carbonaceous constituents are those substances that contain carbon-hydrogen, carbon-halogen, or carbon-carbon chemical bonding.

"Partial closure" means the closure of a dangerous waste management unit in accordance with the applicable closure requirements of WAC 173-303-400 and 173-303-600 through 173-303-695 at a facility that contains other active dangerous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other dangerous

waste management unit, while other units of the same facility continue to operate.

"Permit" means an authorization which allows a person to perform dangerous waste transfer, storage, treatment, or disposal operations, and which typically will include specific conditions for such facility operations. Permits must be issued by one of the following:

The department, pursuant to this chapter;

United States EPA, pursuant to 40 CFR Part 270; or

Another state authorized by EPA, pursuant to 40 CFR Part 271.

"Permit-by-rule" means a provision of this chapter stating that a facility or activity is deemed to have a dangerous waste permit if it meets the requirements of the provision.

"Persistence" means the quality of a material that retains more than half of its initial activity after one year (365 days) in either a dark anaerobic or dark aerobic environment at ambient conditions. Persistent compounds are either halogenated organic compounds (HOC) or polycyclic aromatic hydrocarbons (PAH) as defined in this section.

"Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

"Pesticide" means but is not limited to: Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life, or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the department of agriculture may declare to be a pest; any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; any substance or mixture of substances intended to be used as spray adjuvant; and, any other substance intended for such use as may be named by the department of agriculture by regulation. Herbicides, fungicides, insecticides, and rodenticides are pesticides for the purposes of this chapter.

"Pile" means any noncontainerized accumulation of solid, nonflowing dangerous waste that is used for treatment or storage.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any confined and discrete conveyance from which pollutants are or may be discharged. This term includes, but is not limited to, pipes, ditches, channels, tunnels, wells, cracks, containers, rolling stock, concentrated animal feeding operations, or watercraft, but does not include return flows from irrigated agriculture.

"Polycyclic aromatic hydrocarbons" (PAH) means those hydrocarbon molecules composed of two or more fused benzene rings. For purposes of this chapter, the PAHs of concern for designation are: Acenaphthene, acenaphthylene, fluorene, anthracene, fluoranthene, phenanthrene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, pyrene, chrysene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-c,d)pyrene, benzo(g,h,i)perylene, dibenzo[(a,e), (a,h), (a,i), and (a,l)] pyrenes, and dibenzo (a,j) acridine.

"Post-closure" means the requirements placed upon disposal facilities (e.g., landfills, impoundments closed as disposal facilities, etc.) after closure to ensure their environmental safety for a number of years after closure. (See also "closure.")

"Processed scrap metal" is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (that is, sorted), and fines, drosses and related materials that have been agglomerated. Note: Shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (WAC 173-303-071 (3)(gg)).

"Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

"Publicly owned treatment works" or "POTW" means any device or system, owned by the state or a municipality, which is used in the treatment, recycling, or reclamation of municipal sewage or liquid industrial wastes. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW.

"Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground water hydrology and related fields to make sound professional judgments regarding ground water monitoring and contaminant fate and transport. Sufficient training and experience may be demonstrated by state registration, professional certifications, or completion of accredited university courses.

"Reactive waste" means a dangerous waste that exhibits the characteristic of reactivity described in WAC 173-303-090(7).

"Reclaim" means to process a material in order to recover useable products, or to regenerate the material. Reclamation is the process of reclaiming.

"Recover" means extract a useable material from a solid or dangerous waste through a physical, chemical, biological, or thermal process. Recovery is the process of recovering.

"Recycle" means to use, reuse, or reclaim a material.

"Recycling unit" is a contiguous area of land, structures and equipment where materials designated as dangerous waste or used oil are placed or processed in order to recover useable products or regenerate the original materials. For the purposes of this definition, "placement" does not mean "storage" when conducted within the provisions of WAC 173-303-120(4). A container, tank, or processing equipment alone does not constitute a unit; the unit includes containers, tanks or other processing equipment, their ancillary equipment and secondary containment system, and the land upon which they are placed.

"Registration number" means the number assigned by the department of ecology to a transporter who owns or leases

and operates a ten-day transfer facility within Washington state.

"Regulated unit" means any new or existing surface impoundment, landfill, land treatment area or waste pile that receives any dangerous waste after:

July 26, 1982, for wastes regulated by 40 CFR Part 261;

October 31, 1984 for wastes designated only by this chapter and not regulated by 40 CFR Part 261; or

The date six months after a waste is newly identified by amendments to 40 CFR Part 261 or this chapter which cause the waste to be regulated.

"Release" means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous wastes, or dangerous constituents as defined at WAC 173-303-64610(4), into the environment and includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous wastes or dangerous constituents and includes the definition of release at RCW 70.105D.020(20).

"Remediation waste" means all solid and dangerous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of dangerous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

"Representative sample" means a sample which can be expected to exhibit the average properties of the sample source.

"Reuse or use" means to employ a material either:

As an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

In a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

"Runoff" means any rainwater, leachate, or other liquid which drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid which drains over land onto any part of a facility.

"Satellite accumulation area" means a location at or near any point of generation where hazardous waste is initially accumulated in containers (during routine operations) prior to consolidation at a designated ninety-day accumulation area or storage area. The area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes into the satellite containers.

"Schedule of compliance" means a schedule of remedial measures in a permit including an enforceable sequence of interim requirements leading to compliance with this chapter.

"Scrap metal" means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. This term does not include the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small quantity handler of universal waste" means a universal waste handler (as defined in this section) who does not accumulate 11,000 pounds or more total of universal waste (batteries, thermostats, mercury-containing equipment, and lamps, calculated collectively) and/or who does not accumulate more than 2,200 pounds of lamps at any time.

"Solid acid waste" means a dangerous waste that exhibits the characteristic of low pH under the corrosivity tests of WAC 173-303-090 (6)(a)(iii).

"Solid waste management unit" or "SWMU" means any discernible location at a facility, as defined for the purposes of corrective action, where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at a facility at which solid wastes, including spills, have been routinely and systematically released. Such units include regulated units as defined by chapter 173-303 WAC.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. *Sorb* means to either adsorb or absorb, or both.

"Special incinerator ash" means ash residues resulting from the operation of incineration or energy recovery facilities managing municipal solid waste from residential, commercial and industrial establishments, if the ash residues are designated as dangerous waste only by this chapter and not designated as hazardous waste by 40 CFR Part 261.

"Special waste" means any state-only dangerous waste that is solid only (nonliquid, nonaqueous, nongaseous), that is: Corrosive waste (WAC 173-303-090 (6)(b)(ii)), toxic waste that has Category D toxicity (WAC 173-303-100(5)), PCB waste (WAC 173-303-9904 under State Sources), or persistent waste that is not EHW (WAC 173-303-100(6)). Any solid waste that is regulated by the United States EPA as hazardous waste cannot be a special waste.

"Spent material" means any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

"Stabilization" and "solidification" means a technique that limits the solubility and mobility of dangerous waste constituents. Solidification immobilizes a waste through

physical means and stabilization immobilizes the waste by bonding or chemically reacting with the stabilizing material.

"Staging pile" means an accumulation of solid, nonflowing, remediation waste that is not a containment building or a corrective action management unit and that is used for temporary storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"State-only dangerous waste" means a waste designated only by this chapter, chapter 173-303 WAC, and is not regulated as a hazardous waste under 40 CFR Part 261.

"State operator" means the person responsible for the overall operation of the state's extremely hazardous waste facility on the Hanford Reservation.

"Storage" means the holding of dangerous waste for a temporary period. "Accumulation" of dangerous waste, by the generator on the site of generation, is not storage as long as the generator complies with the applicable requirements of WAC 173-303-200 and 173-303-201.

"Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect dangerous waste for transport to dangerous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquid dangerous wastes or dangerous wastes containing free liquids. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Tank" means a stationary device designed to contain an accumulation of dangerous waste, and which is constructed primarily of nonearthen materials to provide structural support.

"Tank system" means a dangerous waste storage or treatment tank and its associated ancillary equipment and containment system.

"Temporary unit" means a tank or container that is not an accumulation unit under WAC 173-303-200 and that is used for temporary treatment or storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of dangerous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the dangerous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of WAC 173-303-573 (9)(b)(ii) or (20)(b)(ii).

"TLm<sub>96</sub>" means the same as "Aquatic LC<sub>50</sub>."

"Totally enclosed treatment facility" means a facility for treating dangerous waste which is directly connected to a production process and which prevents the release of dangerous waste or dangerous waste constituents into the environment during treatment.

"Toxic" means having the properties to cause or to significantly contribute to death, injury, or illness of man or wildlife.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, buildings, piers, and other similar areas where shipments of dangerous waste are held, consolidated, or transferred within a period of ten days or less during the normal course of transportation.

"Transport vehicle" means a motor vehicle, water vessel, or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, steamship, etc.) is a separate transport vehicle.

"Transportation" means the movement of dangerous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of dangerous waste.

"Travel time" means the period of time necessary for a dangerous waste constituent released to the soil (either by accident or intent) to enter any on-site or off-site aquifer or water supply system.

"Treatability study" means a study in which a dangerous waste is subjected to a treatment process to determine: Whether the waste is amenable to the treatment process; what pretreatment (if any) is required; the optimal process conditions needed to achieve the desired treatment; the efficiency of a treatment process for a specific waste or wastes; or the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions contained in WAC 173-303-071 (3)(r) and (s), are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of dangerous waste.

"Treatment" means the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which dangerous wastes are degraded, transformed or immobilized.

"Triple rinsing" means the cleaning of containers in accordance with the requirements of WAC 173-303-160 (2)(b), containers.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

"Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

"Unexploded ordnance (UXO)" means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating dangerous waste without posing a threat of release of dangerous waste to the environment.

"Universal waste" means any of the following dangerous wastes that are subject to the universal waste requirements of WAC 173-303-573:

Batteries as described in WAC 173-303-573(2);

Thermostats as described in WAC 173-303-573(3);

Lamps as described in WAC 173-303-573(5); and

Mercury-containing equipment as described in WAC 173-303-573(4).

"Universal waste handler":

Means:

A generator (as defined in this section) of universal waste; or

The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

Does not mean:

A person who treats (except under the provisions of WAC 173-303-573 (9)(a), (b), or (c) or (20)(a), (b), or (c)) disposes of, or recycles universal waste; or

A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geological formation nearest the natural ground surface that is capable of yielding ground water to wells or springs. It includes lower aquifers that are hydraulically interconnected with this aquifer within the facility property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a

result of such use is contaminated by physical or chemical impurities.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolid products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

"Wastewater treatment unit" means a device that:

Is part of a wastewater treatment facility which is subject to regulation under either:

Section 402 or section 307(b) of the Federal Clean Water Act; or

Chapter 90.48 RCW, State Water Pollution Control Act, provided that the waste treated at the facility is a state-only dangerous waste; and

Handles dangerous waste in the following manner:

Receives and treats or stores an influent wastewater; or

Generates and accumulates or treats or stores a wastewater treatment sludge; and

Meets the definition of tank or tank system in this section.

"Water or rail (bulk shipment)" means the bulk transportation of dangerous waste which is loaded or carried on board a vessel or railcar without containers or labels.

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a dangerous waste release, can be readily cleaned up prior to the release of dangerous waste or dangerous constituents to ground water or surface water.

Any terms used in this chapter which have not been defined in this section have either the same meaning as set forth in Title 40 CFR Parts 260, 264, 270, and 124 or else have their standard, technical meaning.

As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the singular include the plural, and words in the plural include the singular.

**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 03-10, filed 11/30/04, effective 1/1/05)

**WAC 173-303-071 Excluded categories of waste.** (1)

Purpose. Certain categories of waste have been excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, because they generally are not dangerous waste, are regulated under other state and federal programs, or are recycled in ways which do not threaten public health or the environment. WAC 173-303-071 describes these excluded categories of waste.

(2) Excluding wastes. Any persons who generate a common class of wastes and who seek to categorically exclude such class of wastes from the requirements of this chapter must comply with the applicable requirements of WAC 173-303-072. No waste class will be excluded if any of the wastes

in the class are regulated as hazardous waste under 40 CFR Part 261.

(3) Exclusions. The following categories of waste are excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, 173-303-145, and 173-303-960, and as otherwise specified:

(a)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works (POTW) for treatment provided:

(A) The generator or owner/operator has obtained a state waste discharge permit issued by the department, a temporary permit obtained pursuant to RCW 90.48.200, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165;

(B) The waste discharge is specifically authorized in a state waste discharge permit, pretreatment permit or written discharge authorization, or in the case of a temporary permit the waste is accurately described in the permit application;

(C) The waste discharge is not prohibited under 40 CFR Part 403.5; and

(D) The waste prior to mixing with domestic sewage must not exhibit dangerous waste characteristics for ignitability, corrosivity, reactivity, or toxicity as defined in WAC 173-303-090, and must not meet the dangerous waste criteria for toxic dangerous waste or persistent dangerous waste under WAC 173-303-100, unless the waste is treatable in the publicly owned treatment works (POTW) where it will be received. This exclusion does not apply to the generation, treatment, storage, recycling, or other management of dangerous wastes prior to discharge into the sanitary sewage system;

(b) Industrial wastewater discharges that are point-source discharges subject to regulation under Section 402 of the Clean Water Act. This exclusion does not apply to the collection, storage, or treatment of industrial waste-waters prior to discharge, nor to sludges that are generated during industrial wastewater treatment. Owners or operators of certain wastewater treatment facilities managing dangerous wastes may qualify for a permit-by-rule pursuant to WAC 173-303-802(5);

(c) Household wastes, including household waste that has been collected, transported, stored, or disposed. Wastes that are residues from or are generated by the management of household wastes (e.g., leachate, ash from burning of refuse-derived fuel) are not excluded by this provision. "Household wastes" means any waste material (including, but not limited to, garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste will not be deemed to be treating, storing, disposing of, or otherwise managing dangerous wastes for the purposes of regulation under this chapter, if such facility:

(i) Receives and burns only:

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(B) Solid waste from commercial or industrial sources that does not contain dangerous waste; and

(ii) Such facility does not accept dangerous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that dangerous wastes are not received at or burned in such facility;

(d) Agricultural crops and animal manures which are returned to the soil as fertilizers;

(e) Asphaltic materials designated only for the presence of PAHs by WAC 173-303-100(6). For the purposes of this exclusion, asphaltic materials means materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of oil and sand, gravel, ash or similar substances;

(f) Roofing tars and shingles, except that these wastes are not excluded if mixed with wastes listed in WAC 173-303-081 or 173-303-082, or if they exhibit any of the characteristics specified in WAC 173-303-090;

(g) Treated wood waste and wood products including:

(i) Arsenical-treated wood that fails the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D004 through D017 only) or that fails any state criteria, if the waste is generated by persons who utilize the arsenical-treated wood for the materials' intended end use. Intended end use means the wood product must have been used in typical treated wood applications (for example, fence posts, decking, poles, and timbers).

(ii) Wood treated with other preservatives provided such treated wood and wood waste (for example, sawdust and shavings) are, within one hundred eighty days after becoming waste:

(A) Disposed of at a landfill that is permitted in accordance with chapter 173-350 WAC, Solid waste handling standards, or chapter 173-351 WAC, criteria for municipal solid waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-9903 and 173-303-9904 nor a TCLP waste under WAC 173-303-090(8); or

(B) Sent to a facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or

(C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845. In addition, creosote-treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to burn creosote treated wood.

(h) Irrigation return flows;

(i) Reserve;

(j) Mining overburden returned to the mining site;

(k) Polychlorinated biphenyl (PCB) wastes:

(i) PCB wastes whose disposal is regulated by EPA under 40 CFR 761.60 (Toxic Substances Control Act) and that are dangerous either because:

(A) They fail the test for toxicity characteristic (WAC 173-303-090(8), Dangerous waste codes D018 through D043 only); or

(B) Because they are designated only by this chapter and not designated by 40 CFR Part 261, are exempt from regulation under this chapter except for WAC 173-303-505 through 173-303-525, 173-303-960, those sections specified in subsection (3) of this section, and 40 CFR Part 266;

(ii) Wastes that would be designated as dangerous waste under this chapter solely because they are listed as WPCB under WAC 173-303-9904 when such wastes are stored and disposed in a manner equivalent to the requirements of 40 CFR Part 761 Subpart D for PCB concentrations of 50 ppm or greater.

(l) Samples:

(i) Except as provided in (l)(ii) of this subsection, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter, when:

(A) The sample is being transported to a lab for testing or being transported to the sample collector after testing; or

(B) The sample is being stored by the sample collector before transport, by the laboratory before testing, or by the laboratory after testing prior to return to the sample collector; or

(C) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action).

(ii) In order to qualify for the exemptions in (l)(i) of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(A) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) Comply with the following requirements if the sample collector determines that DOT or USPS, or other shipping requirements do not apply:

(I) Assure that the following information accompanies the sample:

(AA) The sample collector's name, mailing address, and telephone number;

(BB) The laboratory's name, mailing address, and telephone number;

(CC) The quantity of the sample;

(DD) The date of shipment;

(EE) A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(iii) This exemption does not apply if the laboratory determines that the waste is dangerous but the laboratory is no longer meeting any of the conditions stated in (l)(i) of this subsection;

(m) Reserve;

(n) Dangerous waste generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit until it exits the unit in which it was generated. This exclusion does not apply to surface impoundments, nor does it apply if the dangerous waste remains in the unit more than ninety days after the unit ceases to be operated for



manufacturing, or for storage or transportation of product or raw materials;

(o) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (NAICS codes 331111 and 332111), except that these wastes are not excluded if they exhibit one or more of the dangerous waste criteria (WAC 173-303-100) or characteristics (WAC 173-303-090);

(p) Wastes from burning any of the materials exempted from regulation by WAC 173-303-120 (2)(a)(vii) and (viii). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria;

(q) As of January 1, 1987, secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed;

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal; and

(v) A generator complies with the requirements of chapter 173-303 WAC for any residues (e.g., sludges, filters, etc.) produced from the collection, reclamation, and reuse of the secondary materials.

(r) Treatability study samples.

(i) Except as provided in (r)(ii) of this subsection, persons who generate or collect samples for the purpose of conducting treatability studies as defined in WAC 173-303-040 are not subject to the requirements of WAC 173-303-180, 173-303-190, and 173-303-200 (1)(a), nor are such samples included in the quantity determinations of WAC 173-303-070 (7) and (8) and 173-303-201 when:

(A) The sample is being collected and prepared for transportation by the generator or sample collector; or

(B) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(C) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study; or

(D) The sample or waste residue is being transported back to the original generator from the laboratory or testing facility.

(ii) The exemption in (r)(i) of this subsection is applicable to samples of dangerous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(A) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with nonacute dangerous waste, 1000 kg of nonacute dangerous waste other than contaminated media, 1 kg of acutely hazardous waste, 2500 kg of media contaminated with

acutely hazardous waste for each process being evaluated for each generated waste stream; and

(B) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with nonacute dangerous waste or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of dangerous waste, and 1 kg of acutely hazardous waste; and

(C) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of (r)(ii)(C)(I) or (II) of this subsection are met.

(I) The transportation of each sample shipment complies with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(AA) The name, mailing address, and telephone number of the originator of the sample;

(BB) The name, address, and telephone number of the laboratory or testing facility that will perform the treatability study;

(CC) The quantity of the sample;

(DD) The date of shipment; and

(EE) A description of the sample, including its dangerous waste number.

(D) The sample is shipped, within ninety days of being generated or of being taken from a stream of previously generated waste, to a laboratory or testing facility which is exempt under (s) of this subsection or has an appropriate final facility permit or interim status; and

(E) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

(AA) The amount of waste shipped under this exemption;

(BB) The name, address, and EPA/state identification number of the laboratory or testing facility that received the waste;

(CC) The date the shipment was made; and

(DD) Whether or not unused samples and residues were returned to the generator.

(F) The generator reports the information required under (r)(ii)(E)(III) of this subsection in its annual report.

(ii) The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in (r)(ii)(A) and (B) of this subsection and (s)(iv) of this subsection, for up to an additional 5000 kg of media contaminated with nonacute dangerous waste, 500 kg of nonacute dangerous waste, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste or for up to an additional 10,000 kg of wastes regulated only by this chapter and not regulated by 40 CFR Part 261, to conduct further treatability study evaluation:

(A) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(B) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(C) The additional quantities and time frames allowed in (r)(iii)(A) and (B) of this subsection are subject to all the provisions in (r)(i) and (r)(ii)(C) through (F) of this subsection. The generator or sample collector must apply to the department where the sample is collected and provide in writing the following information:

(I) The reason the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

(II) Documentation accounting for all samples of dangerous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the department considers necessary.

(s) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to chapter 70.105 RCW) are not subject to the requirements of this chapter, except WAC 173-303-050, 173-303-145, and 173-303-960 provided that the conditions of (s)(i) through (xiii) of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to (s)(i) through (xiii) of this subsection. Where a group of MTUs are located at the same site, the limitations specified in (s)(i) through (xiii) of this subsection apply to the entire group of MTUs collectively as if the group were one MTU.

(i) No less than forty-five days before conducting treatability studies the laboratory or testing facility notifies the department in writing that it intends to conduct treatability studies under this subsection.

(ii) The laboratory or testing facility conducting the treatability study has an EPA/state identification number.

(iii) No more than a total of 10,000 kg of "as received" media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" dangerous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(iv) The quantity of "as received" dangerous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of nonacute dangerous wastes other than contaminated media, and 1 kg of acutely hazardous waste. This quantity limitation does not include treatment materials (including nondangerous solid waste) added to "as received" dangerous waste.

(v) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(vi) The treatability study does not involve the placement of dangerous waste on the land or open burning of dangerous waste.

(vii) The laboratory or testing facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(A) The name, address, and EPA/state identification number of the generator or sample collector of each waste sample;

(B) The date the shipment was received;

(C) The quantity of waste accepted;

(D) The quantity of "as received" waste in storage each day;

(E) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(F) The date the treatability study was concluded;

(G) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated TSD facility, the name of the TSD facility and its EPA/state identification number.

(viii) The laboratory or testing facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to

and from the facility for a period ending three years from the completion date of each treatability study.

(ix) The laboratory or testing facility prepares and submits a report to the department by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(A) The name, address, and EPA/state identification number of the laboratory or testing facility conducting the treatability studies;

(B) The types (by process) of treatability studies conducted;

(C) The names and addresses of persons for whom studies have been conducted (including their EPA/state identification numbers);

(D) The total quantity of waste in storage each day;

(E) The quantity and types of waste subjected to treatability studies;

(F) When each treatability study was conducted;

(G) The final disposition of residues and unused sample from each treatability study.

(x) The laboratory or testing facility determines whether any unused sample or residues generated by the treatability study are dangerous waste under WAC 173-303-070 and if so, are subject to the requirements of this chapter, unless the residues and unused samples are returned to the sample originator under the exemption in (r) of this subsection.

(xi) The laboratory or testing facility notifies the department by letter when it is no longer planning to conduct any treatability studies at the site.

(xii) The date the sample was received, or if the treatability study has been completed, the date of the treatability study, is marked and clearly visible for inspection on each container.

(xiii) While being held on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public.

Note: If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate.

(t) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D018 through D043 only) and are subject to the corrective action regulations under 40 CFR Part 280.

(u) Special incinerator ash (as defined in WAC 173-303-040).

(v) Wood ash that would designate solely for corrosivity by WAC 173-303-090 (6)(a)(iii). For the purpose of this exclusion, wood ash means ash residue and emission control dust generated from the combustion of untreated wood, wood treated solely with creosote, and untreated wood fiber materials including, but not limited to, wood chips, saw dust, tree stumps, paper, cardboard, residuals from waste fiber recycling, deinking rejects, and associated wastewater treatment

solids. This exclusion allows for the use of auxiliary fuels including, but not limited to, oils, gas, coal, and other fossil fuels in the combustion process.

(w)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (w)(i) and (ii) of this subsection, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W which is incorporated by reference at WAC 173-303-400 (3)(a), regardless of whether the plant generates a total of less than 220 pounds/month of dangerous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the department a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(F) Additional reports.

(I) Upon determination by the department that the storage of wood preserving wastewaters and spent wood preserving solutions in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store wood preserving wastewaters and spent wood preserving solutions. This authority applies to tanks and secondary containment systems used to store wood preserving wastewaters and spent wood preserving solutions in tanks and containers. The department's determination of a threat to public health or the environment may be based upon observations of factors that would contribute to spills or releases of wood preserving wastewaters and spent wood preserving solutions or the gen-

eration of hazardous by-products. Such observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(II) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(III) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (w)(iii)(F)(I) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the wood preserving wastewaters and spent wood preserving solutions until such repairs or improvements are completed and approved by the department.

(x) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(y) Used oil filters that are recycled in accordance with WAC 173-303-120, as used oil and scrap metal.

(z) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(aa) Wastes that fail the test for the toxicity characteristic in WAC 173-303-090 because chromium is present or are listed in WAC 173-303-081 or 173-303-082 due to the presence of chromium. The waste must not designate for any other characteristic under WAC 173-303-090, for any of the criteria specified in WAC 173-303-100, and must not be listed in WAC 173-303-081 or 173-303-082 due to the presence of any constituent from WAC 173-303-9905 other than chromium. The waste generator must be able to demonstrate that:

(i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(ii) The waste is generated from an industrial process that uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(iii) The waste is typically and frequently managed in nonoxidizing environments.

(bb)(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in WAC 173-303-040 - blast furnaces, smelting, melting and refining furnaces, and other devices the department may add to the list - of the definition for "industrial furnace"), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of dangerous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues

must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent                      Maximum for any single composite sample-TCLP (mg/l)

Generic exclusion levels for K061

and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
(2)Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for

F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(ii) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the follow-

ing information: The name and address of the subtitle D unit receiving the waste shipments; the dangerous waste number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of dangerous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment." These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics (WAC 173-303-090) or criteria (WAC 173-303-100).

(cc)(i) Oil-bearing hazardous secondary materials (that is, sludges, by-products, or spent materials) that are generated at a petroleum refinery (NAICS code 324110) and are inserted into the petroleum refining process (NAICS code 324110 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (that is, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph: Provided, That the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in (cc)(ii) of this subsection, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (that is, from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under WAC 173-303-081 and 173-303-082, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in (cc)(i) of this subsection. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (NAICS codes 211111, 211112, 213111, 213112, 541360, 237120, 238910, 324110, 486110, 486910, 486210, 221210, 486210, 487110, 488210, 488999, 722310, 424710, 454311, 454312, 424720, 425110, 425120). Recovered oil does not include oil-bearing hazardous wastes listed in WAC 173-303-081 and 173-303-082; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in WAC 173-303-040.

(dd) Dangerous waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are dangerous only because they exhibit the toxicity characteristic (TC) specified in WAC 173-303-090(8) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal

tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(ee) Biological treatment sludge from the treatment of one of the following wastes listed in WAC 173-303-9904 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K157) unless it exhibits one or more of the characteristics or criteria of dangerous waste.

(ff) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(gg) Shredded circuit boards being recycled: Provided, That they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(hh) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (NAICS code 324110) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in WAC 173-303-090(5) and/or toxicity for benzene (WAC 173-303-090(8), waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process.

An "associated organic chemical manufacturing facility" is a facility where the primary NAICS code is 325110, 325120, 325188, 325192, 325193, or 325199, but where operations may also include NAICS codes 325211, 325212, 325110, 325132, 325192; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (that is, sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(ii) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in WAC 173-303-016(5).

(jj) Catalyst inert support media separated from one of the following wastes listed in WAC 173-303-9904 Specific Sources - Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172). These wastes are not excluded

if they exhibit one or more of the dangerous waste characteristics or criteria.

(kk) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed: Provided, That:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in (kk)(i) of this subsection were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic or criteria of dangerous waste nor is derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169 - K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: If the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system): Provided, That the impoundment has a double liner, and: Provided further, That the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(ll) Dredged material. Dredged material as defined in 40 CFR 232.2 that is subject to:

(i) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of a U.S. Army Corps of Engineers civil works project, the administrative equivalent of the permits referred to in (ll)(i) and (ii) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 CFR 336.1, 336.2 and 337.3.

(mm) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(nn)(i) Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes.

(A) Controlled substances as defined and regulated by chapter 69.50 RCW (Schedule I through V);

(B) Legend drugs as defined and regulated by chapter 69.41 RCW; and

(C) Over-the-counter drugs as defined and regulated by chapter 69.60 RCW.

(ii) Controlled substances, legend drugs, and over-the-counter drugs that are held in the custody of law enforcement agencies or possessed by any licensee as defined and regulated by chapter 69.50 RCW or Title 18 RCW and authorized to possess drugs within the state of Washington are excluded, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British thermal units/hour, a combustion zone temperature greater than 1500 degrees Fahrenheit, or a facility permitted to incinerate municipal solid waste.

(iii) For the purposes of this exclusion the term "drugs" means:

(A) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(B) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) Substances (other than food) intended to affect the structure or any function of the body of man or other animals, as defined in RCW 18.64.011(3). (Note: RCW 18.64.011(3)(d) is intentionally not included in the definition of drugs for this exclusion.)

(iv) When possessed by any licensee the term drugs used in this exclusion means finished drug products.

~~(oo) ((Reserve-)) Cathode ray tubes (CRTs) and glass removed from CRTs:~~

(i) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(A) Storage. CRTs must be either:

(I) Stored in a building with a roof, floor, and walls; or

(II) Placed in a container (that is, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(B) Labeling. Each container in which the CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) - contains leaded glass" or "leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(C) Transportation. CRTs must be transported in a container meeting the requirements of (oo)(i)(A)(II) and (B) of this subsection.

(D) Speculative accumulation and use constituting disposal. CRTs are subject to the limitations on speculative accumulation as defined in WAC 173-303-016. If they are used in a manner constituting disposal, they must comply with the applicable requirements of WAC 173-303-505 instead of the requirements of this section.

(E) Exports. In addition to the applicable conditions specified in (oo)(i)(A) through (D) of this subsection, exporters of CRTs must comply with the following requirements:

(I) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve-month or

lesser period. The notification must be in writing, signed by the exporter, and include the following information:

- Name, mailing address, telephone number and EPA/state ID number (if applicable) of the exporter of the CRTs.
- The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.
- The estimated total quantity of CRTs specified in kilograms.
- All points of entry to and departure from each foreign country through which the CRTs will pass.
- A description of the means by which each shipment of the CRTs will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).
- The name and address of the recycler and any alternate recycler.
- A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.
- The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(II) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., N.W., Washington, D.C. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of intent to export CRTs."

(III) Upon request by EPA, the exporter must furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(IV) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of (oo)(i)(E)(I) of this subsection. Where a claim of confidentiality is asserted with respect to any notification information required by (oo)(i)(E)(I) of this subsection, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(V) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an acknowledgment of consent to export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(VI) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in (oo)(i)(E)(I)(first bullet) of this subsection and decreases in the quantity indicated pursuant to (oo)(i)(E)(I)(third bullet) of this subsection. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to (oo)(i)(E)(I)(fourth bullet) and (i)(E)(I)(eighth bullet) of this section) and the exporter of CRTs receives from EPA a copy of the acknowledgment of consent to export CRTs reflecting the receiving country's consent to the changes.

(VII) A copy of the acknowledgment of consent to export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the acknowledgment.

(VIII) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with (oo)(i)(E)(VI) of this subsection and obtain another acknowledgment of consent to export CRTs.

(IX) Exporters must keep copies of notifications and acknowledgments of consent to export CRTs for a period of five years following receipt of the acknowledgment.

(ii) Requirements for used CRT processing: CRTs undergoing CRT processing as defined in WAC 173-303-040 are not solid wastes if they meet the following requirements:

(A) Storage. CRTs undergoing processing are subject to the requirement of (oo)(i)(D) of this subsection.

(B) Processing.

(I) All activities specified in the second and third bullets of the definition of "CRT processing" in WAC 173-303-040 must be performed within a building with a roof, floor, and walls; and

(II) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(iii) Processed CRT glass sent to CRT glass making or lead smelting: Glass from CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in WAC 173-303-016.

(iv) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of WAC 173-303-505.

(v) Notification and recordkeeping for cathode ray tubes (CRTs) exported for reuse.

(A) Persons who export CRTs for reuse must send a one-time notification to the U.S. EPA Regional Administrator. The notification must include a statement that the notifier plans to export CRTs for reuse, the notifier's name, address, and EPA/state ID number (if applicable) and the name and phone number of a contact person.

(B) Persons who export CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least five years from the date the CRTs were exported.

(pp) Zinc fertilizers made from hazardous wastes provided that:

- (i) The fertilizers meet the following contaminant limits:
- (A) For metal contaminants:

Maximum Allowable Total Concentration Constituent in Fertilizer, per Unit (1%) of Zinc (ppm)	
Arsenic .....	0.3
Cadmium .....	1.4
Chromium .....	0.6
Lead .....	2.8
Mercury .....	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of (pp)(ii) of this subsection. Such records must at a minimum include:

- (A) The dates and times product samples were taken, and the dates the samples were analyzed;
- (B) The names and qualifications of the person(s) taking the samples;
- (C) A description of the methods and equipment used to take the samples;
- (D) The name and address of the laboratory facility at which analyses of the samples were performed;
- (E) A description of the analytical methods used, including any cleanup and sample preparation methods; and
- (F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this subsection (3)(pp).

(qq) Debris. Provided the debris does not exhibit a characteristic identified in WAC 173-303-090, the following materials are not subject to regulation under this chapter:

(i) Hazardous debris that has been treated using one of the required extraction or destruction technologies specified in Table 1 of 40 CFR section 268.45, which is incorporated by reference at WAC 173-303-140 (2)(a); persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(ii) Debris that the department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

**WSR 07-15-052**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**  
 [Filed July 13, 2007, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-06-068.

Title of Rule and Other Identifying Information: WAC 260-36-085 License and fingerprint fees.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on October 11, 2007, at 9:30 a.m.

Date of Intended Adoption: October 11, 2007.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by October 8, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by October 8, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending WAC 260-36-085 is to increase license fees for persons actively participating in racing activities in order to cover the cost to administer the licensing program as required in RCW 67.16.020(1). The licensee fee increase is a comprehensive adjustment of fees approved in the 2007-2009 biennial budget to allow an exception to the fiscal growth factor restrictions.

Reasons Supporting Proposal: Allows the agency to comply with RCW 67.16.020(1) by collecting a license fee that covers the cost of administration of the licensing program.

Statutory Authority for Adoption: RCW 67.16.020.

Statute Being Implemented: RCW 67.16.020(1).

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

July 13, 2007  
 Robert J. Lopez  
 Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-01-054, filed 12/14/06, effective 1/14/07)

**WAC 260-36-085 License and fingerprint fees.** The following are the license fees for any person actively participating in racing activities:

Apprentice jockey	\$((69.00))
	<u>80.00</u>



Assistant trainer	<del>\$(32.00)</del> <u>38.00</u>
Association employee—management	<del>\$(21.00)</del> <u>27.00</u>
Association employee—hourly/seasonal	<del>\$(11.00)</del> <u>17.00</u>
Association volunteer nonpaid	No fee
Authorized agent	<del>\$(21.00)</del> <u>27.00</u>
Clocker	<del>\$(21.00)</del> <u>27.00</u>
Exercise rider	<del>\$(69.00)</del> <u>80.00</u>
Groom	<del>\$(21.00)</del> <u>27.00</u>
Honorary licensee	<del>\$(11.00)</del> <u>17.00</u>
Jockey agent	<del>\$(69.00)</del> <u>80.00</u>
Jockey	<del>\$(69.00)</del> <u>80.00</u>
Other	<del>\$(21.00)</del> <u>27.00</u>
Owner	<del>\$(69.00)</del> <u>80.00</u>
Pony rider	<del>\$(69.00)</del> <u>80.00</u>
Service employee	<del>\$(21.00)</del> <u>27.00</u>
Spouse groom	<del>\$(21.00)</del> <u>27.00</u>
Stable license	<del>\$(42.00)</del> <u>50.00</u>
Trainer	<del>\$(69.00)</del> <u>80.00</u>
Vendor	<del>\$(106.00)</del> <u>122.00</u>
Veterinarian	<del>\$(106.00)</del> <u>122.00</u>

The license fee for multiple licenses may not exceed ~~\$(106.00)~~ 122.00, except persons applying for owner, veterinarian or vendor license must pay the license fee established for each of these licenses.

The following are examples of how this section applies:

Example one - A person applies for the following licenses: Trainer (~~\$(69.00)~~ 80.00), exercise rider (~~\$(69.00)~~ 80.00), and pony rider (~~\$(69.00)~~ 80.00). The total license fee for these multiple licenses would only be ~~\$(106.00)~~ 122.00.

Example two - A person applies for the following licenses: Owner (~~\$(69.00)~~ 80.00), trainer (~~\$(69.00)~~ 80.00) and exercise rider (~~\$(69.00)~~ 80.00). The total cost of the trainer and exercise rider license would be ~~\$(106.00)~~

122.00. The cost of the owner license (~~\$(69.00)~~ 80.00) would be added to the maximum cost of multiple licenses (~~\$(106.00)~~ 122.00) for a total license fee of ~~\$(175.00)~~ 202.00.

Example three - A person applies for the following licenses: Owner (~~\$(69.00)~~ 80.00), vendor (~~\$(106.00)~~ 122.00), and exercise rider (~~\$(69.00)~~ 80.00). The license fees for owner (~~\$(69.00)~~ 80.00) and vendor (~~\$(106.00)~~ 122.00) are both added to the license fee for exercise rider (~~\$(69.00)~~ 80.00) for a total license fee of ~~\$(244.00)~~ 282.00.

In addition to the above fees, a \$10.00 fee will be added to cover the costs of conducting a fingerprint-based background check. The background check fee will be assessed only once annually per person regardless of whether the person applies for more than one type of license in that year.

The commission will review license and fingerprint fees annually to determine if they need to be adjusted to comply with RCW 67.16.020.

**WSR 07-15-065**

**WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF TRANSPORTATION**

(By the Code Reviser's Office)

[Filed July 17, 2007, 8:46 a.m.]

WAC 468-300-803, 468-300-870, 468-300-872, 468-300-876, 486-300-878 and 468-300-880, proposed by the department of transportation in WSR 07-02-101 appearing in issue 07-02 of the State Register, which was distributed on January 17, 2007, 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 07-15-076**

**PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed July 17, 2007, 4:23 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Facility fee increases for WAC 246-310-990 Certificate of need, 246-329-990 Child birth centers, 246-335-990 In-home service agencies, 246-337-990 Residential treatment facilities, and 246-380-990 State institutional survey. These sections establish fees for certificate of need, child birth centers, in-home service agencies, residential treatment facilities and state institutional survey. RCW 43.70.250 authorizes the department to charge fees sufficient to cover the full cost of program operations.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Room 139, Tumwater, WA 98501, on August 21, 2007, at 10:00 a.m.

Date of Intended Adoption: August 28, 2007.

Submit Written Comments to: Alisa Harris, P.O. Box 47852, Olympia, WA 98594 [98504]-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by August 20, 2007.

Assistance for Persons with Disabilities: Contact Alisa Harris by August 17, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules increase fees in the certificate of need, child birth centers, in-home services agencies, residential treatment facilities and state institutional survey programs in excess of the fiscal growth factor. This exemption was given to meet the actual cost of conducting business as approved by the legislature in section 222, chapter 522, Laws of 2007, (SHB 1128). This proposal also adds to WAC 246-335-990(5) in-home services agencies on how the department of health will process refunds.

Reasons Supporting Proposal: RCW 43.70.250 requires the department to charge fees sufficient to cover the full cost of program operations. These additional resources are necessary to maintain current program operations and to assure public health and safety in facilities statewide.

Statutory Authority for Adoption: RCW 43.70.250, 70.38.105, 18.46.030, 70.127.090, 71.12.470, 43.70.040.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Department of health, office of facilities and services licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steven Saxe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2905.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal is exempt under RCW 19.85.025(3) and does not require a small business economic impact statement. However, the department prepared fee analyses which provide documentation of the need for a fee increase. To obtain a copy of fee analysis, contact Alisa Harris at P.O. Box 47852, Olympia, WA 98594 [98504]-7852.

A cost-benefit analysis is not required under RCW 34.05.328. The department did not complete a cost-benefit analysis. This rule proposal is exempt from this requirement under RCW 34.05.328 [(5)(b)](ii).

July 17, 2007  
Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 03-22-020, filed 10/27/03, effective 11/27/03)

**WAC 246-310-990 Certificate of need review fees.** (1)

An application for a certificate of need under chapter 246-310 WAC must include payment of a fee consisting of the following:

- (a) A review fee based on the facility/project type;

(b) If more than one facility/project type applies to an application, the review fee for each type of facility/project must be included.

Facility/Project Type	Review Fee
Ambulatory Surgical Centers/Facilities	<del>\$(43,379.00)</del> <u>17,392.00</u>
Amendments to Issued Certificates of Need	<del>\$(8,432.00)</del> <u>10,961.00</u>
Emergency Review	<del>\$(5,427.00)</del> <u>7,055.00</u>
Exemption Requests	
• Continuing Care Retirement Communities (CCRCs)/Health Maintenance Organization (HMOs)	<del>\$(5,427.00)</del> <u>7,055.00</u>
• Bed Banking/Conversions	<del>\$(883.00)</del> <u>1,147.00</u>
• Determinations of Nonreviewability	<del>\$(1,261.00)</del> <u>1,639.00</u>
• Hospice Care Center	<del>\$(1,136.00)</del> <u>1,476.00</u>
• Nursing Home Replacement/Renovation Authorizations	<del>\$(1,136.00)</del> <u>1,476.00</u>
• Nursing Home Capital Threshold under RCW 70.38.105 (4)(e) (Excluding Replacement/Renovation Authorizations)	<del>\$(1,136.00)</del> <u>1,476.00</u>
• Rural Hospital/Rural Health Care Facility	<del>\$(1,136.00)</del> <u>1,476.00</u>
Extensions	
• Bed Banking	<del>\$(505.00)</del> <u>656.00</u>
• Certificate of Need/Replacement Renovation Authorization Validity Period	<del>\$(505.00)</del> <u>656.00</u>
Home Health Agency	<del>\$(16,155.00)</del> <u>21,001.00</u>
Hospice Agency	<del>\$(14,388.00)</del> <u>18,704.00</u>
Hospice Care Centers	<del>\$(8,432.00)</del> <u>10,961.00</u>
Hospital (Excluding Transitional Care Units-TCUs, Ambulatory Surgical Center/Facilities, Home Health, Hospice, and Kidney Disease Treatment Centers)	<del>\$(26,506.00)</del> <u>34,457.00</u>
Kidney Disease Treatment Centers	<del>\$(16,409.00)</del> <u>21,331.00</u>
Nursing Homes (Including CCRCs and TCUs)	<del>\$(30,293.00)</del> <u>39,380.00</u>

(2) The fee for amending a pending certificate of need application is determined as follows:

- (a) If an amendment to a pending certificate of need application results in the addition of one or more facil-

ity/project types, the review fee for each additional facility/project type must accompany the amendment application;

(b) If an amendment to a pending certificate of need application results in the removal of one or more facility/project types, the department shall refund to the applicant the difference between the review fee previously paid and the review fee applicable to the new facility/project type; or

(c) If an amendment to a pending certificate of need application results in any other change as identified in WAC 246-310-100, a fee of one thousand ~~((three))~~ seven hundred ~~((fifty-one))~~ fifty-six dollars must accompany the amendment application.

(3) If a certificate of need application is returned by the department under WAC 246-310-090 (2)(b) or (e), the department shall refund seventy-five percent of the review fees paid.

(4) If an applicant submits a written request to withdraw a certificate of need application before the beginning of review, the department shall refund seventy-five percent of the review fees paid by the applicant.

(5) If an applicant submits a written request to withdraw a certificate of need application after the beginning of review, but before the beginning of the ex parte period, the department shall refund one-half of all review fees paid.

(6) If an applicant submits a written request to withdraw a certificate of need application after the beginning of the ex parte period the department shall not refund any of the review fees paid.

(7) Review fees for exemptions and extensions are non-refundable.

**AMENDATORY SECTION** (Amending WSR 07-07-075, filed 3/16/07, effective 4/16/07)

**WAC 246-329-990 Fees.** The purpose of the fees section is to describe the fees associated with licensing, renewal and other charges assessed by the department.

(1) Childbirth centers licensed under chapter 18.46 RCW shall submit an annual fee of ~~((five))~~ seven hundred ~~((ninety-nine))~~ thirteen dollars and ~~((ninety))~~ zero cents to the department unless a center is a charitable, nonprofit, or government-operated institution under RCW 18.46.030.

(2) A change of ownership fee of one hundred ~~((fifty))~~ seventy-eight dollars. A new license will be issued and valid for the remainder of the current license period.

(3) The department may charge and collect from a licensee a fee of ~~((seven))~~ eight hundred ~~((fifty))~~ ninety-two dollars for:

(a) A second on-site visit resulting from failure of the licensee to adequately respond to a statement of deficiencies;

(b) A complete on-site survey resulting from a substantiated complaint; or

(c) A follow-up compliance survey.

(4) A licensee shall submit an additional late fee in the amount of ~~((twenty-five))~~ twenty-nine dollars per day, not to exceed five hundred ninety-five dollars, from the renewal date (which is thirty days before the current license expiration date) until the date of mailing the fee, as evidenced by the postmark.

(5) Refunds. The department shall refund fees paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the department, two-thirds of the fees paid, less a fifty dollar processing fee; or

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

(c) The department may not refund applicant fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, but no license is issued because applicant failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

**AMENDATORY SECTION** (Amending WSR 04-19-142, filed 9/22/04, effective 10/23/04)

**WAC 246-335-990 Fees.** (1) A licensee or applicant shall submit to the department:

(a) An initial twelve-month license fee of ~~((one thousand nine hundred sixty-six))~~ two thousand one hundred sixty-two dollars for each service category for new persons not currently licensed in that category to provide in-home services in Washington state, or currently licensed businesses which have had statement of charges filed against them;

(b) A twenty-four month renewal fee based on the number of full-time equivalents (FTEs), which is a measurement based on a forty-hour week and is applicable to paid agency personnel or contractors, or the number of beds, as follows:

(c) For single service category licenses:

# of FTEs	Home Health	Hospice	Home Care	# of Beds	Hospice Care Center
5 or less	<del>\$(1,966.00)</del> <u>2,162.00</u>	<del>\$(983.00)</del> <u>1,081.00</u>	<del>\$(590.00)</del> <u>649.00</u>	5 or less	<del>\$(655.00)</del> <u>720.00</u>
6 to 15	<del>\$(2,765.00)</del> <u>3,041.00</u>	<del>\$(1,035.00)</del> <u>1,138.00</u>	<del>\$(1,068.00)</del> <u>1,174.00</u>	6 to 10	<del>\$(1,311.00)</del> <u>1,442.00</u>
16 to 50	<del>\$(3,146.00)</del> <u>3,460.00</u>	<del>\$(1,540.00)</del> <u>1,694.00</u>	<del>\$(1,147.00)</del> <u>1,261.00</u>	11 to 15	<del>\$(1,966.00)</del> <u>2,162.00</u>
51 to 100	<del>\$(3,965.00)</del> <u>4,361.00</u>	<del>\$(2,467.00)</del> <u>2,713.00</u>	<del>\$(1,343.00)</del> <u>1,477.00</u>	16 to 20	<del>\$(2,621.00)</del> <u>2,883.00</u>
101 or more	<del>\$(4,083.00)</del> <u>4,491.00</u>	<del>\$(2,595.00)</del> <u>2,854.00</u>	<del>\$(1,442.00)</del> <u>1,586.00</u>		

(d) For multiple service category licenses:

(i) One hundred percent of the home health category fee and seventy-five percent of the appropriate service category fee for each additional service category (hospice, home care, hospice care center); or

(ii) One hundred percent of the hospice category fee and seventy-five percent of the appropriate service category fee for each additional service category (home care, hospice care center); and

(e) A change of ownership fee of ~~((one hundred ninety-seven))~~ two hundred sixteen dollars for each licensed service category. A new license will be issued and valid for the remainder of the current license period.

(2) The department may charge and collect from a licensee a fee of ~~((nine hundred eighty-three))~~ one thousand eighty-one dollars for:

(a) A second on-site visit resulting from failure of the licensee to adequately respond to a statement of deficiencies;

(b) A complete on-site survey resulting from a substantiated complaint; or

(c) A follow-up compliance survey.

(3) A licensee with deemed status shall pay fees according to this section.

(4) A licensee shall submit an additional late fee in the amount of ~~((thirty-three))~~ thirty-six dollars per day, not to exceed five hundred fifty dollars, from the renewal date (which is thirty days before the current license expiration date) until the date of mailing the fee, as evidenced by the postmark.

(5) Refunds. The department shall refund fees paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the department, two-thirds of the fees paid, less a fifty dollar processing fee; or

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

(6) The department may not refund applicant fees if:

(a) The department has performed more than one on-site visit for any purpose;

(b) One year has elapsed since an initial licensure application is received by the department, but no license is issued because applicant failed to complete requirements for licensure; or

(c) The amount to be refunded as calculated by subsection (5)(a) or (b) of this section is ten dollars or less.

AMENDATORY SECTION (Amending WSR 06-21-108, filed 10/17/06, effective 11/17/06)

**WAC 246-337-990 Licensing fees.** A licensee must submit the following fees to the department:

FEE TYPE	AMOUNT
Administrative processing/ initial application fee	<del>\$((+55.00))</del> <u>204.00</u>
License bed fee (per bed)	<del>\$((+44.60))</del> <u>190.00</u>
Annual renewal fee (per bed)	<del>\$((+44.60))</del> <u>190.00</u>

FEE TYPE	AMOUNT
Late fee (per bed)	<del>\$((25.00))</del> <u>33.00</u> (up to <del>\$((500.00))</del> <u>660.00</u> )
Follow-up compliance survey fee or a complete on-site survey fee resulting from a substantiated complaint	<del>\$((+000.00))</del> <u>1,320.00</u>

(1) The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received an application but has not conducted an on-site survey or provided technical assistance. The department shall refund two-thirds of the fees paid, less a fifty dollar processing fee;

(b) The department has received an application and has conducted an on-site survey or provided technical assistance. The department shall refund one-third of the fees paid, less a fifty dollar processing fee.

(2) The department will not refund fees paid by the applicant if:

(a) The department has conducted more than one on-site visit for any purpose;

(b) One year has elapsed since the department received an initial licensure application, and the department has not issued a license because the applicant failed to complete requirements for licensure; or

(c) The amount to be refunded as calculated by subsection (1)(a) or (b) of this section is ten dollars or less.

AMENDATORY SECTION (Amending WSR 06-21-108, filed 10/17/06, effective 11/17/06)

**WAC 246-380-990 Fees.** An annual health and sanitation survey fee for community colleges, ferries, and other state of Washington institutions and facilities shall be assessed as follows:

	Fee
(1) Food Service	
(a) As defined in WAC 246-215-011(12) food service establishments or concessions in community colleges, ferries, or any other state of Washington facility preparing potentially hazardous foods. This shall include dockside food establishments directly providing food for the Washington state ferry system.	<del>\$((603.30))</del> <u>796.00</u>
(b) Food service establishments or concessions that do not prepare potentially hazardous foods.	<del>\$((302.60))</del> <u>399.00</u>

- Fee
- (c) The health and sanitation survey fee referenced in subsection (a) and (b) of this section may be waived provided there is an agreement between the department of health and the local jurisdictional health agency for the local health agency to conduct the food service establishments surveys.
- (2) State institutions or facilities.
- (a) Institutions or facilities operating a food service: The annual fee shall be ~~((nine))~~ twelve dollars and fifty cents times the population count plus ~~((six))~~ seven hundred ~~((three))~~ ninety-six dollars and ~~((thirty))~~ zero cents per food service establishment. The population count shall mean the average daily population for the past twelve months (January through December).
- (b) Institutions or facilities that do not operate a food service: The annual fee shall be ~~((nine))~~ twelve dollars and fifty cents times the population count.
- (c) The population count for a new institution shall mean the average projected daily population for the first twelve months of operation.

site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by August 24, 2007.

Assistance for Persons with Disabilities: Contact Vicki Brown, Program Manager, by August 24, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will amend the reference to a particular month and year of accreditation standards. This rule will allow the department of health to accept students graduating from dental hygiene schools accredited by the American Dental Association, based on Commission on Dental Accreditation standards, between January 1993 and June 2007 as meeting the standards for licensure.

Reasons Supporting Proposal: There have been twenty or more new dental hygiene schools that have been accredited by the American Dental Commission on Dental Accreditation after January, 1993.

Statutory Authority for Adoption: RCW 18.29.130.

Statute Being Implemented: RCW 18.29.130 and 18.29.021.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Vicki Brown, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement does not need to be prepared because the rule does not impose more than minor costs to small businesses within the industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Brown, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4865, fax (360) 664-9077, e-mail [vicki.brown@doh.wa.gov](mailto:vicki.brown@doh.wa.gov).

July 17, 2007

Mary C. Selecky  
Secretary

**WSR 07-15-077**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed July 17, 2007, 4:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-047.

Title of Rule and Other Identifying Information: Dental hygiene, WAC 246-815-030 Education requirements for licensure applicants.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Room 139, Tumwater, WA 98501, on August 31, 2007, at 9:00 a.m.

Date of Intended Adoption: August 31, 2007.

Submit Written Comments to: Vicki Brown, Program Manager, Dental Hygiene Program, P.O. Box 47867, Olympia, WA 98504-7867, e-mail [vicki.brown@doh.wa.gov](mailto:vicki.brown@doh.wa.gov), web

AMENDATORY SECTION (Amending WSR 94-05-053, filed 2/10/94, effective 3/13/94)

**WAC 246-815-030 Education requirements for licensure applicants.** (1) To be eligible for dental hygiene licensure, the applicant must have successfully completed a dental hygiene education program approved by the secretary of the department of health. The secretary adopts ~~((those))~~ the standards of the American Dental Association Commission on Dental Accreditation ("CODA") relevant to the accreditation of dental hygiene schools, in effect ~~((in January, 1993))~~ through June 2007. In implementing the adopted standards, the secretary approves those dental hygiene education programs ~~((which were accredited by the commission as of January 1993))~~ that are currently accredited and received initial "CODA" accreditation on or before June 30, 2007, provided, that the accredited education program's curriculum includes:

(a) Didactic and clinical competency in the administration of injections of local anesthetic;

(b) Didactic and clinical competency in the administration of nitrous oxide analgesia;

(c) Didactic and clinical competency in the placement of restorations into cavities prepared by a dentist; and

(d) Didactic and clinical competency in the carving, contouring, and adjusting contacts and occlusions of restorations.

(2) Dental hygiene education programs approved by the secretary of the department of health pursuant to the American Dental Association Commission on Dental Accreditation standards (~~(in effect in January, 1993,)~~) whose curriculum does not include the didactic and clinical competency enumerated in subsection (1)(a)(-) through (d) ((above)) of this section will be accepted if the applicant has successfully completed an expanded functions education program(s) approved pursuant to WAC 246-815-110, 246-815-120, and 246-815-130.

(3) A form will be provided in the department of health licensure application packages for the purpose of education verification.

(4) The standards of the American Dental Association Commission on Dental Accreditation relevant to the accreditation of dental hygiene schools are available from the American Dental Association, 211 East Chicago Ave., Chicago, IL 60611-2678, 312-440-2500, <http://www.ada.org/>.

## WSR 07-15-080

### PROPOSED RULES

#### BUILDING CODE COUNCIL

[Filed July 17, 2007, 3:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-098.

Title of Rule and Other Identifying Information: Amendment of chapter 51-56 WAC, further amendment of the 2006 Edition of the Uniform Plumbing Code (UPC).

Hearing Location(s): Spokane City Council Chambers, West 808 Spokane Falls Boulevard, Spokane, WA, on September 14, 2007, at 10:00 a.m.; and at the Tukwila Community Center, 12424 42nd Avenue South, Tukwila, WA, on October 12, 2007, at 10:00 a.m.

Date of Intended Adoption: November 9, 2007.

Submit Written Comments to: John Neff, Council Chair, P.O. Box 42525, Olympia, WA 98504-2525, e-mail [sbcc@cted.wa.gov](mailto:sbcc@cted.wa.gov), fax (360) 586-9383, by October 12, 2006 [2007].

Assistance for Persons with Disabilities: Contact Sue Mathers by August 31, 2007, TTY (360) 586-0772 or (360) 725-2966.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would amend sections 411 and 704 to better align the plumbing code with the health code requirements for commercial kitchen drainage.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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 council is seeking comments on the issues proposed in the rules below.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-2964; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No disproportionate impact on small business was identified. This rule will modify the adoption of model codes to stay current with national standards for the benefit of industry and Washington state interests. New state amendments clarify and simplify the code.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this section as one of the agencies required to comply with this statute.

June 8, 2007

John P. Neff

Council Chair

AMENDATORY SECTION (Amending WSR 07-01-094, filed 12/19/06, effective 7/1/07)

**WAC 51-56-0400 Chapter 4—Plumbing fixtures and fixture fittings.**

**402.0 Water-Conserving Fixtures and Fittings.**

**402.1** The purpose of this section shall be to implement water conservation performance standards in accordance with RCW 19.27.170.

**402.2 Application.** This section shall apply to all new construction and all remodeling involving replacement of plumbing fixtures and fittings in all residential, hotel, motel, school, industrial, commercial use, or other occupancies determined by the council to use significant quantities of water. Plumbing fixtures, fittings and appurtenances shall conform to the standards specified in this section and shall be provided with an adequate supply of potable water to flush and keep the fixtures in a clean and sanitary condition without danger of backflow or cross-connection.

**402.3 Water Efficiency Standards.**

**402.3.1 Standards for Vitreous China Plumbing Fixtures.**

**402.3.1.1** The following standards shall be adopted as plumbing materials, performance standards, and labeling standards for water closets and urinals. Water closets and urinals shall meet either the ANSI/ASME standards or the CSA standard.

ANSI/ASME A112.19.2M-1998	Vitreous China Plumbing Fixtures
ANSI/ASME A112.19.6-1995	Hydraulic Requirements for Water Closets and Urinals
CSA B45	CSA Standards on Plumbing Fixtures

**402.3.1.2** The maximum water use allowed in gallons per flush (gpf) or liters per flush (lpf) for any of the following water closets shall be the following:

Tank-type toilets	1.6 gpf/6.0 lpf
Flushometer-valve toilets	1.6 gpf/6.0 lpf
Flushometer-tank toilets	1.6 gpf/6.0 lpf
Electromechanical hydraulic toilets	1.6 gpf/6.0 lpf

EXCEPTIONS: 1. Water closets located in day care centers, intended for use by young children may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.  
 2. Water closets with bed pan washers may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.  
 3. Blow out bowls, as defined in ANSI/ASME A112.19.2M, Section 5.1.2.3 may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.

**402.3.1.3** The maximum water use allowed for any urinal shall be 1.0 gallons per flush or 3.78 liters per flush.

**402.3.1.4** No urinal or water closet that operates on a continuous flow or continuous flush basis shall be permitted.

**402.3.1.5** This section does not apply to fixtures installed before the effective date of this Section, that are removed and relocated to another room or area of the same building after the effective date of this Section.

**402.3.2 Standards for Plumbing Fixture Fittings.**

**402.3.2.1** The following standards are adopted as plumbing material, performance requirements, and labeling standards for plumbing fixture fittings. Faucets, aerators, and shower heads shall meet either the ANSI/ASME standard or the CSA standard.

ANSI/ASME A112.18.1M-1996	Plumbing Fixture Fittings
CSA B125	Plumbing Fittings

**402.3.2.2** The maximum water use allowed for any shower head is 2.5 gallons per minute or 9.5 liters per minute.

EXCEPTION: Emergency use showers shall be exempt from the maximum water usage rates.

**402.3.2.3** The maximum water use allowed in gallons per minute (gpm) or liters per minute (lpm) for any of the following faucets and replacement aerators is the following:

Lavatory faucets	2.5 gpm/9.5 lpm
Kitchen faucets	2.5 gpm/9.5 lpm
Replacement aerators	2.5 gpm/9.5 lpm
Public lavatory faucets other than metering	0.5 gpm/1.9 lpm

**402.4 Metering Valves.** Lavatory faucets located in restrooms intended for use by the general public shall be equipped with a metering valve designed to close by spring or water pressure when left unattended (self-closing).

EXCEPTIONS: 1. Where designed and installed for use by persons with a disability.  
 2. Where installed in day care centers, for use primarily by children under 6 years of age.

**402.5 Implementation.**

**402.5.1** The standards for water efficiency and labeling contained within Section 402.3 shall be in effect as of July 1, 1993, as provided in RCW 19.27.170 and amended July 1, 1998.

**402.5.2** No individual, public or private corporation, firm, political subdivision, government agency, or other legal entity, may, for purposes of use in the state of Washington, distribute, sell, offer for sale, import, install, or approve for installation any plumbing fixtures or fittings unless the fixtures or fittings meet the standards as provided for in this Section.

Section 402.6 is not adopted.

**411.2 Location of Floor Drains.** Floor drains shall be installed in the following areas:

**411.2.1** Toilet rooms containing two (2) or more water closets or a combination of one (1) water closet and one (1) urinal, except in a dwelling unit. The floor shall slope toward the floor drains.

**411.2.2** Commercial kitchens as required in Section 704.3.

**411.2.3** Laundry rooms in commercial buildings and common laundry facilities in multifamily dwelling buildings.

**412.0 Minimum Number of Required Fixtures.** For minimum number of plumbing fixtures required, see Building Code chapter 29 and Table 2902.1.

Sections 412.1 through 412.7 and Table 4-1 are not adopted.

AMENDATORY SECTION (Amending WSR 07-01-094, filed 12/19/06, effective 7/1/07)

**WAC 51-56-0700 Chapter 7—Sanitary drainage.**

**701.1.2** ABS and PVC DWV piping installations shall be installed in accordance with IS 5 and IS 9. Except for individual single family dwelling units, materials exposed within ducts or plenums shall have a flame-spread index of not more than 25 and a smoke developed index of not more than 50, when tested in accordance with the Test for Surface-Burning Characteristics of the Building Materials (See the Building Code standards based on ASTM E-84 and ANSI/UL 723).

**704.3** Except where specifically required to be connected indirectly to the drainage system, or when first approved by the authority having jurisdiction, all plumbing fixtures, drains, appurtenances, and appliances shall be directly connected to the drainage system of the building or premises. Where other fixtures, appliances and appurtenances are directly connected to the drainage system, a floor drain or

floor sink shall be provided adjacent to the fixture, and the fixture shall be connected on the sewer side of the floor drain trap, provided that no other drainage line is connected between the floor drain waste connection to the fixture drain. The fixture and floor drain shall be trapped and vented as required by this code.

**710.3** The minimum size of any pump or any discharge pipe from a sump having a water closet connected thereto shall be not less than two (2) inches (52 mm).

Sections 710.3.1 through 710.3.3 are not adopted.

#### CHAPTER 7, PART II—BUILDING SEWERS

**Part II Building Sewers.** Delete all of Part II (Sections 713 through 723, and Tables 7-7 and 7-8).

**WSR 07-15-089**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed July 18, 2007, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-02-021.

Title of Rule and Other Identifying Information: The department is creating new chapter 388-557 WAC, Chronic care management program.

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, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on August 21, 2007, at 10:00 a.m.

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

Submit Written Comments to: Stephanie Schiller, 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](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m. on August 21, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health and recovery services administration (HRSA) is incorporating into rule HRSA's chronic care management (CCM) program.

Reasons Supporting Proposal: See purpose above. Section 4, chapter 259, Laws of 2007.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520, Other: Section 4, chapter 259, Laws of 2007.

Statute Being Implemented: Section 4, chapter 259, Laws of 2007.

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: Alison Robbins, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Alison Robbins, P.O. Box 45530, Health and Recovery Services Administration, Olympia, WA 98504-5530, phone (360) 725-1634, fax (360) 753-7315, e-mail [robbliaa@dshs.wa.gov](mailto:robbliaa@dshs.wa.gov).

July 11, 2007  
Stephanie E. Schiller  
Rules Coordinator

#### Chapter 388-557 WAC

#### CHRONIC CARE MANAGEMENT

##### NEW SECTION

**WAC 388-557-0050 Chronic care management program—General.** (1) The department's chronic care management program:

(a) Offers care management and coordination activities for medical assistance clients determined to be at risk for high medical costs;

(b) Provides education, training, and/or coordination of services for program participants through statewide care management (SCM) and local care management (LCM) providers contracted with DSHS;

(c) Assists program participants in improving self-management skills and improving health outcomes; and

(d) Reduces medical costs by educating clients to better utilize healthcare services.

(2) The department's chronic care management program does not:

(a) Change the scope of services available to a client eligible under a Title XIX medicaid program;

(b) Interfere with the relationship between a participant (client) and the client's chosen department-enrolled provider(s);

(c) Duplicate case management activities available to a client in the client's community; or

(d) Substitute for established activities that are available to a client and provided by programs administered through other DSHS divisions or state agencies.

(3) Chronic care management program services provided by a statewide care management (SCM) contractor and a local care management (LCM) contractor must meet:



- (a) The conditions of the contract between DSHS and the contractor; and
- (b) Applicable state and federal requirements.
- (4) The SCM contractor uses a predictive modeling program to review DSHS claims, and eligibility data to identify clients eligible to participate in the chronic care management program.

#### NEW SECTION

**WAC 388-557-0100 Chronic care management program—Definitions.** The following terms and definitions apply to the chronic care management program:

**"Chronic care management program services"** are services provided by DSHS-contracted organizations to clients with multiple health, behavioral, and social needs in order to improve care coordination, client education, and client self-management skills.

**"Evidence-based healthcare practice"** means a clinical approach to practicing medicine based on the clinician's awareness of evidence and the strength of that evidence to support the management of a disease treatment process.

**"Local Care Management program" or "LCM program"** means a comprehensive care management program and medical home program for medical assistance clients (participants) that serves a specific geographical area of the state.

**"Local Care Management (LCM) contractor"** means an entity or group of entities that contracts with DSHS to provide chronic care management program services to eligible participants (clients).

**"Medical home"** means an approach to providing healthcare services in a high-quality and cost-effective manner that is accessible, family-centered, comprehensive, continuous, coordinated, compassionate, and culturally competent.

**"Participant"** means a medical assistance client who has been contacted by an SCM or LCM, and has agreed to participate in the chronic care management program.

**"Predictive modeling"** means using historical medical claims data to predict future utilization of medical services.

**"Self-management"** means, with guidance from a healthcare team, the concept of a medical assistance client being the "driver" of their own healthcare to improve their healthcare outcome through:

- Education;
- Monitoring;
- Adherence to evidence-based guidelines; and
- Active involvement in the decision-making process with the team.

**"Statewide Care Management program" or "SCM program"** means a comprehensive care management program for clients that serves all areas of the state not served by a local care management (LCM) program.

**"Statewide Care Management (SCM) contractor"** means an entity that contracts with DSHS to provide chronic care management program services to eligible medical assistance clients (participants). The SCM contractor provides client identification and referral to appropriate local care management (LCM) programs through predictive modeling.

#### NEW SECTION

**WAC 388-557-0200 Chronic care management program—Client eligibility and participation.** (1) To be a participant in the chronic care management program, a client must:

- (a) Be a recipient of the supplemental security income (SSI) program or general assistance with expedited medical categorically needy (GAX) program;
- (b) Be identified through predictive modeling as being high risk for high medical costs as a result of needing medical treatment for multiple conditions; and
- (c) Agree to participate in the program.
- (2) A client participating in the chronic care management program must not be:
- (a) Receiving medicare benefits;
- (b) Residing in an institution, as defined in WAC 388-500-0005, for more than thirty days;
- (c) Eligible for third party coverage that provides care management services or requires administrative controls that would duplicate or interfere with the department's chronic care management program;
- (d) Enrolled with a managed care organization (MCO) plan contracted with DSHS;
- (e) Currently receiving long term care services; or
- (f) Receiving case management services that chronic care management program services would duplicate.
- (3) Using data provided by DSHS, the statewide care management (SCM) contractor identifies medical assistance clients who are potential participants for chronic care management program services. A client who meets the participation requirements in this section:
- (a) Will be served by the SCM program or a local care management (LCM) program, based on the geographical area of the state the client resides.
- (b) Will be contacted by an SCM or LCM care manager for an assessment and enrollment in the program;
- (c) Will not be enrolled unless the client specifically agrees to the enrollment;
- (d) May request disenrollment at any time; and
- (e) May request re-enrollment at any time.
- (4) A participating client who subsequently enrolls in a DSHS voluntary managed care organization (MCO) plan is no longer eligible for chronic care management program services. The participating client is not exempted from mandatory enrollment in an MCO plan under chapter 388-538 WAC and:
- (a) Is no longer eligible for chronic care management program services;
- (b) Is not eligible for an enrollment exemption from the MCO plan because of the existing relationship with an SCM or LCM care manager; and
- (c) May be exempt from mandatory enrollment in the MCO plan only under the provisions of chapter 388-535 WAC.
- (5) A client who meets the eligibility and enrollment criteria for participation in the chronic care management services program:
- (a) Is eligible to participate for six months from the date of enrollment provided the client continues to meet eligibility and enrollment criteria; and

(b) May participate for an additional six-month participation period if both the department and the SCM or LCM contractor determine that the participant's self-management skills and healthcare outcome would benefit.

(6) A client who does not agree with a decision regarding chronic care management program services has a right to a hearing under chapter 388-02 WAC.

#### NEW SECTION

**WAC 388-557-0300 Chronic care management program services—Confidentiality and data sharing.** (1) Statewide care management (SCM) and local care management (LCM) contractors must meet the confidentiality and data sharing requirements that apply to clients eligible under Title XIX medicaid programs and as specified in the chronic care management contract.

(2) DSHS shares healthcare data with SCM and LCM contractors under the provisions of RCW 70.02.050 and the health insurance portability and accountability act of 1996 (HIPAA).

(3) DSHS requires SCM and LCM contractors to monitor and evaluate participant activities and provide to the department:

- (a) Any client information collected; and
- (b) Any data compiled as the result of the program.

#### NEW SECTION

**WAC 388-557-0400 Chronic care management program services—Payment.** Only a DSHS-contracted statewide care management (SCM) and local care management (LCM) program may bill and be paid for providing the chronic care management program services described in chapter 388-557 WAC. Billing requirements and payment methodology are described in the contract between DSHS and the contractor.

### WSR 07-15-091

#### PROPOSED RULES

### DEPARTMENT OF AGRICULTURE

[Filed July 18, 2007, 10:29 a.m.]

Supplemental Notice to WSR 07-05-028.

Preproposal statement of inquiry was filed as WSR 06-24-106.

Title of Rule and Other Identifying Information: WAC 16-301-525 What are the exemptions to the crucifer seed quarantine that apply within the regulated area? and 16-301-530 What requirements apply to crucifer seed in the regulated area?

Due to comments received at the public hearing on April 18, 2007, the department has amended proposed language, extended the public comment period, and scheduled another public hearing.

Hearing Location(s): Washington State University, Mount Vernon NWREC, 16650 State Route 536, Mount Vernon, WA 98273, on August 28, 2007, at 1:00 p.m.

Date of Intended Adoption: September 18, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail [tnorman@agr.wa.gov](mailto:tnorman@agr.wa.gov), fax (360) 902-1996, by August 29, 2007.

Assistance for Persons with Disabilities: Contact the agency receptionist by August 18, 2007, TTY (800) 833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to address three areas of the crucifer quarantine that are of concern to the seed industry.

Reasons Supporting Proposal: This proposal is necessary to facilitate the sale of certain crucifer vegetable seeds into a select market. Addressing the areas of concern reduces regulatory burden of compliance with the crucifer quarantine. This proposal also reduces the overall expense of testing and labor associated with quarantine compliance, making the overall rule user-friendly while still protecting the Washington seed industry.

Statutory Authority for Adoption: Chapters 15.49, 17.24, and 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no increased cost to seed producers or seed conditioners.

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

Dennis Hannapel  
Assistant Director

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-525 What are the exemptions to the crucifer seed quarantine that apply within the regulated area?** This crucifer quarantine does not apply to:

(1) Experiments or trial grounds of the United States Department of Agriculture;

(2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or

(3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550.

(4) Shipments, movements, or transportation of:

(a) Prepackaged crucifer seed in packages of 1/2 ounce or less if the seeds are free of regulated diseases as required in WAC 16-301-530; or

(b) Vegetable seedlings offered for sale for home garden use in the regulated area if the seedlings are free of regulated diseases as required in WAC 16-301-530.

(5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse.

(6) Seed lots with a maximum weight of five pounds that were in inventory prior to January 1, 2007.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-530 What requirements apply to planting crucifer seed in the regulated area?** (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the regulated area.

(b) Any seed of a *Brassica* or *Sinapis* species planted or established in the regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the regulated area must file a Notice of Intent/Quarantine Compliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the regulated area unless ~~((each seed container bears a label issued by the seed program indicating that the seed is in compliance with the requirements of this chapter))~~ accompanied by documentation verifying quarantine compliance.

(a) For small packages such as heat sealed envelopes and tins, quarantine compliance may be placed on a sales invoice or other documentation that is provided to the purchaser of seed. Language must be approved by the seed program.

(b) Larger containers must bear a label issued by the seed program indicating that the seed is in compliance with this chapter.

#### WSR 07-15-097

#### PROPOSED RULES

#### DEPARTMENT OF FISH AND WILDLIFE

[Filed July 18, 2007, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-168.

Title of Rule and Other Identifying Information: WAC 220-47-001, 220-47-302, 220-47-310, 220-47-311, 220-47-325, 220-47-401, and 220-47-411, rules for commercial salmon fishing in Puget Sound.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, August 21, 2007, at 1:30 p.m. - 4:30 p.m.

Date of Intended Adoption: On or after August 22, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail [preuslmp@dfw.wa.gov](mailto:preuslmp@dfw.wa.gov), fax (360) 902-2155, by February 23 [August 5], 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Statute Being Implemented: RCW 77.12.047 and 77.04.020.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Jeromy Jording, 1111 Washington Street, Olympia, (360) 902-2717; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

1. Description of the Reporting, Record-Keeping, and other Compliance Requirements of the Proposed Rule. This action corrects which provisions are required for quick reporting in Puget Sound salmon fisheries.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply With Such Requirements. None required or anticipated.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs. There is no cost of compliance.

4. Will Compliance With the Rule Cause Businesses to Lose Sales or Revenue? No, legal harvest will not be reduced. Accurate catch accounting will help fully utilize harvestable salmon.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply With the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

Reporting is available via a toll-free number, which is free.

6. Steps Taken By the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So. The department will conduct a public hearing and receive public comment on the rule proposal for consideration in the rule-making process.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule. The department will conduct a public hearing and receive public comment on the rule proposal for consideration in the rule-making process.

8. A List of Industries That Will be Required to Comply With the Rule. Puget Sound commercial net fishers who catch salmon, and fish processors who deal with commercially caught salmon.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

July 18, 2007  
Loreva M. Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-166, filed 8/3/05, effective 9/3/05)

**WAC 220-47-001 Puget Sound salmon—Quick reporting.** All Puget Sound salmon fisheries are designated as "quick reporting required" fisheries, and commercial purchasers and receivers must comply with the provisions of WAC 220-69-240(~~(10)~~) (12).

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

**WAC 220-47-302 Puget Sound—Lawful gear—Gill net.** (1) It is unlawful to use drift gill net salmon gear in Puget Sound that exceeds 1,800 feet in length or contains meshes of a size less than 5 inches, except in Area 9A, where gill nets may not exceed 600 feet in length, or be more than 60 mesh deep, or contain mesh size less than 5 inches.

(2) It is unlawful to use skiff gill net salmon nets in Puget Sound that exceed 300 feet in length or 90 meshes in depth, or that contain meshes of a size less than 5 inches, except in Area 9A, where gill nets may not exceed 600 feet in length, or be more than 60 meshes deep, or contain mesh size less than 5 inches. It is unlawful to retrieve skiff gill nets by any means except by hand (no hydraulics may be used). It is unlawful to fail to attend to skiff gill nets at all times.

(3) Drift gill nets and skiff gill nets shall be operated substantially in a straight line. It is unlawful to set such nets in a circle or to set them in other than (~~(substantially in)~~) a substantially straight line.

(4) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A sockeye or pink salmon fisheries unless said gill net gear is constructed so that the first 20 meshes below the cork line are composed of five-inch mesh, white opaque, minimum 210/30d (#12) diameter, nylon twine.

(5) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A between the dates of September 30 and October (~~(14)~~) 20 unless the gill net vessel has aboard and uses operable recovery boxes as described in this subsection.

(a) Dimensions and capacities of required recovery boxes:

(i) Recovery boxes must have two chambers, if one box, or (~~(it may be two boxes with)~~) one chamber in each box, if two boxes.

(ii) Each recovery box chamber must have an inside length measurement of 48 inches, an inside width measurement of 10 inches, and an inside height measurement of 16 inches.

(iii) Each chamber of the recovery box must have an inlet hole measuring between 3/4 inch and 1 inch in diameter(~~(and)~~). The inlet hole must be centered horizontally across the door or wall of the chamber, and the bottom of the hole must be located 1-3/4 inches above the floor of the chamber.

(iv) Each chamber of the recovery box must include a water outlet hole on the opposite wall from the inlet hole, and the outlet hole must be at least 1-1/2 inches in diameter, with the bottom of the outlet hole located 12 inches above the floor of the chamber.

(v) Flow of water through each chamber of the recovery boxes must be not less than 16 gallons per minute, nor more than 20 gallons per minute.

(b) Each box and chamber must be operating during any time that the net is being retrieved or picked.

(c) The vessel operator must demonstrate to department employees, upon request, that the pumping system is delivering the proper volume of fresh seawater into each chamber.

(d) All salmon not to be retained must be released immediately with care and with the least possible injury to the fish, or placed into the operating recovery box.

(e) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

(f) All fish placed in the recovery boxes must be released within the same catch area as the area of capture, and the release must occur prior to landing or docking.

(6) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

AMENDATORY SECTION (Amending Order 91-72, filed 8/27/91, effective 9/27/91)

**WAC 220-47-310 Puget Sound net seasons—Time.** During the openings provided for in this chapter, all times stated are Pacific Standard Time from January 1 through the (~~(first Saturday in April)~~) second Saturday in March and from the (~~(last Sunday in October)~~) first Sunday in November through December 31(~~(-)~~); and all times stated are Pacific Daylight Time from the (~~(first Sunday in April)~~) second Sunday in March to the (~~(last Saturday in October)~~) first Saturday in November.

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

**WAC 220-47-311 Purse seine—Open periods.** It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for (~~hereinafter~~) in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 7PM with use of recovery box; 7AM - 4:00PM without use of recovery box	10/12
((7, 7A:))	7AM - 6PM with use of recovery box; 7AM - 3:15PM without use of recovery box	((10/11, 10/12, 10/13, 10/18, 10/19, 10/20, 10/25, 10/26, 10/27)) 10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2
	7AM - 5PM with use of recovery box; 7AM - 2:30PM without use of recovery box	((11/1, 11/2, 11/3, 11/8, 11/9, 11/10)) 11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16
7B, 7C:	6AM - 8PM	((8/16, 8/23, 8/30)) 8/22, 8/29, 9/5
	((7AM - 8PM	9/6))
7B:	((7AM 9/11) 7AM - 8PM	- ((7PM 9/13)) 9/12
	((7AM 9/17) 7AM - 7PM	- ((6PM 10/28)) 9/17, 9/18, 9/19
	((7AM 10/30) 7AM 9/23	- ((4PM) 6PM) 11/3
	7AM ((11/6) 11/5	- 4PM ((11/10) 11/9
	7AM ((11/13) 11/12	- 4PM ((11/17) 11/16
	7AM ((11/20) 11/19	- 4PM ((11/24) 11/23
	((8AM 11/27) 7AM 11/26	- 4PM ((12/4) 11/30
	8AM 12/3	= 4PM 12/7

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and (~~is open~~) until 4:00 p.m. on the first Friday in December.

8:	7AM - 5PM	11/6
	7AM - 5PM	11/13
	7AM - 5PM	11/20
	7AM - 4PM	11/27
8A:	7AM - 7PM	Limited participation - two boats ((9/25, 10/2)) 10/1, 10/8.
	7AM - 6PM	((10/9, 10/16, 10/24, 10/26)) 10/15, 10/22, 10/30, 11/1
	7AM - 5PM	((11/1, 11/6, 11/8, 11/15)) 11/7, 11/12, 11/14, 11/20
	7AM - 4PM	((11/20, 11/22)) 11/26, 11/28
8D:	7AM - 7PM	((9/25, 10/2) 9/24, 10/1, 10/8

	7AM - 6PM	((10/9, 10/16, 10/24, 10/26)) 10/15, 10/22, 10/30, 11/1
	7AM - 5PM	((11/1, 11/6, 11/8, 11/15)) 11/7, 11/12, 11/14, 11/20
	7AM - 4PM	((11/20, 11/22)) 11/26, 11/28
10, 11:	7AM - 6PM	((10/16, 10/23, 10/25)) 10/22, 10/29, 10/31
	7AM - 5PM	((10/30, 11/6, 11/8, 11/13)) 11/5, 11/12, 11/14, 11/19
	7AM - 4PM	((11/20)) 11/26
12, 12B:	7AM - 6PM	((10/16, 10/23, 10/25)) 10/22, 10/29, 10/31
	7AM - 5PM	((10/30, 11/6, 11/13)) 11/5, 11/12, 11/19
12C:	7AM - 5PM	((11/7, 11/14)) 11/13, 11/20
	7AM - 4PM	((11/21)) 11/27

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October ((29)) 27 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, and prior to September ((11)) 9 in Area 7B.

Chum salmon - prior to ((October 1)) September 30 in Areas 7 and 7A.

All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

**WAC 220-47-325 Purse seine—Release of incidentally caught fish.** (1) It is unlawful for any purse seine vessel operator landing salmon to (~~land salmon~~) do so directly into the hold. All salmon must be landed (~~to~~) onto the deck(-) or sorting tray or table(-) of the harvesting vessel, with the hold hatch cover(s) closed, until the release of salmon that may not be retained is complete(-); and additionally:

(2) In Areas 7 and 7A and prior to September ((11)) 16 in Areas 7B and 7C, it is unlawful for any purse seine vessel operator to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in this section prior to the seine net being removed from the water, unless otherwise provided for in this section.

(3) The brailer shall be constructed in the following manner and with the following specifications:

- (a) A bag of web hung on a rigid hoop attached to a handle;
  - (b) The bag shall be opened by releasing a line running through rings attached to the bottom of the bag; and
  - (c) The web shall be of soft knotless construction, and the mesh size may not exceed 57 mm (2.25 inches) measured along two contiguous sides of a single mesh.
- (4) Hand-held dip nets shall be constructed of a shallow bag of soft, knotless web attached to a handle.

(5) Fish may be brought on board without using a brailer or dip net as specified in this section if the number of fish in the net is small enough that the crew can hand-pull the bunt

onto the vessel without the use of hydraulic or mechanical assistance.

(6) Fishers using a recovery box must have and operate the box in compliance with the provisions of WAC 220-47-302 (5)(a) through (f), and it is unlawful to fail to do so.

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

**WAC 220-47-401 Reef net open periods.** (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in

the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for (~~hereinafter~~) in each respective area:

AREA	TIME	-	DATE(S)
7, 7A	7AM - 7PM Daily		<del>((9/16-11/11))</del> <u>9/16 - 11/17</u>

(2) It is unlawful to retain Chinook salmon taken with reef net gear at all times, and it is unlawful to retain chum or wild coho salmon taken with reef net gear prior to (~~October 4~~) September 30.

(3) All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 06-173, filed 7/26/06, effective 8/26/06)

**WAC 220-47-411 Gill net—Open periods.** It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the seasons provided for (~~hereinafter~~) in each respective fishing area:

AREA	TIME	-	DATE(S)	MINIMUM MESH
6D: Skiff gill net only.	7 AM	-	7 PM <del>((9/21, 9/22, 9/25, 9/26, 9/27, 9/28, 9/29, 10/2, 10/3, 10/4, 10/5, 10/6, 10/9, 10/10, 10/11, 10/12, 10/13, 10/16, 10/17, 10/18, 10/19, 10/20, 10/23, 10/24, 10/25, 10/26, 10/27))</del> <u>9/24, 9/25, 9/26, 9/27, 9/28, 10/1, 10/2, 10/3, 10/4, 10/5, 10/8, 10/9, 10/10, 10/11, 10/12, 10/15, 10/16, 10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26</u>	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released(;) must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	Noon	-	Midnight(;) Use of recovery box required	<del>((10/11, 10/12, 10/13))</del> <u>10/12, 10/17, 10/18, 10/19</u>	6 1/4"
	Noon	-	Midnight	<del>((10/18, 10/19, 10/20, 10/25, 10/26, 10/27, 11/1, 11/2, 11/3, 11/8, 11/9, 11/10))</del> <u>10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2, 11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16</u>	6 1/4"

Note: In Areas 7 and 7A after September 30 but prior to October (~~16~~) 20, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

7B/7C:	7PM	-	7AM	NIGHTLY <del>((8/14, 8/20, 8/22, 8/24, 8/27, 8/29, 8/31))</del> <u>8/20, 8/26, 8/28, 8/30, 9/3, 9/4, 9/6</u>	7"
	7PM	-	8AM	NIGHTLY <del>((9/4, 9/5, 9/7))</del> <u>9/9, 9/11, 9/13</u>	<del>((7"))</del> <u>5"</u>
7B:	6PM	-	8AM	NIGHTLY <del>((9/10, 9/12, 9/14))</del> <u>9/16, 9/18, 9/21</u>	5"
	7AM <del>((9/47))</del> <u>9/23</u>	-	8PM <del>((10/28))</del> <u>10/27</u>		5"
	<u>7AM 10/28</u>	-	<u>8PM 11/3</u>		<u>6 1/4"</u>
	7AM <del>((10/30))</del> <u>11/5</u>	-	4PM <del>((11/3))</del> <u>11/9</u>		6 1/4"
	7AM <del>((11/6))</del> <u>11/12</u>	-	4PM <del>((11/10))</del> <u>11/16</u>		6 1/4"
	7AM <del>((11/13))</del> <u>11/19</u>	-	4PM <del>((11/17))</del> <u>11/23</u>		6 1/4"
	7AM <del>((11/20))</del> <u>11/26</u>	-	4PM <del>((11/24))</del> <u>11/30</u>		6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH
	8AM ( <del>11/27</del> ) <u>12/3</u>	-	4PM ( <del>11/24</del> ) <u>12/7</u>	<u>6 1/4"</u>

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squilicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and (~~is open~~) until 6:00 PM on the first Friday in December.

8:	7AM	-	7PM ( <del>10/30, 11/1, 11/3, 11/6, 11/8, 11/10, 11/13, 11/15, 11/17</del> ) <u>11/5, 11/7, 11/9, 11/12, 11/14, 11/16, 11/19, 11/21, 11/23</u>	6 1/4"
8A:	7AM	-	( <del>11/20, 11/22, 11/24</del> ) <u>11/26, 11/28, 11/30</u>	6 1/4"
	6PM ( <del>5PM</del> )	-	NIGHTLY ( <del>10/3</del> ) <u>10/9</u>	5"
	<u>7AM</u>	-	( <del>NIGHTLY 10/10, 10/12, 10/13</del> ) <u>10/16, 10/18, 10/19</u>	5"
	8AM	-	( <del>10/17, 10/19, 10/20</del> ) <u>10/23, 10/25, 10/26, 10/29, 10/31, 11/2</u>	( <del>5"</del> ) <u>6 1/4"</u>
8D:	( <del>8AM</del> )	-	<u>10/23, 10/25, 10/27</u>	<u>6 1/4"</u>
	7AM	-	( <del>10/31, 11/2, 11/3, 11/7, 11/9, 11/10, 11/14, 11/16, 11/17</del> ) <u>11/6, 11/8, 11/9, 11/13, 11/15, 11/16, 11/21, 11/22, 11/23</u>	6 1/4"
	7AM	-	( <del>11/21, 11/23, 11/24</del> ) <u>11/27, 11/29, 11/30</u>	6 1/4"
	6PM	-	NIGHTLY ( <del>9/24, 9/26, 9/28, 10/1, 10/3, 10/5</del> ) <u>9/23, 9/25, 9/27, 9/30, 10/2, 10/4, 10/7, 10/9, 10/11</u>	5"
	( <del>5PM</del> )	-	( <del>NIGHTLY 10/8, 10/10, 10/12</del> ) <u>10/18, 10/19</u>	5"
	8AM	-	( <del>10/19, 10/20, 10/26, 10/27</del> ) <u>10/25, 10/26, 11/1, 11/2</u>	5"
	7AM	-	( <del>11/2, 11/3</del> ) <u>11/8, 11/9</u>	5"
	7AM	-	( <del>11/9, 11/10, 11/16, 11/17</del> ) <u>11/15, 11/16, 11/21, 11/23</u>	6 1/4"
	7AM	-	( <del>11/23, 11/24</del> ) <u>11/29, 11/30</u>	6 1/4"
	7PM	-	NIGHTLY ( <del>8/22, 8/24</del> ) <u>8/28, 8/30</u>	5"
9A:	6AM ( <del>8/27</del> ) <u>9/26</u>	-	( <del>8PM 10/28</del> ) <u>7PM 11/3</u>	5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon (~~not to be retained~~) required to be released must be (~~released~~) removed from the net by cutting the meshes ensnaring the fish.

10, 11:	4PM	-	7AM NIGHTLY ( <del>10/45</del> ) <u>10/21</u>	6 1/4"
	5PM ( <del>4PM</del> )	-	( <del>8AM</del> ) <u>9AM</u> NIGHTLY ( <del>10/17, 10/18</del> ) <u>10/23</u>	6 1/4"
	<u>3PM</u>	-	7AM NIGHTLY ( <del>10/22, 10/24</del> ) <u>10/28, 10/30</u>	6 1/4"
	5PM	-	( <del>8AM</del> ) <u>9AM</u> NIGHTLY ( <del>10/25</del> ) <u>10/31</u>	6 1/4"
	3PM	-	7AM NIGHTLY ( <del>10/29</del> ) <u>11/4</u>	6 1/4"
	4PM	-	8AM NIGHTLY ( <del>10/31, 11/1</del> ) <u>11/6</u>	6 1/4"
	3PM	-	7AM NIGHTLY ( <del>11/5, 11/7</del> ) <u>11/11, 11/13</u>	6 1/4"
	4PM	-	8AM NIGHTLY ( <del>11/8</del> ) <u>11/14</u>	6 1/4"
	3PM	-	7AM NIGHTLY ( <del>11/12</del> ) <u>11/18</u>	6 1/4"
	4PM	-	8AM NIGHTLY ( <del>11/14, 11/15</del> ) <u>11/20</u>	6 1/4"
	2PM	-	7AM NIGHTLY ( <del>11/19</del> ) <u>11/25</u>	6 1/4"
	3PM	-	8AM NIGHTLY ( <del>11/21, 11/22</del> ) <u>11/27</u>	6 1/4"

12A: Skiff gill net only.	7AM	-	7PM ( <del>9/5, 9/12, 9/19, 9/26, 10/3, 10/10</del> ) <u>9/4, 9/11, 9/18, 9/25, 10/2</u>	5"
---------------------------	-----	---	---	----

Note: In Area 12A, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released(;) must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	8AM	-	8PM ( <del>10/17, 10/19, 10/24, 10/26</del> ) <u>10/24, 10/25, 10/30, 11/1, 11/2</u>	6 1/4"
	7AM	-	7PM ( <del>10/31, 11/2, 11/7, 11/9, 11/14, 11/16</del> ) <u>11/7, 11/8, 11/14, 11/15, 11/20</u>	6 1/4"
12C:	7AM	-	7PM ( <del>11/7, 11/9, 11/14, 11/16</del> ) <u>11/13, 11/15, 11/20, 11/22</u>	6 1/4"
	7AM	-	6PM ( <del>11/21, 11/22</del> ) <u>11/26, 11/27</u>	6 1/4"

AREA	TIME	DATE(S)	MINIMUM MESH
All other saltwater and freshwater areas - closed.	Nightly openings refer to the start date.		
	Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.		

**WSR 07-15-098**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed July 18, 2007, 11:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-167.

Title of Rule and Other Identifying Information: WAC 220-36-023 and 220-40-027, rules for commercial salmon fishing in Grays Harbor and Willapa Bay.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, August 21, 2007, at 9:00 a.m.-noon.

Date of Intended Adoption: On or after August 22, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by February 23 [August 5], 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Statute Being Implemented: RCW 77.12.047 and 77.04.020.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Ron Warren, 1111 Washington Street, Olympia, (360) 249-4628, ext. 204; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, record-keeping, and Other Compliance Requirements of the Proposed Rule. This

action establishes provisions for commercial salmon fisheries in Grays Harbor, and commercial salmon and sturgeon fisheries in Willapa Bay.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply With Such Requirements. None required or anticipated.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs. There is no anticipated cost of compliance.

4. Will Compliance With the Rule Cause Businesses to Lose Sales or Revenue? No. Legal harvest will not be reduced. Accurate catch accounting will help fully utilize harvestable stocks.

5. Cost Of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply With the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

Reporting is available via a toll free number, which is free to the caller.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So. No steps taken, as there are no costs incurred.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule. The department will conduct a public hearing and receive public comment on the rule proposal for consideration in the rule-making process.

8. A List of Industries That Will be Required to Comply With the Rule. Commercial net fishers who catch salmon and sturgeon, and fish processors who deal with commercially caught salmon and their distribution.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

July 18, 2007

Loreva M. Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-167, filed 8/3/05, effective 9/3/05)

**WAC 220-40-027 Salmon—Willapa Bay fall fishery.** August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:



**Fishing periods**

(1) Gill net gear may be used to fish for salmon and sturgeon as shown below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time	Area
6:00 p.m. September <del>((18))</del> <u>16</u> through 6:00 p.m. September <del>((23, 2005))</del> <u>21, 2007.</u>	Areas 2G east of a line <del>((projected))</del> <u>drawn</u> true south from the most waterward exposed end of the rock jetty located near Washaway Beach <del>((:))</del> ; 2H west of Willapa Channel Marker 40 <del>((:))</del> ; 2M <del>((:))</del> ; and 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2).
6:00 p.m. September <del>((21))</del> <u>19</u> through 6:00 p.m. September <del>((22))</del> <u>20, 2007;</u> and 6:00 p.m. September <del>((28))</del> <u>27</u> through 6:00 p.m. September <del>((29, 2005))</del> <u>28, 2007.</u>	Area 2K
6:00 p.m. September <del>((24))</del> <u>23</u> through 6:00 p.m. <del>((October 3, 2005))</del> <u>September 28, 2007.</u>	Area 2G east of a line drawn true south from the most waterward exposed end of the rock jetty located near Washaway Beach <del>((:))</del> ; Area 2H <del>((:))</del> ; Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2) <del>((:))</del> ; and Area 2M.
<del>((6:00 p.m. October 9 through 6:00 p.m. October 11, 2005))</del> <u>6:00 a.m. through 6:00 p.m. October 1, 2007; 6:00 a.m. through 6:00 p.m. October 2, 2007; 6:00 a.m. through 6:00 p.m. October 3, 2007; 6:00 a.m. through 6:00 p.m. October 4, 2007; 6:00 a.m. through 6:00 p.m. October 5, 2007; 6:00 a.m. through 6:00 p.m. October 6, 2007; and 6:00 a.m. through 6:00 p.m. October 7, 2007.</u>	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach <del>((:))</del> ; 2H <del>((:))</del> ; 2M <del>((:))</del> ; and 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2).

Time	Area
<del>((6:00 p.m. October 17 through 6:00 p.m. October 20, and 6:00 p.m. October 24 through 6:00 p.m. October 27, 2005))</del> <u>7:00 a.m. through 7:00 p.m. October 8, 2007; 7:00 a.m. through 7:00 p.m. October 9, 2007; 7:00 a.m. through 7:00 p.m. October 10, 2007; and 7:00 a.m. through 7:00 p.m. October 11, 2007.</u>	Areas 2G west of a line drawn true north-south through Willapa Channel Marker 10 and east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, but excluding the area southerly and easterly of a line from Island Sands Light to Ramsey Point <del>((:))</del> ; 2M <del>((:))</del> ; and 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2).
<del>((Noon, November 6 through noon November 30, 2005))</del> <u>6:00 p.m. November 12, 2007, through 6:00 p.m. November 16, 2007.</u>	Area 2G east of a line drawn true south from the most waterward exposed end of the rock jetty located near Washaway Beach; Area 2H west of Willapa Channel Marker 40; Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2); and Area 2M.
<del>Noon, November 5, 2007, through noon, November 30, 2007.</del>	Areas 2G, 2H, 2J and 2M.

(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Record Area (SMCRA) 2G, described in this section. The Tokeland Boat basin means ~~((that))~~ the portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

**Gear**

- (3) Gill net gear restrictions - All areas:
- Drift gill net gear only. It is unlawful to use set net gear.
  - September 1 through October ~~((3, 2005—6))~~ 7, 2007: Six-inch maximum mesh, no more than 55 meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure break-away panels.
  - October ~~((4))~~ 8 through October 31, ~~((2005—6 1/2))~~ 2007: Six and one-half inch maximum mesh.
  - November 1 through November 30, ~~((2005—9))~~ 2007: Nine-inch minimum mesh; except that from 6:00 p.m. November 12 through 6:00 p.m. November 16, 2007 (coho

directed), use either 6-inch maximum mesh or 9-inch maximum mesh (choose only one), no more than 55 meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure breakaway panels.

**Other**

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing or within 3 hours of the close of that particular fishery, whichever happens first.

(5) The southern population of green sturgeon has been listed by NOAA Fisheries as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.

AMENDATORY SECTION (Amending Order 05-167, filed 8/3/05, effective 9/3/05)

**WAC 220-36-023 Grays Harbor salmon—Fall fishery.** August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes, except that:

**Fishing periods**

((H)) Gill net gear may be used to fish for salmon and sturgeon according to the chart below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury and must be released immediately:

Time	Areas
<del>((7:30 a.m. October 8 through 6:30 p.m. October 8, 2005))</del> <del>5:30 p.m. through 1:30 a.m. October 8, 2007;</del> <del>9:00 p.m. through 5:00 a.m. October 15, 2007.</del>	2C
<del>((9:30 a.m. October 13 through 5:30 p.m. October 13, 2005, and 10:30 a.m. October 14 through 6:30 p.m. October 14, 2005))</del> <del>6:00 a.m. through 6:00 p.m. October 11, 2007;</del> <del>6:00 a.m. through 6:00 p.m. October 12, 2007;</del> <del>6:00 a.m. through 6:00 p.m. October 13, 2007.</del>	That portion of Area 2A upstream from the Highway 101 Bridge at Aberdeen, to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore. AND That portion of Area 2D north and east of a line projected due south from the 28th street boat launch to

Time	Areas
	Renney Island, then southeasterly to Range Marker G, then to the eastern boundary of Area 2D at the Highway 101 Bridge.

~~((A)) (1) Drift gill net gear only. It is unlawful to use set net gear.~~

~~((B)-6) (2) Six-inch maximum mesh restriction, no more than 55 meshes deep.~~

~~((E)) (3) Soak time shall not exceed ((45 minutes)) one hour. Soak time, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed ((45 minutes)) one hour.~~

~~((D) Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box shall be operating during any time that the net is being retrieved or picked. The flow in the recover box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches. Each chamber of the recover box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.~~

~~((I)) (4) All ((chinook,)) nonlegal sturgeon(;) and nonlegal steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box.~~

~~((F) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.~~

~~((G) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.~~

~~((H)) (5) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing or within 3 hours of the close of that particular fishery, whichever happens first.~~

~~((I)) (6) Fishers must take department observers if requested by department staff, when participating in these openings(, and provide notice of intent to participate by contact to the quick reporting phone, fax or e-mail, WAC 220-69-240, prior to 10:00 a.m. the day preceding each opening).~~

~~((2) Gill net gear may be used to fish for salmon and sturgeon:~~

Time	Areas
7:30 a.m. October 15 through 6:30 p.m. October 15, 2005	Area 2B
7:30 a.m. October 16 through 6:30 p.m. October 16, 2005	
7:30 a.m. October 28 through 6:30 p.m. October 28, 2005, and	
7:30 a.m. October 29 through 6:30 p.m. October 29, 2005	

~~(a) Drift gill gear only. Unlawful to use set net gear.~~

~~(b) 6 1/2-inch maximum mesh restriction.~~

~~(c) Quick reporting required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." WAC 220-69-240.~~

~~(d) Fishers must take department observers if requested by department staff when participating in these fisheries. Notice of intent to participate not required.)) (7) The southern population of green sturgeon has been listed by NOAA Fisheries as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited, to protect this federally listed stock.~~