WSR 08-05-095
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed February 15, 2008, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-22-093.

Title of Rule and Other Identifying Information: The department is amending WAC 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-520, 388-532-530, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-745 (new section), 388-532-750, 388-532-760, 388-532-780, 388-532-790, reproductive health/family planning only/TAKE CHARGE.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on April 8, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 9, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 8, 2008.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2008, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes are intended to describe the changes in program eligibility and scope of care. These rules:

- Add a definition for comprehensive family planning preventive medicine visit and delayed pelvic protocol;
- Change text throughout from "over-the-counter (OTC) birth control and supplies" to "over-the-counter (OTC) birth control drugs and supplies";
- Clearly identify who is eligible for family planning only and TAKE CHARGE;
- Add language under provider requirements in all sections (reproductive health, family planning only, and TAKE CHARGE) about "referring the client to available and affordable nonfamily planning primary care services, as needed."
- Strike the language under the covered section for "services for women" under reproductive health that said "cervical, vaginal, and breast cancer screening examination once per year as medically necessary" and expand the language to allow for an annual comprehensive family planning preventive medicine visit and a gynecological examination for any Medicaid client who is seeking and needing family planning. The department is also including the same language under the family planning only sections and TAKE CHARGE. Requirements for the comprehensive family planning preventive medicine visit is also included;
- Strike the following language under the covered section for services for men under reproductive health: "Prostate cancer screening for men, who are fifty years of age and older, once per year," and change it to read: "Prostate cancer screening for men, once per year, when medically necessary."
- Add screening and treatment for chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age under the covered section for family planning only and TAKE CHARGE;
- Update the definition for education, counseling and risk reduction intervention (ECRR) in the TAKE CHARGE section and remove the definition for intensive follow-up services.
- Include federal requirements for TAKE CHARGE eligibility which states that an applicant must provide proof of citizenship or qualified alien status and identity, must need family planning services, and must not be currently covered through another medical assistance program for family planning or have any health insurance that covers family planning.
- Change language under TAKE CHARGE program provider requirements that the "provider must document that each individual responsible for providing TAKE CHARGE services is trained on all aspects of the TAKE CHARGE program." The word "document" replaces the word "assure."
- Add *"within seven working days of receipt"* to the existing requirement for TAKE CHARGE providers to forward the client's medical ID card to them;
- Include language in the TAKE CHARGE section about "informing the client of their right to see any TAKE CHARGE provider within the state."
- Incorporate into rule current policy that abortions and other pregnancy-related services are not covered under the TAKE CHARGE program.
- Change the language under the TAKE CHARGE - Good cause exemption section from TAKE CHARGE applicants who are either adolescents or young adults, to "eighteen years of age or younger" and change domestic violence victims to those "domestic violence victims who depend on their spouses insurance…."
- Identify when TAKE CHARGE providers are *exempt* from billing third parties.

Reasons Supporting Proposal: The department previously proposed these rules under WSR 07-07-102 and held a public hearing on May 9, 2007.

Revisions to this rule are necessary in order to bring the program into compliance with special terms and conditions of the new family planning/TAKE CHARGE waiver set forth by the Centers for Medicare and Medicaid Services (CMS) for the state of Washington. Adoption of the revisions is critical to prevent loss of 90% federal match funds for the family planning/TAKE CHARGE program.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.800.

Statute Being Implemented: RCW 74.08.090 and 74.09.800.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Maureen Considine, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1652.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Maureen Considine, FP/TAKE CHARGE Program Manager, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1652, e-mail consicm@dshs.wa.gov.

February 12, 2008
Stephanie E. Schiller
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

• Signed a core provider agreement with the department;

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

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

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

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

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

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

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

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

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

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

(b) Categorically needy program (CNP);

(c) General assistance unemployable (GAU) program;

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

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

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

(a) A department-approved family planning provider;

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

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

(d) A department-contracted pharmacy for:

(i) Over-the-counter contraceptive drugs and supplies, including emergency contraception; and

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

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

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

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

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

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

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

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

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

(7) Refer the client to available and affordable nonfamily planning primary care services, as needed.

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

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

(1) **Services for women:**

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

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

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

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

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

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

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

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

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

(c) Over-the-counter (OTC) ((~~contraceptives,~~)) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety ((~~(~~))as described in chapter 388-530 WAC, ((~~Pharmacy services)~~)) Prescription Drugs (Outpatient).

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

(i) Requested by the client; and

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

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

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

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

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

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

(j) Abortion.

(2) **Services for men:**

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

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

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

(i) Requested by the client; and

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

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

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

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

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

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

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

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

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

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

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

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

(7) Refer the client to available and affordable nonfamily planning primary care services, as needed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(((~~3~~))) (4) Over-the-counter (OTC) ((~~contraceptive,~~)) family-planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety (as described in chapter 388-530 WAC, ((~~Pharmacy services~~)) Prescription Drugs (Outpatient)).

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

(a) Requested by the client; and

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

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

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

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

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

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

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

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

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

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

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

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

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

~~reduce the risk of unintended pregnancy. ECRR services must include:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Need family planning services;

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

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

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

~~(ii) Family planning coverage that does not cover one hundred percent of the applicant's chosen birth control~~)) (f) Not be currently covered through another medical assistance program for family planning or have any health insurance that covers family planning, except as provided in WAC 388-530-790.

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

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

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

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

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

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

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

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

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

~~(i) A randomly selected group of providers that give intensive follow-up service (IFS) to TAKE CHARGE clients under a TAKE CHARGE research component client services~~

~~contract. See WAC 388-532-740(2) for a related limitation; or~~

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

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

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

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

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

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

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

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

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

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

((~~(c)~~)) (3) Over-the-counter (OTC) ((~~contraceptives,~~)) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety (as described in chapter ((~~388-538~~)) 388-530 WAC, ((~~Pharmacy services~~)) Prescription Drugs (Outpatient));

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Requested by the TAKE CHARGE client; and

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

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

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

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

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

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

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

~~The specific elements of IFS are negotiated with each research site.~~))

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

NEW SECTION

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

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

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

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

(a) Requested by the TAKE CHARGE client; and

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

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

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

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

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

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

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

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

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

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

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

(1) Abortions and other pregnancy-related services; and

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

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

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

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

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

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

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

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

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

(5) Contraceptive methods discussed with the client;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Federally qualified health centers (FQHCs), rural health centers (RHCs), and Indian health providers who

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

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

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

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

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

WAC 388-532-790 TAKE CHARGE program—Good cause exemption from billing third party insurance. (1) TAKE CHARGE applicants who are ((~~either adolescents or young adults~~)) eighteen years of age or younger and ((~~who~~)) depend on their parents' medical insurance, or individuals who are domestic violence victims who depend on their spouses or another's health insurance may request an exemption, due to "good cause," from the eligibility restrictions in WAC 388-532-720 (1)(f) and from the use of available third party family planning coverage ((~~due to "good cause."~~)). Under the TAKE CHARGE program, "good cause" means that use of the third party coverage would violate his or her ((~~privacy~~)) confidentiality because the third party:

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

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

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

WSR 08-06-015
WITHDRAWAL OF PROPOSED RULES
COUNTY ROAD ADMINISTRATION BOARD
[Filed February 21, 2008, 2:47 p.m.]

The county road administration board would like to withdraw WSR 07-22-048 filed with the code reviser on October 31, 2007. We plan to refile these WAC changes at a later date.

Please contact Karen Pendleton at (360) 753-5989 if you have questions.

Karen Pendleton
Executive Assistant

WSR 08-06-016
WITHDRAWAL OF PROPOSED RULES
EXECUTIVE ETHICS BOARD
[Filed February 21, 2008, 2:48 p.m.]

The executive ethics board would like to withdraw the CR-102 proposed rule making, filed on February 4, 2008, regarding WAC 292-110-010 Use of state resources. It has been determined that further research and stakeholder input is necessary.

Melanie de Leon
Executive Director

WSR 08-06-021
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 07-11—Filed February 22, 2008, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-084.

Title of Rule and Other Identifying Information: This proposal will amend the following two rules to implement chapter 80.80 RCW in which the 2007 legislature directed the department of ecology to adopt rules by June 30, 2008, to implement and enforce a greenhouse gases emissions performance standard and to establish criteria for evaluating sequestration plans: Chapter 173-407 WAC, Carbon dioxide mitigation program for fossil-fueled thermal electric generating facilities and chapter 173-218 WAC, Underground injection control program.

Hearing Location(s): Ecology Headquarters Building, Auditorium, 300 Desmond Drive S.E., Lacey, WA, on April 8, 2008, at 6:00 p.m.; and at the Spokane County Public Health Center, 1101 West College Avenue, Room 140, Spokane, WA, on April 10, 2008, at 6:00 p.m. Department of ecology hearings are being conducted jointly with the energy facility site evaluation council (EFSEC).

Date of Intended Adoption: June 16, 2008.

Submit Written Comments to: Nancy Pritchett, P.O. Box 47600, Olympia, WA 98504-7600, e-mail npri461@ecy.

wa.gov, fax (360) 407-7534, received by 5:00 p.m., April 18, 2008.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6800, by April 1, 2008. If you have a hearing loss, call 711 for Washington Relay Service. If you have a speech disability, call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to adopt, as directed in chapter 80.80 RCW, a greenhouse gases emissions performance standard for baseload electric generation and establish criteria to implement and enforce the emissions performance standard. The proposal will:

(1) Amend chapter 173-407 WAC to modify the title to reference the greenhouse gases emissions performance standard; add new sections to implement and enforce the greenhouse gases emissions performance standard for baseload electric generation, as directed in chapter 80.80 RCW; and make minor corrections to existing rule language implementing chapter 80.70 RCW.

(2) Amend chapter 173-218 WAC to include permitting requirements for the permanent geologic sequestration of CO_2 as a method for meeting the greenhouse gases emissions performance standard. The purpose of the proposed amendments is to protect ground water and public health and safety from contamination due to geologic sequestration of CO_2.

Reasons Supporting Proposal: Executive Order 07-02 established goals for the statewide reduction of greenhouse gases emissions within Washington over the next several decades as one of the methods of addressing climate change. These emissions reductions goals were also adopted within ESSB 6001 and codified in chapter 80.80 RCW. The legislature passed chapter 80.80 RCW in 2007 with the intent to establish statutory goals for statewide reductions in greenhouse gases emissions and to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions. RCW 80.80.040 directed the department of ecology to adopt rules by June 30, 2008, to implement and enforce a greenhouse gases emissions performance standard and to establish criteria for evaluating sequestration plans. The proposed rules satisfy the statutory requirements under chapter 80.80 RCW. These proposed rules also support the goals of Executive Order 07-02 by beginning to address the impacts of climate change in Washington.

Statutory Authority for Adoption: ESSB 6001, codified as chapter 80.80 RCW.

Statute Being Implemented: Chapter 80.80 RCW.

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

Name of Proponent: Department of ecology, air quality program and water quality program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Pritchett, Lacey, Washington, (360) 407-6082.

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

Small Business Economic Impact Statement

For a printed copy of this report, contact Nancy Pritchett, P.O. Box 47600, Olympia, WA 98504-7600, e-mail npri461@ecy.wa.gov, phone (360) 407-6082. Refer to Publication Number [WSR] 08-02-006.

You can also view this report on the department of ecology's web site at http://www.ecy.wa.gov/biblio/0802006.html.

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement (SBEIS) does not contain the appendices, reference section, and footnotes 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.

1. Background: The Washington state department of ecology (ecology) is proposing to amend chapter 173-407 WAC, Carbon dioxide mitigation program for fossil-fueled thermal electric generating facilities and chapter 173-218 WAC, Underground injection control program.

In 2007, state lawmakers passed new climate change legislation that Governor Christine Gregoire signed into law on May 3, 2007. The new law (chapter 80.80 RCW) requires ecology, in coordination with the energy facility site evaluation council (EFSEC), to adopt rules setting a greenhouse gases emissions performance standard. The rules will set standards for:

- Baseload generation and cogeneration facilities in Washington.
- Baseload electric generation for which electric utilities enter into long-term financial commitments on or after July 1, 2008.

Reason for this rule proposal: Carbon dioxide (CO_2) is the main source of the greenhouse gas emissions that are contributing to climate change. Electricity generation is the third leading contributor of greenhouse gases in Washington, behind transportation and the direct use of fuel. Ecology is proposing rule amendments that will:

- Implement a CO2 emission performance standard of 1,100 pounds of greenhouse gases per mega watt hour (MWh) of power generated for baseload power plants.
- Establish an output-based methodology for calculating greenhouse gas emissions from a cogeneration facility.
- Establish performance standards to protect the quality of ground water associated with a carbon capture and sequestration project.
- Establish criteria for evaluating carbon capture and sequestration plans submitted by power plants.

All of these are necessary to implement the new law and they will help us begin to address the impacts of climate change in Washington and support the Governor's Climate Change Challenge Executive Order 07-02.

Scope of Analysis: Although the energy sector has broad impacts, ecology has defined a narrow scope for this analysis.

- This analysis does not deal with energy and economy interactions. It only addresses change to the electrical sector for electricity sold to the grid.
- Generally, this kind of analysis only covers the costs of the proposed rule.
- The price data in this document are from the market and include the impacts of all existing subsidies. Most energy sources are subsidized. Hydro, wind, solar, and fossil fuels all receive different forms of subsidies. Ecology has not attempted to net out the price effect of subsidies from the cited data because the market interactions are too complex to allow it. The USDOE estimates do not appear to include subsidies, except that the modeled price of coal and natural gas come from a market that is affected by subsidies. The price data used to determine the viability of carbon capture in this document are from the market and therefore include the impacts of all subsidies.

Comparison of the Current and Proposed Rules: Two rules are affected by this proposal. This analysis covers both rules. The first rule is chapter 173-407 WAC implementing the requirements of chapter 80.70 RCW. The second rule is chapter 173-218 WAC implementing provisions of chapter 90.48 RCW to protect ground water quality.

Current rule requirements: The existing rules of chapter 173-407 WAC implements the provisions of chapter 80.70 RCW that do not affect the activities or permitting requirements of EFSEC. The existing rule requires ***mitigation*** "of the emissions of CO_2 from all new and certain modified fossil-fueled thermal electric generating facilities with station-generating capability of more than 25 MWe." The law and existing rule require that the mitigation cover the expected emissions for the thirty year expected lifetime of a power plant. Carbon capture and sequestration is one option for accomplishing this.

The existing rules of chapter 173-218 WAC do not include specific requirements for using underground injection control wells for underground geologic sequestration of carbon dioxide, but they do regulate the discharge of fluids into the wells to prevent ground water contamination. Permits for these types of projects are required under chapter 90.48 RCW, Water pollution control and chapter 173-216 WAC, the state waste discharge permit program.

Description of proposed changes: Who is affected? The rule applies in a complex manner and would apply to power plants only in specific cases. This is laid out in Table 1. Any plant that meets the criteria in the table must comply, however, it will be easier for the new natural gas turbines and gas/oil turbines to meet the requirements. Given the 1,100 pounds of CO_2 per MWh emission performance standard, the law and the proposed rule are most likely to affect coal-based power plants. Affected coal power and old style natural gas boilers are likely to need carbon capture and sequestration to comply. Based on recent project permitting history, only natural gas combined cycle power plants are likely to be proposed and permitted for baseload operation in Washington. However, the law and the rule have flexibility which limits who is affected.

Baseload generation: According to the definition of baseload generation in WAC 173-407-110 if a new generator finds it is viable to operate *less than* 60% of the time so that they are not part of baseload generation, then the proposed rules would not affect them. This means a new generator could purposely build a facility to be permitted for operating at only 60% to avoid having to meet the requirements of the proposed rules. This is true even if the facility provided power on an emergency basis for *more than* 60% of the year. The other side of this scenario is that the law and proposed rules are likely to limit the development of any new large coal or inefficient fossil fuel power plants. This is because these types of power plants must operate more than 60% of the time to make a profit. For plants outside Washington, selling power into Washington, the law and rule limit emissions from baseload facilities that are subject to contracts for more than five years and they cannot put power on the system as an unspecified source.

Short-term contracts: Because the law only covers long-term contracts the proposed rule (WAC 173-407-300, 173-407-310 and 173-407-320) can only address long-term contracts. Therefore, short-term contracts for purchases of less than five years are not covered. This means entities who want to buy electricity from a new coal or another fossil fuel source (that is not required to comply with the new law or proposed rules) will be able to do so, but only based on short-term contracts. This creates some uncertainty for any new coal or other fossil fuel generators who prefer long-term contracts to guarantee payoff of construction loans. This uncertainty may limit their willingness to develop this resource in Washington.

Distributed Generation: Distributed generation is when power is generated but no power is sold to the grid it is used to supply only the electrical needs of the facility for where it is located. This is not cogeneration. Even if these types of generators end up providing power during peak or emergency times, via short-term contracts, they would be unaffected by the proposed rules.

Emergency Generation: Emergency generators are designed to come on if grid power is lost. These generators will be unaffected.

Averaging of load: WAC 173-407-300 allows the load from specified and unspecified sources in a contract that provides a mix of types of power generation (such as a Bonneville Power Authority (BPA) contract) to be averaged based on a formula.

BPA provided comments expressing concerns that they would have difficulty contracting with Washington public utility districts (PUDs) if they had to specify all sources of power. Therefore, WAC 173-407-300 is included in the proposed rule. When an entity signs a contract that includes electricity from unknown sources, they are allowed to average the CO_2 emissions from all of the sources. In practice, this means that if a contract is for a specified share of power from renewables, up to 42% of their sources can be unspecified. Given that the northwest has a very large current supply of renewable power, in practice this means they may be able to include as much existing and new fossil fuel-based power as necessary under long-term BPA contracts.

Table 1: Affected Power Plants

When would a power plant be required to meet the emission performance standard?								
	Instate				Out of state			
	upon start-up	new ownership interest	nonexempt upgrade	new long-term contract to supply baseload power	upon start-up	new ownership interest	nonexempt upgrade	new long-term contract to supply baseload power
Baseload generation								
Stand-alone								X
New	X	X	X	X				X
existing		X	X	X				
Cogeneration								
new	X	X	X					X
existing		X	X					X
Distributed generation								
new				X				X
existing				X				X
Nonbaseload generation								
Seasonal								
new				X				X
existing				X				X
Emergency								
new				X				X
existing				X				X
Peaking power								
new				X				X
existing				X				X

Table assumes that the facility is not powered exclusively by renewable fuels.
Distributed generation is generation installed to supply the electrical needs of the facility it is located within. No power is sold to the grid. This is not cogeneration.
Cogeneration, aka combined heat and power, is a facility that produces both electrical energy and useful thermal energy. One or both forms of energy may be sold. Cogenreation [Cogeneration] facilities must meet certain FERC requirements to qualify.
Emergency generation are emergency generators, designed to operate on event of loss of grid power.
Peaking power plants and seasonal power plants are facilities designed, intended and permitted to operate at less than full time. Peaking power plants operate solely to provide peak shaving [saving] power through the course of the day/year. They are not permitted for full-time operation.
Seasonal power plants are plants that operate only during portions of the year with high power demand. They are not permitted for full-time operation.
Once nonbaseload generation becomes baseload generation through a new contract to supply baseload power, such units become existing baseload units.

What is required? Chapter 80.80 RCW created additional requirements with respect to greenhouse gases emissions. The law itself has a substantial impact without the proposed rules. However, it would be difficult for new power contracts in the state to be signed or new power plants sited and permitted for operation without adopting the proposed rules. The law and proposed rules adds a requirement for *permanent sequestration* of greenhouse gases above the 1,100 pounds of allowable emissions per MWh of electricity generated. The law does not define *permanent sequestration* or the specific plan requirements for designing, building, and monitoring a sequestration site or project. This is covered in the proposed rules.

The law and proposed rules also require that a new long-term financial commitment to buy electricity must meet the 1,100 pounds per MWh emissions performance standard. The rule specifies how a purchaser of electricity would determine if the proposed long-term financial commitment would meet the emissions performance standard.

Chapter 173-218 WAC is amended to include specific provisions for the design, permitting, implementation, closure and financial assurance requirements of an underground geologic sequestration project.

Baseline for Analysis: The baseline for this analysis is the law, as it can't be implemented without the existing rules or the proposed amendments.

Time Period for Analysis: This analysis is limited to a twelve-year span reviewing likely choices available to power plants up to 2020. Ecology typically uses a twenty-year period when evaluating rules. For major investments such as industrial plants, a longer period could be used. The law and the proposed rules allow CO_2 emissions to be reduced through perpetual storage, which would also require a longer time span for analysis. However, major potential changes make extending the time span less viable:

- The time span of the analysis affects not just discounting, but in this case, what should be evaluated. At the 2007 Electric Power Research Institute (EPRI) summer seminar, only 5% of the participants (industry professionals) indicated they thought CO_2 capture would be commercially available by 2015. Only 24% thought it would be available by 2020, and only 15% by 2025. Over half of the participants do not expect it to be available for at least twenty years. The proposed rules limit CO_2 emissions for long-term baseload, but allows carbon capture and sequestration. If carbon capture and sequestration is not viable within the next twenty years, then it is the foregone energy that must be valued.
- On the other hand, 42% of the EPRI participants believe mandatory CO_2 controls will be placed on the energy sector by 2010. Another 31% believe it will happen by 2012. The market forces that will affect the United States economy under carbon constraints and/or carbon pricing make twenty years too long a period to evaluate. It will change both the rules in the markets and the prices.
- Results from Wallula sequestration testing may change our understanding of geological sequestration.
- At the end of the five-year period, the law directs the department of community, trade and economic development (CTED) to revise the emission performance standard to reflect the capabilities of combined cycle natural gas fired turbine equipment available at that time. Based on current combined cycle power plant equipment, the standard would be revised downward to 830 – 860 lb/MWh if this update were to occur today. However, we don't know what will be viable five years from now. When revisions occur they must be evaluated. A change of this magnitude would likely alter the market outcome and therefore ecology would count those costs for this analysis.
- As part of the 2008 legislative session, the legislature is considering a bill adding a greenhouse gas reporting requirement to chapter 70.94 RCW. The bill would direct ecology to develop proposed legislation and other recommendations to implement a greenhouse gas cap and trade program that would become effective by 2012. If this series of proposed laws is passed by the legislature and the implementing rules are finalized per the timeframe in the current bill, the economic landscape of power plants and their greenhouse gas emissions will be very different than what exists today.

Finally, if the rule has a short-term of action because changes in state law significantly alter the constraints on the market, then the rule would only affect a very limited number of plants. This makes the unit costs of electricity and carbon a better mechanism for comparison.

Discount rates (interest rates) are used to compare values that accrue over time. This document relies heavily on the USDOE analysis of the cost of carbon dioxide capture. The USDOE models do not state the discount rate for modeling efforts that provide the unit cost of carbon capture and electricity. Ecology has requested this information so that the final analysis can have a coherent set of discount rates.

2. Analysis of Compliance Costs for Washington Businesses: The primary effect of the law and proposed rules taken together is to make it difficult to produce electricity with coal or with natural gas steam plants. Some companies may choose to shift to natural gas turbines.

Ecology could have counted small detailed costs involved with applying for sequestration, however, that cost is unlikely to accrue. The shift in fuel is more expensive than these small costs but less expensive than carbon capture. Since carbon capture is so expensive that it is likely to make the electricity unmarketable, it is not likely to be selected for long-term compliance by any company. Therefore, the shift in fuel and all the costs associated with that are both the most likely and the appropriate measure of the costs. The total cost shift for this scenario involves significant differences in capital, labor, fuel costs and other items. Ecology has relied on USDOE estimates for this data.

3. Quantification of Costs and Ratios: If the law and the proposed rules have any affect, and if [it] affects more than one firm, then the impact will tend to be disproportionate. If construction of a plant were precluded then the revenue loss would be the highest possible cost that could be evaluated. It is not possible to estimate the size of the hypothetical plant. However, the disproportionate impact can be illustrated using a cost per MWh basis.

Table 2: Cost of electricity in Mills/KWh

Source	Mills per kWh
GE Energy	78
Conoco Phillips	75.3
Shell	80.5
Subcritical Pulverized Coal	64
Supercritical Pulverized Coal	63.3
Natural Gas Combined Cycle	68.4

A range of expected costs per MWh is available from USDOE data. The wholesale market price of electricity would have to be greater than or equal to these values in order for a company to want to produce and sell the electricity. Thus, these costs form a low estimate of the price that would have to be available to create entry into the market.

Taking the average of the coal-based sources, $72/MWh, we can construct an estimate of the loss per MWh per employee for either a generator or a potential buyer, such as a public utility district.

Table 3: Cost of foregone revenue per MWh per employee by NAICS

Cost per MWh per Employee					
NAICS	221112	221121	221122	926130	All
Small Businesses			$3.59	******	$3.84
Large Business	$0.17	$0.96	$0.22		$0.32

*** data which would reveal the identity of companies or the number of employees is suppressed.

4. Actions Taken to Reduce the Impact of the Proposed Rule on Small Business: Ecology has done a variety of things to reduce the cost of the rule. These are listed below under the topic headings in the law. However, the primary cost-reducing feature is averaging of load under (e) below.

(a) Reducing, modifying, or eliminating substantive regulatory requirements;

- Ecology considered a wide range of options for requiring a demonstration of compliance with the performance standard. Some advocated for regular and some for a one-time action when rule applicability is triggered while others advocated for a continuing compliance requirement based on annual reporting of compliance. Ecology chose to propose an annual compliance and reporting approach to be consistent with other air quality program requirements, including current emission inventory program requirements.
- In the performance standard applicability to contracts (WAC 173-407-300), proposed to use default values for some generation sources and for unspecified sources to simplify the effort of a utility to determine compliance for contracts. This allows the use of actual emission information, in the calculation for specified sources, but does not require actual emission information to be used.
- At one point the draft rule required monitoring of greenhouse gas emissions by all baseload power plants in Washington, as of the date the rule would go into effect, regardless of whether the facility was required to demonstrate compliance with the performance standard. Proposal has reduced the monitoring and reporting requirement to only those facilities and units that are subject to the applicability criteria - i.e. those which are new baseload plants, enter into a new long-term financial commitment, upgrade, new ownership interest, etc.
- The law does not contain a de minimis criterion for a new ownership interest (which triggers the requirement to comply with the standard). We propose a de minimis ownership interest change to trigger applicability. This will reduce work associated with the trading of a few shares or small percentages of a facility's output.
- The law does not include a de minimis usage of fossil fuel in a renewable resource generation facility. We have proposed a de minimis fossil fuel use to qualify as a renewable resource fueled generator. This de minimis is based on a criterion in several federal regulations. We have also defined what a renewable resource fuel is and utilized that definition in the proposed rule text. A de minimis fossil fuel usage is necessary for biomass fueled generation plants, because (1) you need to light the fire and fossil fuel (oil or natural gas) is usually used, (2) the cogeneration plants based on renewable fuels often have mandatory steam or electricity production contracts and need some sort of back-up fuel, and (3) occasionally the renewable fuel (especially wood waste) is too wet and needs supplemental fuel to properly burn. Without this de minimis, no electric generation facility that uses renewable fuels (biomass, landfill gas, etc.) could qualify for the renewable energy source exemption in the law.
- The proposed rules will allow sequestration pilot projects to be permitted before meeting all of the data gathering requirements for a full permit.
- The proposed rules will allow the use of all existing geologic data previously collected for other activities to be used for site characterization.
- Geologic carbon sequestration projects will be permitted using the existing State Waste Discharge Permit Program instead of creating a unique permit program. Very few geologic sequestration permit applications are expected so if there were a unique permit program, the few projects would require permit fees that covered the total cost of the program.
- If a geologic sequestration project is associated with a fossil fuel power plant, which is likely, the same wastewater permit fee would cover all discharges including the carbon sequestration.
- The proposed rule will allow the use of all existing geologic data previously collected for other activities to be used for site characterization.
- During the discussions ecology considered:
  - Requiring monitoring for each potable aquifer at a sequestration project and the unsaturated zone above the uppermost aquifer but chose to only require monitoring of the groundwater as close as practicable to the geologic sequestration formation.

- Requiring evaluation and monitoring within six miles beyond the project boundary but chose to require this evaluation and monitoring one mile beyond the project boundary.
- Requiring annual pressure testing of all injection wells but chose to require these tests every five years.
- Requiring the post-closure period to extend for a set number of years after injection is complete but chose to allow the post-closure period to end once monitoring and modeling indicate that there is little continued environmental risk.
- Requiring the project boundary to include the area of 100% of the carbon dioxide injected but chose to define the boundary as the calculated extend of 95% of the injected carbon dioxide mass one hundred years after the end of injection.
- Requiring a minimum number of deep characterization wells prior to permitting any site but chose to allow the number of wells to be determined based on site specific considerations.

• During the discussions ecology considered not allowing:
  - Sequestration projects within ten miles of any jurisdictional boundary, but chose to allow it as long as the project proponents addressed issues related to boundaries.
  - Sequestration projects within ten miles of marine shorelines, but chose to allow as long as the project proponents addressed issues related to the shorelines.
  - Sequestration projects with more than 25% of the project area within a one hundred year flood plain, but chose to allow as long as the project proponents addressed issues related to flood plains.
  - Sequestration projects where more than 25% of the land overlying is not physically accessible, but chose to allow as long as the project proponents addressed issues related to accessibility.
  - Sequestration projects with more than a low risk of seismic events, but chose to allow as long as the project proponents addressed issues related to seismic risks of the site.
  - Sequestration projects within five miles of any active faults, but chose to allow as long as the project proponents addressed any active (Holocene) faults within five miles.
  - The injection of carbon dioxide with any contaminants but chose to allow carbon dioxide as long as all known treatment technologies are used to remove contaminants.

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

• Ecology considered requiring continuous monitoring for N2O at large plants, instead propose that large plants (above 25MW) do periodic emissions testing for the first year to establish a plant specific emission factor, and use that factor until an upgrade or other rule applicability triggering action occurs. For smaller plants, only emission factors derived from an authoritative source used, subject to ECY approval. For methane the same approach as for N2O is used.

• In the monitoring and record-keeping and reporting requirements ecology considered continuous stack monitoring of CO_2, and exhaust flow rate for all plant sizes. Proposal only requires this for facilities subject to the EPA acid rain program requirements, and allows the use of emission factor calculations as allowed by that program for natural gas combustion units. For all units not subject to the federal acid rain program allow the use of emission factors.

• For all plant sizes, an annual reporting requirement to ecology, done electronically for acid rain program sources, piggybacked on their fourth quarter report to EPA, for all others a separate submittal to ecology containing the required information.

• The minimum reporting requirements for geologic sequestration projects is the same as the minimum required for all state waste discharge permits.

(c) Reducing the frequency of inspections;

• For compliance with the emission performance standard, no inspections are required. However, the facilities subject to the federal acid rain program requirements to monitor CO_2 emissions already and will continue to have required quality assurance and substitute data provisions to be followed. This proposed rule does not add new requirements but rather references those existing requirements. The federal program already requires this, and a different state program would be more burdensome on the facilities due to having to maintain duplicate and differing data.

• There is no set schedule for ecology inspection of geologic sequestration projects.

(d) Delaying compliance timetables;

• For compliance with the emission performance standard, no inspections are required. However, the facilities subject to the federal acid rain program requirements to monitor CO_2 emissions already and will continue to have required quality assurance and substitute data provisions to be followed. This proposed rule does not add new requirements but rather references those existing requirements. The federal program already requires this, and a different state program would be more burdensome on the facilities due to having to maintain duplicate and differing data.

• There is no set schedule for ecology inspection of geologic sequestration projects.

• There is no compliance dates in this proposed rule, just applicability dates in the law. Except for the enforcement of the sequestration plan requirements. The source is required to submit the sequestration plan or the sequestration program at the time of the submittal of the notice of construction application. The approval of this plan or program will be issued at the same time as the permit. If there is an instance of noncompliance with the emissions performance standard (EPS), there is a requirement to revisit the program or plan. There is a requirement to submit

the new plan or program as soon as possible, but no later than one hundred fifty days after the annual report that compares actual performance with the EPS. We could have made the deadline sooner, but we decided to make it this length of time. The source should have enough internal information on meeting the EPS some months before the end of the reporting period, and as such would prudently start work on a plan or program.

Geologic sequestration projects may begin with a pilot project prior to complying with all of the permitting requirements for a full-scale project.

(f) Any other mitigation techniques.

The most significant cost reduction in the proposed rules is the section that allows averaging of the load for contracted power supply involving multiple sources of electrical power. WAC 173-407-300 allows the load from specified and unspecified sources to be averaged based on a formula.

- Bonneville Power Administration provided comments expressing concerns that they would have difficulty contracting with Washington PUDs if they had to specify all sources of power. Therefore, WAC 173-407-300 is included in the proposed rule. When an entity signs a contract that includes purchases of electricity from unknown sources they are allowed to average the CO_2 emissions from all the sources. In practice this means that if the contract includes a specified share of power from renewables, they can have up to 42% of their sources be unspecified. Given that the northwest has a very large current supply of renewable power, in practice this means they may be able to include as much existing and new fossil fuel-based power as they find to be necessary under long-term BPA contracts.

5. The Involvement of Small Business in the Development of the Proposed Rule Amendments: The rule advisory committee contained representatives of both the consumer-owned utilities and the publicly-owned utilities. The entities represented by these representatives are the small businesses that are directly affected by the rules.

6. The NAICS of Affected Industries:

The rule may affect companies in four NAICS codes.

Table 4. NAICS Codes

Activity	NAICS
Fossil fuel electric power generation	221112
Electric bulk power transmission and control	221121
Electric power distribution	221122
Utility regulation and administration	926130

7. Impacts on Jobs: Ecology used the OFM input/output table to estimate the potential labor impacts if a coal power plant were not opened. The size of the plant is unknown. In this case it is likely that electricity would be supplied by another typical source. The analysis assumes a shift of 10 MW of face place capacity from average coal production costs to average gas cogeneration production costs. Since this is a cost savings to the economy it acts as a reduction in expenditure (demand) in the model. The net change in demand based payments plugged into the model is $-335,000. This yields an annual loss of four jobs.

A copy of the statement may be obtained by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail caca461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail caca461@ecy.wa.gov.

February 22, 2008
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 01-10, filed 1/3/06, effective 2/3/06)

WAC 173-218-030 Definitions. "Abandoned well" means a well that is unused, unmaintained, or is in such disrepair as to be unusable.

"AKART" is an acronym that means all known, available and reasonable methods of prevention, control and treatment. AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices" typically applies to nonpoint source pollution controls, and is considered a subset of the AKART requirement. The storm water management manuals (see definition in this section) may be used as a guideline, to the extent appropriate, for developing best management practices to apply AKART for storm water discharges.

"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.

"Beneficial uses" mean uses of the waters of the state which include, but are not limited to, use for domestic, stock watering, industrial, commercial, agricultural, irrigation, mining, fish and wildlife maintenance and enhancement, recreation, generation of electric power and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state.

"Best management practices" mean approved physical, structural, and/or managerial practices that, when used singularly or in combination, prevent or reduce pollutant discharges.

"Caprock" means geologic confining layer(s) that has sufficiently low permeability and lateral continuity to prevent the migration of injected carbon dioxide out of the geologic containment system.

"Cesspool" means a drywell that receives untreated sanitary waste containing human excreta, and that sometimes has an open bottom and/or perforated sides that discharge to the subsurface.

"Commercial business" means a type of business activity that may distribute goods or provide services, but

does not involve the manufacturing, processing or production of goods.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in ground water or that occurs at concentrations greater than those found naturally.

"Contamination" means introduction of a contaminant.

"Dangerous waste" 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 chapter 173-303 WAC, Dangerous waste regulations, the words "dangerous waste" will refer to the full universe of wastes regulated by chapter 173-303 WAC.

"Decommission" means to fill or plug a UIC well so that it will not result in an environmental or public health or safety hazard, nor serve as a channel for movement of water or pollution to an aquifer.

"Department" means department of ecology.

"Dispersion" means the release of surface and storm water runoff from a drainage facility system such that the flow spreads over a wide area and is located so as not to allow flow to concentrate anywhere upstream of a drainage channel with erodible underlying granular soils.

"Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

"Existing well" means a well that is in use at the adoption date of this chapter.

"Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

"Geologic containment system" means the geologic layers that both receive the injected carbon dioxide (CO_2) and contains or sequesters it within the system's physical boundaries. The containment system is a three-dimensional area with defined boundaries, that includes one or more geologic formations.

"Geologic sequestration of carbon dioxide" means the injection of carbon dioxide, usually from human activities like burning coal or oil, into subsurface geologic formations to prevent its release into the atmosphere for a defined length of time.

"Geologic sequestration project" means the surface and underground facilities used to inject carbon dioxide for sequestration and includes: Geologic containment system, monitoring zone(s) and surface facilities described in the permit application.

"Geologic sequestration project boundary" means a three-dimensional boundary defined in permit that encloses all surface and underground facilities of the geologic sequestration project and extending vertically to the overlying ground surface.

"Ground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.

"Ground water protection area" means a geographic area that is by or close by a surrounding community and nontransient noncommunity water system, that uses ground water as a source of drinking water (40 CFR 144.87) and other sensitive ground water areas critical to protecting underground sources of drinking water from contamination; such as sole source aquifers, highly productive aquifers supplying private wells, critical aquifer recharge areas and/or other state and local areas determined by state and local governments.

"Hazardous substances" mean any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6) or any dangerous or extremely dangerous waste as designated by rule under chapter 70.105 RCW; any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule under chapter 70.105 RCW; any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C., Sec. 9601(14); petroleum or petroleum products; and any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

"High threat to ground water" means, for this chapter, a UIC well is a high threat to ground water when it receives fluids that cannot meet the criteria in chapter 173-200 WAC Water quality standards for ground waters of Washington (GWQS) at the top of the aquifer, which include, but are not limited to, the following examples: A UIC well that receives drainage, that has not been pretreated and does not meet the GWQS; such as, from an area where storm water comes into contact with a vehicle fueling area, airport deicing activities, storage of treated lumber or vehicle washing; or a UIC well that receives a discharge that is determined to be an imminent public health hazard by a legal authority or is prohibited in this chapter.

"Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings that has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

"Infiltration pond" means an earthen impoundment used for the collection, temporary storage and infiltration of incoming storm water runoff.

"Infiltration trench" means a trench used to infiltrate fluid into the ground, is generally at least twenty-four inches wide and backfilled with a coarse aggregate. Perforated pipe or a product with similar use may also be installed.

"Industrial wastewater" means water or liquid-carried waste from industrial or commercial processes, as distinct from domestic wastewater. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

"Monitoring zone(s)" means the geologic layers, identified in the application, where chemical, physical and other characteristics are measured to establish the location, behavior and effects of the injected carbon dioxide in the subsurface and to detect leakage from the geologic containment system. At a minimum, a monitoring zone must be established beneath the ground surface but outside of the geologic containment system to detect leakage of injected CO_2.

"Motor vehicle waste disposal well" means a Class V injection well that is typically a shallow disposal system that receives or has received fluids from vehicular repair or maintenance activities such as auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shops or any facility that does any vehicular repair work (40 CFR 144.81).

"New injection well" means an injection well that is put in use following the adoption date of this chapter.

"Nonendangerment standard" means to prevent the movement of fluid containing any contaminant into the ground water if the contaminant may cause a violation of the Water quality standards for ground waters of the state of Washington, chapter 173-200 WAC or may cause health concerns.

"Nonpollution-generating surface" means a surface considered to be an insignificant source of pollutants in storm water runoff and/or a surface not defined as a pollution-generating surface.

"Person" means any political subdivision, local, state, or federal government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatsoever.

"Point of compliance" means the location where the facility must be in compliance with chapter 173-200 WAC Water quality standards for ground waters of the state of Washington; the top of the aquifer, as near to the source as technically, hydrogeologically, and geographically feasible.

"Pollution" means contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will, or is likely to, create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Pollution-generating surfaces" mean the surfaces are considered a significant source of pollutants in storm water runoff. Pollution generating surfaces include pollution generating pervious surfaces and pollution generating impervious surfaces such as surfaces that are subject to: Regular vehicular use, industrial activities, or storage of erodible or leachable materials that receive direct rainfall, or the run-on or blow-in of rainfall, use of pesticides or fertilizers or loss of soil; or leaching such as from metal roofs not coated with an inert, nonleachable material, roofs that are subject to venting of manufacturing, commercial, or other indoor pollutants. Examples of commercial indoor pollutants are commercial facilities such as restaurants where oils and other solid particles are expected to be expelled. It does not include normal indoor air venting at commercial facilities where activities such as cooking, processing, etc., do not take place. Examples are: Roads, unvegetated road shoulders, bike lanes within the traveled lane of a roadway, driveways, parking lots, unfenced fire lanes, vehicular equipment storage yards, airport runways, lawns, and landscaped areas that apply pesticide applications; such as golf courses, parks, cemeteries, and sports fields except for landscaped areas that are approved infiltrative best management practices.

"Proper management of storm water" means AKART has been provided or the well owner has demonstrated that the discharge will meet the nonendangerment standard.

"Radioactive waste" means any waste which contains radioactive material in concentrations that exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, and Column 2.

"Retrofit" means taking actions to reduce the pollutant load from a UIC well to meet the statutory requirements of 40 CFR 144.12 and RCW 90.48.010. These actions may include, but are not limited to: Changes to the source control activities and/or structures around the well; an upgrade to the well such as adding a catch basin or spill control device; and/or addition of pretreatment facilities or decommissioning. The selection of actions is based on local priorities, required by the department or the local jurisdiction to address a documented water quality problem.

"Rule authorized" means a UIC well that is registered with the department and meets the nonendangerment standard. If a well is rule authorized, it does not require a state waste discharge permit from the department.

"Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

"Septic system" means a well that is used to discharge sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. (Also called on-site sewage system.)

"Sequestration" means to set apart or remove.

"State waste discharge permit" means a permit issued in accordance with chapter 173-216 WAC, State waste discharge permit program.

"Storm water" means the portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a storm water drainage system into a defined surface water body, or a constructed treatment, evaporation, or infiltration facility.

"Storm water manuals" mean the *Stormwater Management Manual for Eastern or Western Washington* or other manuals approved by the department.

"Storm water pollution prevention plan" means a documented plan to implement measures to identify, prevent, and control the contamination of storm water and its discharge to UIC wells.

"Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar

mechanisms intended to distribute fluids below the surface of the ground.

"Underground source of drinking water" means ground waters that contain fewer than 10,000 mg/L of total dissolved solids and/or supplies drinking water for human consumption.

"UIC well" or **"underground injection control well"** means a well that is used to discharge fluids into the subsurface. A UIC well is one of the following: (1) A bored, drilled or driven shaft, or dug hole whose depth is greater than the largest surface dimension; (2) an improved sinkhole; or (3) a subsurface fluid distribution system.

"Waste fluid" means any fluid that cannot meet the nonendangerment standard at the point of compliance, which is the top of the aquifer.

"Well assessment" means an evaluation of the potential risks to ground water from the use of UIC wells. A well assessment includes information such as the land use around the well which may affect the quality of the discharge and whether the UIC well is located in a ground water protection area. It may include the local geology and depth of the ground water in relation to the UIC well if the well is considered a high threat to ground water.

"Well injection" means the subsurface emplacement of fluids through a well.

"You" means the owner or operator of the UIC well.

AMENDATORY SECTION (Amending Order 01-10, filed 1/3/06, effective 2/3/06)

WAC 173-218-040 UIC well classification including allowed and prohibited wells. The most common type of UIC well in Washington is a Class V well. A Class V well is usually a shallow disposal well such as a drywell, drainfield or French drain (see subsection (5) of this section).

(1) "Class I injection well" means a well used to inject dangerous and/or radioactive waste, beneath the lowermost formation containing an underground source of drinking water within one-quarter mile of the well bore. All Class I wells are prohibited in Washington and must be decommissioned.

(2) "Class II injection well" means a well used to inject fluids:

(a) Brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production. It may be mixed with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as hazardous wastes at the time of injection;

(b) For enhanced recovery of oil or natural gas; or

(c) For storage of hydrocarbons that are liquid at standard temperature and pressure.

(3) "Class III injection well" means a well used for extraction of minerals. All Class III wells are prohibited in Washington and must be decommissioned. Examples of Class III injection wells include, but are not limited to, the injection of fluids for:

(a) In situ production of uranium or other metals that have not been conventionally mined;

(b) Mining of sulfur by Frasch process; or

(c) Solution mining of salts or potash.

(4) "Class IV injection well" means a well used to inject dangerous or radioactive waste into or above an underground source of drinking water. Class IV wells are prohibited and must be decommissioned except for Class IV wells reinjecting treated ground water into the same formation from where it was drawn as part of a removal or remedial action if such injection is approved by EPA in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act or the Resource Conservation and Recovery Act, 40 CFR 144.13(c). Other examples of Class IV wells include:

(a) Dangerous or radioactive waste into or above a formation that contains an underground source of drinking water within one quarter mile of the well. This includes disposal of dangerous waste into a septic system or cesspool regardless of the size; or

(b) Dangerous or radioactive waste that cannot be classified as a Class I well type or (a) of this subsection.

(5) "Class V injection well" means all injection wells not included in Classes I, II, III, or IV. Class V wells are usually shallow injection wells that inject fluids above the uppermost ground water aquifer. Some examples are dry wells, French drains used to manage storm water and drain fields.

(a) The following are examples of Class V injection wells that are allowed in Washington:

(i) Drainage wells used to drain surface fluids, primarily storm water runoff, into or below the ground surface, such as, but not limited to, a drywell or infiltration trench containing perforated pipe;

(ii) Heat pump or cooling water return flow wells used to inject water previously used for heating or cooling;

(iii) Aquifer recharge wells used to replenish the water in an aquifer;

(iv) Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

(v) Septic systems serving multiple residences or nonresidential establishments that receive only sanitary waste and serve twenty or more people per day or an equivalent design capacity of 3,500 gallons or larger per day;

(vi) Subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a nonoil or gas producing zone to reduce or eliminate subsidence associated with the removal of fresh water;

(vii) Injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power;

(viii) Injection wells used in experimental technologies;

(ix) Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale;

(x) Injection wells used for remediation wells receiving fluids intended to clean up, treat or prevent subsurface contamination;

(xi) Injection wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

(xii) Injection wells used to control flooding of residential basements;

(xiii) Injection wells used for testing geologic reservoir properties for potential underground storage of natural gas or oil in geologic formations; if the injected water used is of equivalent or better quality than the ground water in the targeted geologic formation and the ground water in the targeted geologic formation is nonpotable and/or toxic because of naturally occurring ground water chemistry; ((~~and~~))

(xiv) Injection wells used as part of a reclaimed water project as allowed under a permit; and

(xv) Injection wells used to inject carbon dioxide for geologic sequestration.

(b) The following are examples of Class V wells that are prohibited in Washington:

(i) New and existing cesspools including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes that have an open bottom and may have perforated sides that serve twenty or more people per day or an equivalent design capacity of 3,500 gallons or larger per day. The UIC requirements do not apply to single family residential cesspools or to nonresidential cesspools which receive solely sanitary waste and have the capacity to serve fewer than twenty persons a day or an equivalent design capacity of less than 3,500 gallons per day;

(ii) Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities (see definition of motor vehicle waste disposal wells in WAC 173-218-030). UIC wells receiving storm water located at vehicular repair, maintenance or dismantling facilities shall not be considered waste disposal wells if the wells are protected from receiving vehicle waste;

(iii) Wells used for solution mining of conventional mines such as stopes leaching;

(iv) Backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether what is injected is a radioactive waste or not;

(v) UIC wells receiving fluids containing hazardous substances (see definition for hazardous substances in WAC 173-218-030) except for wells:

(A) Allowed under (a)(x) of this subsection; or

(B) Receiving storm water that meets the nonendangerment standard by applying the best management practices and requirements in WAC 173-218-090 or storm water authorized under a permit; and

(vi) UIC wells receiving industrial wastewater except for industrial wastewater authorized under a permit.

AMENDATORY SECTION (Amending Order 01-10, filed 1/3/06, effective 2/3/06)

WAC 173-218-090 Specific requirements for Class V wells to meet the nonendangerment standard. Specific requirements for Class V wells are organized by wells that are used for storm water management and wells that are used for other purposes. This section does not apply to the Class V wells in WAC 173-218-100.

(1) **New** Class V UIC wells used for **storm water management** must:

(a) Meet additional ground water protection area requirements as determined by other state laws or by local ordinances;

(b) Not directly discharge into ground water. A separation between the bottom of the well and the top of the ground water is required. The treatment capacity of the unsaturated zone or the zone where the fluid is discharged, and the pollutant loading of the discharge must be considered when determining the vertical separation; and

(c) The owner or operator of a new Class V well used to manage storm water must meet the nonendangerment standard as defined under WAC 173-218-080. The owner or operator of a new Class V well must show compliance with the nonendangerment standard prior to placing a new well into service. Compliance with the nonendangerment standard may be met through one or a combination of the following two approaches:

(i) Presumptive approach: The presumptive approach means compliance with the nonendangerment standard is presumed, unless discharge monitoring data or other site specific information shows that a discharge causes or contributes to a violation of chapter 173-200 WAC Water quality standards for ground waters of the state of Washington, when:

(A) The well activity is in compliance with this chapter; and either

(B) The well is designed and installed to the storm water manual current at the time of construction and is operated in conformance with storm water best management practices including the proper selection, implementation, and maintenance of all on-site pollution control using the current storm water manual published by the department for your region or an equivalent department approved local manual.

(C) Owners or operators of municipal separate storm sewer systems regulated under section 1342(p) of the Federal Water Pollution Control Act which also own or operate Class V UIC wells may satisfy the presumptive approach by applying the storm water management programs developed to comply with the Federal Water Pollution Control Act to their new UIC wells. For new UIC wells, construction phase and postconstruction storm water controls must be applied in accordance with applicable storm water manuals.

(D) The presumptive approach may not be used when best management practices do not exist to remove or reduce a contaminant, the vadose zone has no treatment capacity and/or the storm water quality is such that a best management practice does not exist to reduce or eliminate the concentration.

(ii) Demonstrative approach: The demonstrative approach means that the technical bases for the selection of storm water best management practices are documented. The documentation must include:

(A) The method and reasons for choosing the storm water best management practices selected;

(B) The pollutant removal performance expected from the practices selected;

(C) The technical basis supporting the performance claims for the practices selected, including any available existing data concerning field performance of the practices selected;

(D) An assessment of how the selected practices will satisfy the requirements of WAC 173-218-080 and chapter 173-200 WAC; and

(E) An assessment of how the selected practices will satisfy state requirements to use all known, available, and reasonable methods of prevention, control and treatment.

(2) **Existing** Class V UIC wells used for **storm water management** do not have to meet the new well requirements. If the UIC wells are not already registered, the owner or operator must register the wells with the department and complete a well assessment. The following timelines must be met unless otherwise approved from the department:

(a) If you own or operate less than or equal to fifty wells:

(i) You have three years after the adoption date of this rule to register your UIC wells unless an extension has been approved by the department;

(ii) You have five years after the adoption date of this rule to complete a well assessment. The approach to conducting the well assessment will be determined by the owner. The well assessment evaluates the potential risks to ground water from the use of UIC wells and includes information such as the land use around the well which may affect the quality of the discharge and whether the UIC well is located in a ground water protection area. It may include the local geology, and depth of the ground water in relation to the UIC well if the well is considered a high threat to ground water. The well assessment requirements will be met if an owner or operator applies the storm water best management practices contained in a guidance document approved by the department to their UIC wells and determines if the UIC well is located in a ground water protection area;

(iii) Any well assessment that identifies a well as a high threat to ground water must include a retrofit schedule; and

(iv) You must immediately take action to correct the use of a well that is determined to be an imminent public health hazard, for example when a drinking water supply is contaminated and causes a public health emergency. The department must be notified within thirty days from the determination and may determine a retrofit schedule. The department's enforcement procedure (see WAC 173-218-130) will be followed when a retrofit schedule is needed.

(b) If you own or operate more than fifty wells:

(i) You have five years after the adoption date of this rule to register your UIC wells unless an extension has been approved from the department;

(ii) You have seven years after the adoption date of this rule to complete a well assessment. The approach to conducting the well assessment will be determined by the owner. The well assessment evaluates the potential risks to ground water from the use of UIC wells and includes information such as the land use around the well which may affect the quality of the discharge, and whether the UIC well is located in a ground water protection area. It may include the local geology, and depth of the ground water in relation to the UIC well if the well is considered a high threat to ground water. The well assessment requirements will be met if an owner or operator applies the storm water best management practices contained in a guidance document approved by the department to their UIC wells and determines if the UIC well is located in a ground water protection area;

(iii) Any well assessment that identifies a well as a high threat to ground water must include a retrofit schedule; and

(iv) You must immediately take action to correct the use of a well that is determined to be an imminent public health hazard, for example when a drinking water supply is contaminated and causes a public health emergency. The department must be notified within thirty days from the determination and may establish a retrofit schedule. The department's enforcement procedure will be followed when a retrofit schedule is needed.

(c) If you own or operate a site that uses, stores, loads, or treats hazardous substances or is an industrial facility that has a Standard Industrial Classification as regulated by Federal Regulations, 40 CFR Subpart 122.26 (b)(14) (excluding construction sites), you may use the following to satisfy the documentation requirements for meeting the nonendangerment standard:

(i) If the facility has or will have a waste water discharge permit issued pursuant to chapter 90.48 RCW, including a National Pollutant Discharge Elimination System (NPDES) permit, the associated storm water pollution prevention plan may be used in place of the well assessment to meet the nonendangerment standard provided the storm water pollution prevention plan specifically addresses storm water discharges to UIC wells; or

(ii) For unpermitted facilities, the preparation and implementation of a storm water pollution prevention plan can be used in place of the well assessment to meet the nonendangerment standard if applied to the UIC wells or documentation must be provided to show that the well does not pose a threat to ground water. Examples of documentation include, but are not limited to, a site drainage map for the UIC wells or a no-exposure certification form completed for discharges to ground.

(d) Owners or operators of municipal separate storm sewer systems regulated under section 1342(p) of the federal Water Pollution Control Act which also own or operate Class V UIC wells may satisfy the nonendangerment standard by applying the storm water management programs developed to comply with the federal Water Pollution Control Act to their UIC wells. For existing UIC wells receiving new sources of storm water, construction phase and post-construction storm water controls must be applied to all development and redevelopment projects in accordance with applicable storm water manuals.

(3) Class V UIC wells **not** used for **storm water management:**

(a) **New** UIC wells that are **not** used for storm water management must:

(i) Not directly discharge into an aquifer, except for wells listed in WAC 173-218-040 (5)(a)(ii) through (iv), (vii) through (xi), (xiii) ((~~and~~)), (xiv) and (xv). A separation between the bottom of the well and the top of the aquifer is required; and

(ii) Meet additional ground water protection requirements if the UIC well is located in a ground water protection area (see WAC 173-218-030) as determined by other state laws or by local ordinances.

(b) **Existing registered** UIC wells that are **not** used for storm water management are already considered to be rule

authorized. To verify that current site practices are protective of ground water quality, the owner or operator must complete a survey from the department except for UIC wells used at CERCLA sites. The department will provide written notification that the current site practices are adequate.

(c) **Existing** UIC wells that are **not registered** and **not** used for storm water management must meet the requirements for new wells.

NEW SECTION

WAC 173-218-115 Specific requirements for Class V wells used to inject carbon dioxide for permanent geologic sequestration. (1) **Permit required:**

(a) Class V UIC wells used for the geologic sequestration of carbon dioxide are not rule authorized and must obtain a state waste discharge permit under chapter 173-216 WAC, State waste discharge permit program or chapter 173-226 WAC, Waste discharge general permit program.

(b) Class V injection wells used for the geologic sequestration of carbon dioxide may directly discharge into an aquifer only if:

(i) The aquifer contains "naturally nonpotable ground water" as defined in WAC 173-200-020(18) and is beneath the lowermost formation containing potable ground water within the vicinity of the geologic sequestration project area;

(ii) The operator has obtained a permit under the state waste discharge permit program or the waste discharge general permit program establishing enforcement limits which may exceed the ground water quality criteria, as allowed under WAC 173-200-050 (3)(b)(vi);

(iii) The operator uses all known, available and reasonable methods of prevention, control and treatment (AKART) to remove contaminants, such as sulfur compounds and other contaminants, from the injected CO_2. Geologic sequestration of carbon dioxide shall not be used for the disposal of non-CO_2 contaminants that can be removed with known treatment technologies; and

(iv) The operator is in compliance with all conditions of their state waste discharge permit or their waste discharge general permit.

(2) **Permit application:** A licensed geologist or engineer shall conduct the geologic and hydrogeologic evaluations required under this section. Technical evaluations shall reflect the best available scientific data as well as existing geologic, geophysical, geomechanical, geochemical, hydrogeological and engineering data available on the proposed project area. Existing data may be used in evaluations provided their source and chronology is identified and the effects of any subsequent modifications due to natural (seismic or other) or human induced (hydraulic fracturing, drilling or other) events are analyzed. The waste discharge permit application, under chapter 173-216 or 173-226 WAC, for a permit authorizing the geologic sequestration of carbon dioxide shall include information supporting the demonstration required by WAC 173-200-050 (3)(b)(vi) and all of the following:

(a) A description of how the project will address:

(i) All jurisdictional boundaries within ten miles of the geologic sequestration project boundary such as: International borders, state borders, local jurisdictions, tribal land, national parks or state parks;

(ii) Accessibility for operations and monitoring in areas where access is restricted by: Shorelines, flood plains, urban or other development, and any other natural or man-made limiting factors;

(iii) Active Holocene faults within five miles and seismic risks;

(b) A current site map showing:

(i) The boundaries of the geologic sequestration project which shall be calculated to include the area containing ninety-five percent of the injected CO_2 mass one hundred years after the completion of all CO_2 injection or the plume boundary at the point in time when expansion is less than one percent per year, whichever is greater, or another method approved by the department;

(ii) Location and well number of all proposed CO_2 injection wells;

(iii) Monitoring wells;

(iv) Location of all other wells including cathodic protection boreholes; and

(v) Location of all pertinent surface facilities, including atmospheric monitoring within the boundary of the project;

(c) A technical evaluation of the proposed project, including but not limited to, the following:

(i) The names and lithologic descriptions of the geologic containment system;

(ii) The name, description, and average depth of the reservoir or reservoirs to be used for the geologic containment system;

(iii) A geophysical, geomechanical, geochemical and hydrogeologic evaluation of the geologic containment system, including:

(A) An evaluation of all existing information on all geologic strata overlying the geologic containment system including the immediate caprock containment characteristics as well as those of other caprocks if included in the containment system and all designated subsurface monitoring zones;

(B) Geophysical data and assessments of any regional tectonic activity, local seismicity and regional or local fault zones; and

(C) A comprehensive description of local and regional structural or stratigraphic features;

(iv) The evaluation shall focus on the proposed geologic sequestration reservoir or reservoirs and a description of mechanisms of geologic containment, including but not limited to:

(A) Rock properties;

(B) Regional pressure gradients;

(C) Structural features; and

(D) Absorption characteristics or geochemical reaction/mineralization processes, with regard to the ability to prevent migration of CO_2 beyond the proposed geologic containment system;

(v) The evaluation shall also identify:

(A) Any productive oil and natural gas zones occurring stratigraphically above, below, or within the geologic containment system;

(B) All water-bearing horizons known in the immediate vicinity of the geologic sequestration project;

(C) The evaluation shall include a method to identify unrecorded wells that may be present within the project boundary;

(vi) The evaluation shall include exhibits, plans and maps showing the following:

(A) All wells, including but not limited to, water, oil, and natural gas exploration and development wells, injection wells and other man-made subsurface structures and activities, including any mines, within one mile of the geologic sequestration project;

(B) All man-made surface structures that are intended for temporary or permanent human occupancy within one mile of the geologic sequestration project;

(C) Any regional or local faulting within the boundary of the geologic sequestration project;

(D) An isopach map of the proposed CO_2 storage reservoir or reservoirs that make up the geologic containment system;

(E) An isopach map of the primary and any secondary caprock or containment barrier;

(F) A structure map of the top and base of the storage reservoir or reservoirs that make up the geologic containment system;

(G) Identification of all structural spill points or stratigraphic discontinuities controlling the isolation of CO_2 or associated fluids;

(H) An evaluation of the potential displacement of in situ water and the potential impact on ground water resources, if any; and

(I) Structural and stratigraphic cross-sections that describe the geologic conditions at the geologic containment system;

(vii) An operations and maintenance plan including, but not limited to, a diagram of the entire injection system and a description of the proposed operating and maintenance procedures;

(viii) A review of the data of public record for all wells within the geologic sequestration project area which penetrate the geologic containment system including the primary and/or all other caprocks and those wells that penetrate these geologic layers within one mile of the boundary of the geologic sequestration project area, or any other distance deemed necessary by the department. This review shall determine if all abandoned wells have been plugged in a manner that prevents the movement of CO_2 or associated native fluids away from the geologic containment system;

(ix) The proposed maximum bottom hole injection rate and injection pressure to be used at the geologic containment system. The maximum allowed injection pressure shall be no greater than eighty percent of the formation fracture pressure as determined by a mini-frac injection test or multiple-stage, minimum threshold fracture injection test or other method approved by the department. The geologic containment system shall not be subjected to injection pressures in excess of the calculated fracture pressure even for short periods of time. Higher operating pressures may only be allowed if approved in writing by the department;

(x) The proposed maximum long-term geologic containment system pressure and the necessary technical data to support the proposed geologic containment system storage pressure request;

(xi) The evaluation and data quality shall be sufficient to establish with a high degree of confidence that the geologic containment system has sufficient capacity, injectivity and other geologic characteristics to permanently sequester CO_2 for the lifetime of the project;

(d) The predicted extent of the injected CO_2 plume throughout the life of the project, determined with established modeling tools that use all available geologic and reservoir engineering information, and the projected response and storage capacity of the geologic containment system. The assumptions used in the model and a discussion of the uncertainty associated with the estimate shall be clearly presented;

(e) An analysis and selection of proposed treatment technology for non-CO_2 contaminant that identifies the technology which meets the requirement that all known, available and reasonable methods of prevention, control and treatment (AKART) to remove contaminants from the injected CO_2;

(f) A detailed description of the proposed project public safety and emergency response plan. The plan shall detail the safety procedures concerning the facility and residential, commercial, and public land use within one mile, or any other distance as deemed necessary by the department, of the boundary of geologic sequestration project area. The public safety and emergency response procedures shall include contingency plans for leakage from any well, flow lines, or other permitted facility. The public safety and emergency response procedures also shall identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to incidents such as: Injection well leaks or loss of containment from injection wells or releases from the geologic containment system. These emergency response procedures shall be updated as necessary throughout the operational life of the permitted storage facilities;

(g) A detailed worker safety plan that addresses safety training and safe working procedures at the facility;

(h) A corrosion monitoring and prevention plan for all wells and surface facilities;

(i) A leak detection and monitoring plan for all wells and surface facilities. The approved leak detection and monitoring plan shall define the threshold for determining that a leak has occurred and shall address:

(i) Identification of any failure of the containment system;

(ii) Identification of release to the atmosphere;

(iii) Identification of degradation of any ground water or surface water resources; and

(iv) Identification of migration of CO_2 or other contaminants into any overlying oil and natural gas reservoirs;

(j) A geologic sequestration project leak detection and monitoring plan using subsurface measurements to monitor movement of the CO_2 plume both within and to detect migration outside of the permitted geologic containment system. This must include:

(i) Collection of baseline information on formation pressure and background concentrations in ground water, surface soils, and chemical composition of in situ waters within the geologic containment system and monitoring zone(s);

(ii) Monitoring of pressure responses and other appropriate information immediately above caprock of the geologic containment system;

(k) The approved subsurface leak detection and monitoring plan shall be based on the site-specific characteristics as documented by materials submitted in the permit application and shall address:

(i) Identification of any failure in the containment system;

(ii) Identification of release to the atmosphere;

(iii) Identification of degradation of any ground or surface water resources; and

(iv) Identification of migration of CO_2 or other contaminants into any overlying oil and natural gas reservoirs;

(l) A risk assessment that identifies and quantifies hazards, probabilities, features, events and processes that might result in undesirable impacts to public health and the environment;

(m) A mitigation and remediation plan that identifies trigger thresholds and corrective actions to be taken prior to a containment system failure, if ground water quality in the monitoring zone or above is degraded, or if carbon dioxide is released to the atmosphere. The mitigation and remediation plan must be approved by the department before injection begins;

(n) The proposed well casing, cementing and integrity testing program;

(o) A closure and post-closure plan, including a closure and post-closure cost estimate;

(p) The application shall designate a financial assurance mechanism sufficient to cover the cost to the department for the abandonment of the project or remediation of facility leaks should the operator not perform as required or cease to exist;

(q) The application shall designate a financial assurance mechanism sufficient to provide financial assurance to the department to cover the plugging and abandonment or the remediation of a CO_2 injection and/or subsurface observation well should the operator not perform as required in accordance with the permit or cease to exist;

(r) The payment of the application fee; and

(s) Any other information that the department requires.

(3) **Geologic sequestration well standards.** (Note: In statutory references to chapter 344-12 WAC, the word "gas" shall include all injected carbon dioxide for geologic sequestration, including supercritical CO_2.) Wells used for geologic sequestration projects must meet the following:

(a) Casing materials and cement must be designed and tested to withstand the reactive fluids and expected conditions encountered during the lifetime of the geologic sequestration project, including the post-closure period.

(b) Minimum standards for construction and maintenance of wells. Chapter 173-160 WAC.

(c) Drilling fluid standards of WAC 344-12-098.

(d) Directional or other appropriate surveys shall be completed for all wells to verify location at depth.

(e) Wells must be logged with appropriate geophysical methods which include at a minimum: Cement bonding and evaluation logs, and casing inspection logs. In addition a standard suite of "state of the art" wireline logs shall be run on each well to document physical properties of the well, the well integrity and any potential leakage points. At a minimum the wireline logging suite must include: Gamma ray, resistivity, temperature, formation pressure, both p- and v-sonic and neutron-density.

(f) All collected geologic data, including geophysical logs, geologists logs, mud logs, and drilling logs, core, drill cuttings, and all other logs and surveys shall be submitted to the department of natural resources, division of geology and earth resources within thirty days after well completion. Submitted information shall include one paper and one digital copy of logs. (Note: The department of natural resources maintains geologic records in the state to enhance the scientific, economic and environmental values of the people of the state.)

(g) One paper and one digital copy of all reports and data collected from surface geological and geophysical surveys of sequestration sites shall be submitted to the department of natural resources, division of geology and earth resources within thirty days after completion.

(h) Wells that are completed within or below the geologic containment system must in addition:

(i) Meet the well casing and cementing standards of WAC 344-12-087;

(ii) Verify the integrity of cement behind casings, including the location of any channels, contamination or missing cement, by a cement map that incorporates data from a cement bond log, a variable density display, and an ultrasonic image, unless an alternative evaluation has been approved in writing by the department;

(iii) Meet the blowout prevention standards of WAC 344-12-092;

(iv) Wells shall be periodically tested to assess their structural integrity. Annual tests shall include wireline surveys for casing integrity/corrosion assessment and other appropriate tests. An injection well casing pressure test will be conducted prior to use and retested at least once prior to each permit renewal or when casing integrity/corrosion assessments identify risks. Any finding of inadequate structural integrity shall be reported to the department within twenty-four hours.

(i) Notify the department thirty days prior to beginning any substantial work on wells including, deepening, repair or closure. Advance notice period may be reduced by the department when the work is intended to address immediate threats to public health, safety or the environment.

(4) **Permit terms and conditions.** All terms and conditions listed in WAC 173-216-110, state waste discharge permit program, apply. In addition, the following terms and conditions shall apply to injection permits for the geologic sequestration of carbon dioxide:

(a) To be issued a permit, an applicant must demonstrate the following:

(i) That the geology, including geochemistry, of the site will:

(A) Provide "permanent sequestration" of carbon dioxide as defined by WAC 173-407-110; and

(B) The caprock and other features of the geologic containment system have the appropriate characteristics to pre-

vent migration of carbon dioxide, other contaminants and nonpotable water.

(ii) A monitoring program has been developed to identify leakage from the geologic containment system to the atmosphere, surface water and ground water. The monitoring program must be able to identify ground water quality degradation in aquifers prior to degradation of any potable aquifer. The monitoring program shall include observations in the monitoring zone(s) that can identify migration to aquifers as close stratigraphically to the geologic containment system as practicable.

(iii) Design and construction standards of all facility structures and wells are sufficient to prevent migration of carbon dioxide or nonpotable water that will degrade water quality or impact beneficial uses outside the geologic containment system.

(iv) All known, available and reasonable methods of prevention, control and treatment (AKART) will be used to remove contaminants from the injected CO_2. Geologic sequestration of carbon dioxide shall not be used for the disposal of non-CO_2 contaminants that can be removed with known treatment technologies.

(b) Pilot studies at potential geologic sequestrations projects sites shall be encouraged to collect site characterization, risk assessment and feasibility information. Permits for pilot studies may be issued without meeting all the Class V geologic sequestration project requirements only when:

(i) The pilot study is for a limited time duration;

(ii) Public health and the environment are protected;

(iii) The pilot study will collect detailed site-specific information used to establish the feasibility of permanent sequestration in developing a permit application that meets the standards of this section. The pilot study permit shall be based upon an operator submitted pilot study plan that addresses:

(A) Site-specific geologic information including reasons for selecting a site as a potential geologic sequestration project;

(B) Site-specific hydrogeologic information that includes information on potable aquifers and how their water quality will be protected;

(C) A detailed plan of work for the pilot study that includes monitoring and quarterly reporting;

(D) The information to be gained by the study;

(E) The total quantity of CO_2 to be injected and an estimated injection schedule for the study. CO_2 injections for pilot studies shall be limited to no more than 1,000 metric tons CO_2, unless the operator demonstrates in the plan that a larger quantity is necessary to determine the feasibility and risks of a project;

(F) The procedures to be implemented to protect public health and the environment;

(iv) Pilot study permits shall not be used for a full scale carbon sequestration project. Injection of carbon dioxide associated with a pilot study permit shall be of limited quantity and duration, not to exceed five years.

(c) The permit shall include a maximum working pressure in the geologic containment system, calculated from information provided in the application, that assures that the pressure in the injection zone does not initiate new fractures or propagate existing fractures in the injection zone or caprock. In no case shall the injection pressure initiate fractures in the caprock or cause the movement of injected fluids or formation fluids into shallower aquifers. Controlled artificial fracturing of the injection zone of the geologic containment system may be allowed with a plan that has been approved by the department.

(d) If the operator identifies leakage in excess of the thresholds established in the mitigation and remediation plan, water quality degradation in shallower aquifers or leaks to the surface, including those around wells or within well casing, the operator must:

(i) Notify the department within twenty-four hours;

(ii) Take all necessary actions to protect public health, safety and the environment;

(iii) Stop injecting immediately, until the project obtains approval for redefining the geologic containment system and its relevant dimensions by the department;

(iv) Implement the mitigation and remediation plan to arrest and reverse environmental impacts. Amendments to the mitigation plan shall be developed in consultation with the department;

(e) Monitoring for geologic sequestration projects shall include:

(i) Characterization of injected fluids;

(ii) Continuous recording of injection pressure, flow rate and volume;

(iii) Continuous recording of pressure on annulus between tubing and long string casing;

(iv) Monitoring zone leak detection identified in (a)(ii) of this subsection;

(v) Sufficient monitoring to confirm the spatial distribution of the CO_2 in the subsurface.

(f) Quarterly reports shall be submitted to the department that include the following:

(i) Physical, chemical and other relevant characterization of the injected fluids;

(ii) Monthly average, maximum and minimum values for injection pressure, flow rate, volume injected and annular pressure;

(iii) Updated data for modeling that will project and/or establish the spatial distribution of CO_2 in the subsurface;

(iv) Results from monitoring zone leak detection;

(v) Results from any other tests/work completed during the reporting period, such as mechanical integrity tests, geophysical surveys, acoustic monitoring, well repairs, etc.

(g) Annual reports shall be submitted to the department that include:

(i) A summary of the data collected throughout the year, including any trends, observations, predictions as well as calculated spatial distribution of injected CO_2;

(ii) List of all noncompliance with the permit along with an explanation of the cause(s) and subsequent remedial measures taken;

(iii) Updated modeling based on the monitoring observations and measurements including a summary of calculated spatial distribution of CO_2 and all other conditions in the subsurface necessary to establish the effectiveness of the geologic containment system, as well as a discussion of history matching and an assessment of the model's accuracy to date.

Updated projections of project response and capacity based on operational experience, including all new geologic data and information;

(iv) Observed anomalies from predicted behavior shall be identified and explained;

(v) Discussion of suggested changes in project management or suggested amendment of permit conditions;

(vi) A report on the financial assurance account which includes updated calculation of cost estimates for all closure and post closure activities and documentation that the account is adequately funded to cover the calculated cost.

(5) **Closure.** If all of the project's carbon dioxide injections are interrupted for a period of one hundred eighty consecutive days, the operator shall begin implementing the approved closure plan. Injection project management may include injection and resting periods possibly exceeding one hundred eighty days for individual injection wells. The closure triggers are for the entire injection facility not individual wells. The department may extend this one hundred eighty day period, in writing, upon the request of the operator, if the operator demonstrates that carbon dioxide injection will resume within a period of not more than two years. The operator shall review and amend the closure plan as needed, at a minimum the plan shall be reviewed at each permit renewal. Proposed amendments shall be effective only after approved in writing by the department. Approval of proposed amendments shall not delay the commencement of closure activities using the most recent approved closure plan. If the operator fails to begin closure, or is not able to begin closure, the department shall use the financial assurance account to begin closure activities.

(6) **Post-closure activities.** The operator is obligated to renew and be covered under permit and pay all appropriate permit fees throughout the post-closure period. The operator shall continue all required monitoring and reporting throughout the closure and post-closure period. The operator shall review and amend the post-closure plan as needed, at a minimum the plan shall be reviewed at each permit renewal. The post-closure period shall continue until the department determines that modeling and monitoring demonstrate that conditions in the geologic containment system indicate that there is little or no risk of future environmental impacts and there is high confidence in the effectiveness of the containment system and related trapping mechanisms. The post-closure period shall be complete only after the operator has received written approval from the department. If the operator fails to or is not able to continue the post-closure activities as required, the department shall use the financial assurance account to complete post-closure activities. Any funds remaining in the financial assurance account shall be released to the operator upon the department's approval of the completion of the post-closure period.

(7) **Financial assurance.**

(a) The owner or operator shall establish a closure and post-closure account to cover all closure and post-closure expenses. The performance security held in the account may be:

(i) Bank letters of credit;

(ii) Cash deposits;

(iii) Negotiable securities;

(iv) An assignment of savings account;

(v) A savings certificate in a Washington bank; or

(vi) A corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington.

(b) The department may for any reason refuse any performance security not deemed adequate.

(c) The cost of the closure and post-closure activities shall be calculated using current cost of hiring a third party to close all existing facilities and to provide post-closure care, including monitoring identified in the closure and post-closure plan.

(d) The closure and post-closure cost estimate shall be revised annually to include any changes in the facility and to include cost changes due to inflation.

(e) The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure account is enforceable regardless of whether the requirement is a specific condition of the permit.

(8) **Mitigation and remediation.** Each project must develop a mitigation and remediation plan that identifies trigger thresholds and corrective actions to be taken if the containment system fails, if water quality outside the geologic containment system is degraded, if carbon dioxide is released to the atmosphere or if any other factor poses an unacceptable risk to public health or the environment. A mitigation and remediation plan must be approved by the department before injection begins and amended as needed. The operator shall review and amend the mitigation and remediation plan as needed, at a minimum the plan shall be thoroughly reviewed at each permit renewal. The mitigation and remediation plan shall:

(a) Define leakage (i.e., trigger threshold), leak detection and identification;

(b) Address caprock and spill-point leaks;

(c) Address well bore leaks from project wells or previously unidentified wells;

(d) Identify immediate responses to protect public health, safety and the environment;

(e) Provide a detailed list of notifications and surveys;

(f) Address remedial measures such as: Well repairs, reduced injection pressure, reservoir or formation pressure, creation of a pressure barrier through increased pressure above geologic containment system, interception, recovery and reinjection of CO_2 or the removal of injected materials;

(g) Address redefining the geologic containment system or closure and abandonment of the sequestration project.

Chapter 173-407 WAC

CARBON DIOXIDE MITIGATION PROGRAM, GREENHOUSE GASES EMISSIONS PERFORMANCE STANDARD AND SEQUESTRATION PLANS AND PROGRAMS FOR ((~~FOSSIL-FUELED~~)) THERMAL ELECTRIC GENERATING FACILITIES

NEW SECTION

WAC 173-407-005 Work in unison. The requirements of this chapter, WAC 173-407-010 through 173-407-070 are based upon chapter 80.70 RCW and are separate and distinct from the requirements found in this chapter, WAC 173-407-100 through 173-407-320 that are based upon chapter 80.80 RCW. These two requirements are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard. Once that standard is met, the requirements of chapter 80.70 RCW (WAC 173-407-010 through 173-407-070) are applied.

PART I
CARBON DIOXIDE MITIGATION FOR FOSSIL-FUELED THERMAL ELECTRIC GENERATING FACILITIES, IMPLEMENTING CHAPTER 80.70 RCW

AMENDATORY SECTION (Amending Order 03-09, filed 12/22/04, effective 1/22/05)

WAC 173-407-010 Policy and purpose of Part I. (1) It is the policy of the state to require mitigation of the emissions of carbon dioxide (CO_2) from all new and certain modified fossil-fueled thermal electric generating facilities with station-generating capability of more than 25 megawatts of electricity (MWe).

(2) A fossil-fueled thermal electric generating facility is not subject to the requirements of chapter 173-401 WAC solely due to its emissions of CO_2.

(a) Emissions of other regulated air pollutants must be a large enough quantity to trigger those requirements.

(b) For fossil-fueled thermal electric generating facilities that are subject to chapter 173-401 WAC, the CO_2 mitigation requirements are an applicable requirement under that regulation.

(3) A fossil-fueled thermal electric generating facility not subject to the requirements of chapter 173-401 WAC is subject to the requirements of the registration program in chapter 173-400 WAC.

AMENDATORY SECTION (Amending Order 03-09, filed 12/22/04, effective 1/22/05)

WAC 173-407-020 Definitions to Part I. The definitions in this section are found in RCW 80.70.010 ((~~(2004)~~)) and apply throughout this chapter unless clearly stated otherwise. The definitions are reprinted below.

((~~(1)~~)) "Applicant" has the meaning provided in RCW 80.50.020 and includes an applicant for a permit for a fossil-fueled thermal electric generation facility subject to RCW 70.94.152 and 80.70.020 (1)(b) or (d).

((~~(2)~~)) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

((~~(3)~~)) "Carbon credit" means a verified reduction in carbon dioxide or carbon dioxide equivalents that is registered with a state, national, or international trading authority or exchange that has been recognized by the council.

((~~(4)~~)) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

((~~(5)~~)) "Cogeneration credit" means the carbon dioxide emissions that the council, department, or authority, as appropriate, estimates would be produced on an annual basis by a stand-alone industrial and commercial facility equivalent in operating characteristics and output to the industrial or commercial heating or cooling process component of the cogeneration plant.

((~~(6)~~)) "Cogeneration plant" means a fossil-fueled thermal power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

((~~(7)~~)) "Commercial operation" means the date that the first electricity produced by a facility is delivered for commercial sale to the power grid.

((~~(8)~~)) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

((~~(9)~~)) "Department" means the department of ecology.

((~~(10)~~)) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

((~~(11)~~)) "Independent qualified organization" is an organization identified by the energy facility site evaluation council as meeting the requirements of RCW 80.70.050.

"Mitigation plan" means a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits.

((~~(12)~~)) "Mitigation project" means one or more of the following:

(a) Projects or actions that are implemented by the certificateholder or order of approval holder, directly or through its agent, or by an independent qualified organization to mitigate the emission of carbon dioxide produced by the fossil-fueled thermal electric generation facility. This term includes, but is not limited to, the use of energy efficiency measures, clean and efficient transportation measures, qualified alternative energy resources, demand side management of electricity consumption, and carbon sequestration programs;

(b) Direct application of combined heat and power (cogeneration);

(c) Verified carbon credits traded on a recognized trading authority or exchange; or

(d) Enforceable and permanent reductions in carbon dioxide or carbon dioxide equivalents through process change, equipment shutdown, or other activities under the control of the applicant and approved as part of a carbon dioxide mitigation plan.

(((~~(13)~~))) "Order of approval" means an order issued under RCW 70.94.152 with respect to a fossil-fueled thermal electric generation facility subject to RCW 80.70.020 (1)(b) or (d).

(((~~(14)~~))) "Permanent" means that emission reductions used to offset emission increases are assured for the life of the corresponding increase, whether unlimited or limited in duration.

(((~~(15)~~))) "Qualified alternative energy resource" has the same meaning as in RCW 19.29A.090.

(((~~(16)~~))) "Station generating capability" means the maximum load a generator can sustain over a given period of time without exceeding design limits, and measured using maximum continuous electric generation capacity, less net auxiliary load, at average ambient temperature and barometric pressure.

(((~~(17)~~))) "Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1)(a) and (b), the amount of carbon dioxide emitted over a thirty-year period based on the manufacturer's or designer's guaranteed total net station generating capability, new equipment heat rate, an assumed sixty percent capacity factor for facilities under the council's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, and taking into account any enforceable limitations on operational hours or fuel types and use; and

(b) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1)(c) and (d), the amount of carbon dioxide emitted over a thirty-year period based on the proposed increase in the amount of electrical output of the facility that exceeds the station generation capability of the facility prior to the applicant applying for certification or an order of approval pursuant to RCW 80.70.020 (1)(c) and (d), new equipment heat rate, an assumed sixty percent capacity factor for facilities under the council's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, and taking into account any enforceable limitations on operational hours or fuel types and use.

AMENDATORY SECTION (Amending Order 03-09, filed 12/22/04, effective 1/22/05)

WAC 173-407-030 Carbon dioxide mitigation program applicability for Part I. (1) **Statutory authority for a carbon dioxide mitigation program.** RCW 70.94.892(1) states that "*For fossil-fueled electric generation facilities having more than twenty-five thousand kilowatts station generating capability but less than three hundred fifty thousand kilowatts station generation capability, except for fossil-fueled floating thermal electric generation facilities under the jurisdiction of the energy facility site evaluation council pursuant to RCW 80.50.010, the department or authority shall implement a carbon dioxide mitigation program consistent with the requirements of chapter 80.70 RCW.*"

(2) **Statutory carbon dioxide mitigation program applicability requirements.** RCW 80.70.020 describes the applicability requirements and is reprinted below:

(1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under RCW 80.50.020 (14)(a), for which an application for site certification is made to the council after July 1, 2004;

(b) New fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, for which an application for an order of approval has been submitted after July 1, 2004;

(c) Fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to the council to increase the output of carbon dioxide emissions by fifteen percent or more through permanent changes in facility operations or modification or equipment; and

(d) Fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, that have an existing order of approval and, after July 1, 2004, apply to the department or authority, as appropriate, to permanently modify the facility so as to increase its station-generating capability by at least twenty-five thousand kilowatts or to increase the output of carbon dioxide emissions by fifteen percent or more, whichever measure is greater.

(3) **New facilities.** Any fossil-fueled thermal electric generating facility is required to mitigate CO_2 emissions as described in chapter 80.70 RCW, if the facility meets the following criteria:

(a) An application was received after July 1, 2004;

(b) The station-generating capability is below 350 MWe and above 25 MWe;

(c) The facility is not a fossil-fueled floating thermal electric generation facility subject to regulation by the energy facility site evaluation council.

(4) **(((~~Modifiying~~)))** **Modifying existing fossil-fueled thermal electric generating facilities.** A fossil-fueled thermal electric generating facility seeking to modify the facility or any electrical generating units is required to mitigate the increase of the emission of CO_2, as described in RCW 80.70.020, when the following occur:

(a) The application was received after July 1, 2004;

(b) The unmodified station generating capability is more than 25 MWe and less than 350 MWe;

(c) The increase to the facility or units is the greater of the following measures:

(i) An increase in station-generating capability of more than 25 MWe; or

(ii) An increase in CO_2 emissions output by 15% or more;

(d) The facility or the modification is not under the jurisdiction of the energy facility site evaluation council.

(5) **Examples of fossil-fueled thermal electric generation units.** The following are some examples of fossil-fueled thermal electric generating units:

(a) Coal, oil, natural gas, or coke fueled steam generating units (boilers) supplying steam to a steam turbine - electric generator;

(b) Simple cycle combustion turbine attached to an electric generator;

(c) Combined cycle combustion turbines (with and without duct burners) attached to an electric generator and supplying steam to a steam turbine - electric generator;

(d) Coal gasification units, or similar devices, where the synthesis gas produced is used to fuel a combustion turbine, boiler or similar device used to power an electric generator or provide hydrogen for use in fuel cells;

(e) Hydrocarbon reformer emissions where the hydrogen produced is used in ((~~a~~)) fuel cells.

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

WAC 173-407-040 Carbon dioxide mitigation program fees under Part I. Fees can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending Order 03-09, filed 12/22/04, effective 1/22/05)

WAC 173-407-050 Calculating total carbon dioxide emissions to be mitigated under Part I. (1) **Step 1 is to calculate the total quantity of CO_2.** The total quantity of CO_2 is referred to as the **maximum potential emissions of CO_2.** The maximum potential emissions of CO_2 is defined as the annual CO_2 emission rate. The annual CO_2 emission rate is derived by the following formula unless a differing analysis is necessary or appropriate for the electric generating process and type of equipment:

$$CO_{2rate} = \frac{F_s \times K_s}{2204.6} \times T_s + \frac{F_1 \times K_1}{2204.6} \times T_1 + \frac{F_2 \times K_2}{2204.6} \times T_2 + \frac{F_3 \times K_3}{2204.6} \times T_{3\ldots} + \frac{F_n \times K_n}{2204.6} \times T_n$$

where:

CO_{2rate} = Maximum potential emissions in metric tons per year

$F_{1\text{-}n}$ = Maximum design fuel firing rate in MMBtu/hour calculated as manufacturer((~~/~~)) or designer's guaranteed total net station generating capability in MWe times the new equipment heat rate in Btu/MWe. Determined based on higher heating values of fuel

$K_{1\text{-}n}$ = Conversion factor for the fuel(s) being evaluated in lb CO_2/((~~mmBtu~~)) MMBtu for fuel F_n

$T_{1\text{-}n}$ = Hours per year fuel F_n is allowed to be used. The default is 8760 hours unless there is a limitation on hours in an order of approval

F_s = Maximum design supplemental fuel firing rate in MMBtu/hour, at higher heating value of the fuel

K_s = Conversion factor for the supplemental fuel being evaluated in lb CO_2/MMBtu for fuel F_n given fuel

T_s = Hours per year supplemental fuel F_n is allowed. The default is 8760 hours unless there is a limitation on hours in an order of approval

(a) When there are multiple new fossil-fueled electric generating units, the above calculation will be performed for each unit and the total CO_2 emissions of all units will be summed.

(b) When a unit or facility is allowed to use multiple fuels, the maximum allowed hours on the highest CO_2 producing fuels will be utilized for each fuel until the total of all hours per fuel add up to the allowable annual hours.

(c) When a new unit or facility is allowed to use multiple fuels without restriction in its approval order(s), this calculation will be performed assuming that the fuel with the highest CO_2 emission rate is used 100% of the time.

(d) When the annual operating hours are restricted for any reason, the total of all $T_{1\text{-}n}$ hours equals the annual allowable hours of operation in the Order of Approval.

(e) Fuel to CO_2 conversion factors (derived from the EPA's AP-42, Compilation of Air Pollutant ((~~Emmission~~)) Emission Factors):

Fuel	K_n lb/MMBtu
#2 oil	158.16
#4 oil	160.96
#6 oil	166.67
Lignite	((~~328.57~~)) 287.50
Sub-bituminous coal	((~~282.94~~)) 267.22
Bituminous coal, low volatility	((~~312.50~~)) 232.21
Bituminous coal, medium volatility	((~~274.55~~)) 241.60
Bituminous coal, high volatility	((~~306.11~~)) 262.38
Natural gas	117.6
Propane	136.61
Butane	139.38
Petroleum coke	242.91
Coal coke	243.1
Other ((~~fossil-fuels~~)) fossil fuels	Calculate based on carbon content of the fossil fuel and application of the gross heat content (higher heating value) of the fuel
((~~Nonfossil fuels~~)) Nonfossil fuels	00.00

(2) **Step 2 - Insert the annual CO_2 rate to determine the total carbon dioxide emissions to be mitigated.** The

formula below includes specifications that are part of the total carbon dioxide definition:

Total CO_2 Emissions = CO_{2rate} x 30 x 0.6

(3) **Step 3 - Determine and apply the cogeneration credit (if any).** Where the cogeneration unit or facility qualifies for cogeneration credit, the cogeneration credit is the annual CO_2 emission rate (in metric tons per year) and is calculated as shown below or similar method:

$$CO_{2credit} = \frac{H_s}{2204.6} \text{ x } (K_a) \div ((.35)) \text{ n}$$

where:

((~~Where cogeneration credit~~)) CO_2 credit	=	The annual CO_2 credit for cogeneration in metric tons/year.
H_s	=	Annual heat energy supplied by the cogeneration plant to the "steam host" per the contract or other binding obligation/agreement between the parties in MMBtu/yr as substantiated by an engineering analysis.
K_a	=	The time weighted average CO_2 emission rate constant for the cogeneration plant in lb CO_2/MMBtu supplied. The time weighted average is calculated similarly to the above method described in subsection (1) of this section.
n	=	Efficiency of new boiler that would provide the same quantity of thermal energy. Assume n = 0.85 unless applicant provides information supporting a different value.

Calculate the metric tons of the cogeneration credit over the thirty-year period.

Cogeneration Credit = $CO_{2credit}$ x 30

(4) **Step 4 - Apply the mitigation factor.**

(a) RCW 80.70.020(4) states that "*Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for twenty percent of the total carbon dioxide emissions produced by the facility*."

(b) The CO_2 emissions mitigation quantity is determined by the following formula:

Mitigation Quantity = Total CO_2 Emissions x 0.2 - Cogeneration Credit

where:

Mitigation quantity	=	The total CO_2 emissions to be mitigated in metric tons
CO_{2rate}	=	The annual maximum CO_2 emissions from the generating facility in tons/year
0.2	=	The mitigation factor in RCW 80.70.020(4)

(5) Additional restrictions for modifications to an existing facility not involving installation of new generating units. The quantity of CO_2 to be mitigated is calculated by the same methods used for the new generating units with the following restrictions:

(a) The quantity of CO_2 subject to mitigation is only that resulting from the modification and does not include the CO_2 emissions occurring prior to the modification((.));

(b) An increase in operating hours or other operational limitations established in an order of approval is not an exempt modification under this regulation. However, only emissions related to the increase in operating hours are subject to the CO_2 mitigation program requirements((.));

(c) The annual emissions (CO_{2rate}) is the difference between the premodification condition and the postmodification condition, but using the like new heat rate for the combustion equipment((.)); and

(d) The cogeneration credit may be used, but only if it is a new cogeneration credit, not a cogeneration agreement or arrangement established prior to July 1, 2004, or used in a prior CO_2 mitigation evaluation.

((7 ~~Review reports and document project progress.~~))

AMENDATORY SECTION (Amending Order 03-09, filed 12/22/04, effective 1/22/05)

WAC 173-407-060 Carbon dioxide mitigation plan requirements and options under Part I. (1) **Once the total carbon dioxide emissions mitigation quantity is calculated, what is next?** The facility must mitigate that level of carbon dioxide emissions. A CO_2 mitigation plan is required and must be approved as part of the order of approval. RCW 80.70.020 (2)(b) states that "*For fossil-fueled thermal electric generation facilities not under jurisdiction of the council, the order of approval shall require an approved carbon dioxide mitigation plan*." A mitigation plan is a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits (RCW 80.70.010).

(2) **What are the mitigation plan options?** The options are identified in RCW 80.70.020(3), which states that "*An applicant for a fossil-fueled thermal electric generation facility shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:*

(a) Payment to a third party to provide mitigation;

(b) Direct purchase of permanent carbon credits; or

(c) Investment in applicant-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration)."

(3) **What are the requirements of the payment to a third party option?** The payment to a third party option requirements are found in RCW 80.70.020 (5) and (6). Subsection (5) identifies the mitigation rate for this option and describes the process for changing the mitigation rate. Subsection (6) describes the payment options.

The initial mitigation rate is **$1.60 per metric ton** of carbon dioxide to be mitigated. If there is a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the

cogeneration credit. This rate will change when the energy facility site evaluation council adjusts it through the process described in RCW 80.70.020 (5)(a) and (b). The total payment amount = mitigation rate x mitigation quantity.

An applicant may choose between **a lump sum payment or partial payment over a period of five years.** The **lump sum payment** is described in RCW 80.70.020 (6)(a) and (b). The payment amount is the mitigation quantity multiplied by the per ton mitigation rate. The entire payment amount is due to the independent qualified organization no later than one hundred twenty days after the start of commercial operation.

The alternative to a one-time payment is a **partial payment** described in RCW 80.70.020 (6)(c). Under this alternative, twenty percent of the total payment is due to the independent qualified organization no later than one hundred twenty days after the start of commercial operation. A payment of the same amount (or an adjusted amount if the rate is changed under RCW 80.70.020 (5)(a)) is due on the anniversary date of the initial payment for the next four consecutive years. In addition, the applicant is required to provide a letter of credit or comparable security for the remaining 80% at the time of the first payment. The letter of credit (or comparable security) must also include possible rate changes.

(4) **What are the requirements of the permanent carbon credits option?** RCW 80.70.030 identifies the criteria and specifies that these credits cannot be resold without approval from the local air authority having jurisdiction or ecology where there is no local air authority. The permanent carbon credit criteria of RCW 80.70.030(1) ((~~is~~)) are as follows:

(a) Credits must derive from real, verified, permanent, and enforceable carbon dioxide or carbon dioxide equivalents emission mitigation not otherwise required by statute, regulation, or other legal requirements;

(b) The credits must be acquired after July 1, 2004; and

(c) The credits may not have been used for other carbon dioxide mitigation projects.

(5) **What are the requirements for the applicant controlled mitigation projects option?** RCW 80.70.040 identifies the requirements for applicant controlled mitigation projects. Subsections (1) through (5) specify the criteria. ((~~Subsection (6) specifies that if federal requirements are adopted for carbon dioxide mitigation for fossil-fueled thermal electric generation facilities, ecology or the local air authority may deem the federal requirements equivalent and replace RCW 80.70.040 with the federal requirements.~~)) The direct investment cost of the applicant controlled mitigation project including funds used for selection, monitoring, and evaluation of mitigation projects cannot be required by ecology or the local authority to exceed the cost of making a lump sum payment to a third party per WAC 173-407-060(3).

The applicant controlled mitigation project must be:

(a) Implemented through mitigation projects conducted directly by, or under the control of, order of approval holder. ((~~(Section 1);~~))

(b) Approved by the authority having jurisdiction or the department where there is no local air authority and incorporated as a condition of the proposed order of approval. ((~~(Section 2);~~))

(c) Fully in place within a reasonable time after the start of commercial operation. Failure to implement an approved mitigation plan is subject to enforcement under chapter 70.94 RCW. (((~~(Section 3)~~

~~In addition, an~~)) (d) The order of approval holder may not use more than twenty percent of the total funds for the selection, monitoring, and evaluation of mitigation projects, and the management and enforcement of contracts. (((~~(Section 4)~~)))

AMENDATORY SECTION (Amending Order 03-09, filed 12/22/04, effective 1/22/05)

WAC 173-407-070 Carbon dioxide mitigation option statement and mitigation plan approval under Part I. (1) Applicants must provide the department or authority with a statement selecting the mitigation option(s) at the time the application is submitted.

(2) Applicants choosing to use the payment to a third party or the permanent carbon credit option must provide the department or the authority, as appropriate, with the documentation to show how the requirements will be satisfied before an order or approval will be issued.

(3) Applicants seeking to use the applicant controlled mitigation projects option must submit the entire mitigation plan to the department or the authority. The department or authority having jurisdiction will review the plan. Under RCW 70.94.892 (2)(b), the review criteria is based on whether the mitigation plan is consistent with the requirements of chapter 80.70 RCW.

(4) Upon completing the review phase, the department or the authority having jurisdiction must approve or deny the mitigation plan.

(5) Approved mitigation plans become part of the order of approval.

AMENDATORY SECTION (Amending Order 03-09, filed 12/22/04, effective 1/22/05)

WAC 173-407-080 Enforcement under Part I. Applicants or facilities violating the carbon dioxide mitigation program requirements are subject to the enforcement provisions of chapter 70.94 RCW.

PART II
GREENHOUSE GASES EMISSIONS PERFORMANCE STANDARD AND SEQUESTRATION PLANS AND PROGRAMS FOR BASELOAD ELECTRIC GENERATION FACILITIES IMPLEMENTING CHAPTER 80.80 RCW

NEW SECTION

WAC 173-407-100 Policy and purpose of Part II. It is the intent of the legislature, under chapter 80.80 RCW, to establish statutory goals for the statewide reduction in greenhouse gases emissions. The legislature further intends by chapter 80.80 RCW to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions.

NEW SECTION

WAC 173-407-110 Definitions to Part II. The following definitions are applicable for the purposes of Part II of this chapter.

"Average available greenhouse gases emissions output" means the level of greenhouse gases emissions as surveyed and determined by the energy policy division of the department of community, trade, and economic development under RCW 80.80.050.

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent. For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale.

"Baseload electric cogeneration facility" means a cogeneration facility that provides baseload electric generation.

"Baseload electric generation facility" means the power plant that provides baseload electric generation.

"Benchmark" means a planned quantity of the greenhouse gases to be sequestered each calendar year at a sequestration facility as identified in the sequestration plan or sequestration program.

"Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for electrical power production.

"Change in ownership" as related to cogeneration plants means a new ownership interest in the electric generation portion of the cogeneration facility or unit.

"Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets Federal Energy Regulatory Commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 824a-3), as amended. In general, a cogeneration facility is comprised of equipment and processes which through the sequential use of energy are used to produce electric energy and useful thermal energy (such as heat or steam) that is used for industrial, commercial, heating, or cooling purposes.

"Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

"Commence commercial operation" means, in regard to a unit serving an electric generator, to have begun to produce steam or other heated medium, or a combustible gas used to generate electricity for sale or use, including test generation.

"Commission" means the Washington utilities and transportation commission.

"Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

"Department" or "ecology" means the department of ecology.

"Electric generating unit" is the equipment required to convert the thermal energy in a fuel into electricity. In the case of a steam electric generation unit, it is comprised of all equipment from fuel delivery to the plant site through an individual boiler, any installed emission control equipment, and ending with the generation of electricity in a dedicated steam turbine/generator. Where a steam turbine generator is supplied by two or more boiler units, all boilers contributing to that steam turbine/generator comprise a single electric generating unit. All combustion units/boilers/combined cycle turbines that produce steam for use in a single steam turbine/generator unit are part of the same electric generating unit.

Examples:

(a) For an integrated gasification combined cycle combustion turbine plant, it is comprised of all equipment from fuel delivery to the unit through the combustion processes, any installed emission control equipment, and ending with the generation of electricity.

(b) For a combined cycle natural gas fired combustion turbine, it is the point where natural gas is delivered to the plant site and ends with the generation of electricity from the combustion turbine and from steam produced and used on a steam turbine.

(c) Fuel cells fueled by hydrogen produced in a reformer utilizing nonrenewable fuels or by a gasifier producing hydrogen from nonrenewable fuels.

"Electricity from unspecified sources" means electricity to be delivered pursuant to a long-term financial commitment whose sources or origins of generation and expected average annual deliveries of electricity cannot be ascertained with reasonable certainty.

"EFSEC" means the energy facility site evaluation council.

"Electric utility" means an electrical company or a consumer-owned utility.

"Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Governing board" means the board of directors or legislative authority of a consumer-owned utility.

"Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

"MWh" means megawatt-hour electricity.

"MWh_{eq}" means megawatt-hour equivalent electrical energy of useful thermal energy output. 1 MWh_{eq} = 3.413 million Btu of thermal energy.

"New ownership interest" means a change in the ownership structure of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility affecting at least:

(a) Five percent of the market value of the power plant or cogeneration facility; or

(b) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multi-unit generation facility.

"Permanent sequestration" means the retention of greenhouse gases in a containment system using a method and in accordance with standards approved by the department that creates a high degree of confidence that substantially ninety-nine percent of the greenhouse gases will remain contained for at least one thousand years.

"Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

"Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council or a local jurisdiction. A power plant may be comprised of one or more individual electrical generating units, each unit of which can be operated or owned separately from the other units.

"Regulated greenhouse gases emissions" is the mass of carbon dioxide emitted plus the mass of nitrous oxide emitted plus the mass of methane emitted. Regulated greenhouse gases emissions include carbon dioxide produced by a sulfur dioxide control system such as a wet limestone scrubber system.

"Renewable fuel" means:

(a) Landfill gas;

(b) Biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;

(c) By-products of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; or

(d) Gas from sewage treatment facilities.

"Renewable resources" means a renewable fuel plus electricity generation facilities fueled by:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy; or

(e) Ocean thermal, wave, or tidal power.

"Sequential use of energy" means:

(a) For a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard; or

(b) For a bottoming-cycle cogeneration facility, the use of reject heat from a thermal application or process, at least some of which is then used for power production.

"Sequestration plan" means a comprehensive plan describing how a plant owner or operator will comply with the emissions performance standard by means of sequestering greenhouse gases, where the sequestration will start after electricity is first produced, but within five years of the start of commercial operation.

"Sequestration program" means a comprehensive plan describing how a baseload electric generation plant's owner or operator will demonstrate compliance with the emissions performance standard at start of commercial operation and continuing unchanged into the future. The program plan is a description of how the facility meets the emissions performance standard based on the characteristics of the baseload electric generation facility or unit or by sequestering greenhouse gases emissions to meet the emissions performance standard with the sequestration starting on or before the start of commercial operation.

"Supplementary firing" means an energy input to:

(a) A cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility;

(b) The electric generating process of a bottoming-cycle cogeneration facility; or

(c) Any baseload electric generation unit to temporarily increase the thermal energy that can be converted to electrical energy.

"Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful electrical power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy.

"Total energy input" means the total energy supplied by all fuels used to produce electricity in a baseload electric generation facility or unit.

"Total energy output" of a topping cycle cogeneration facility or unit is the sum of the useful electrical power output and useful thermal energy output.

"Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade includes the installation, replacement or modification of equipment that increases the heat input or fuel usage as specified in existing generation air quality permits in effect as of July 22, 2007. Upgrade does not include:

(a) Routine or necessary maintenance;

(b) Installation of emission control equipment;

(c) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or

(d) Installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

"Useful energy output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.

"Useful thermal energy output" of a cogeneration facility means the thermal energy:

(a) That is made available to and used in an industrial or commercial process (net of any heat contained in condensate return and/or makeup water);

(b) That is used in a heating application (e.g., space heating, domestic hot water heating); or

(c) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller).

"Waste gas" is refinery gas and other fossil fuel derived gases with a heat content of more than 300 Btu/standard cubic foot. Waste gas does not include gaseous renewable energy sources.

NEW SECTION

WAC 173-407-120 Facilities subject to the greenhouse gases emissions performance standard for Part II. (1) This rule is applicable to all baseload electric generation and cogeneration facilities and units that:

(a) Are new and are permitted for construction and operation after June 30, 2008, that utilize fossil fuel or nonrenewable fuels for all or part of their fuel requirements.

(b) Are existing and that commence operation on or before June 30, 2008, when the facility or unit's owner or operator engages in an action listed in subsection (3) or (4) of this section.

(2) This rule is not applicable to any baseload electric generation facility or unit or cogeneration facility or unit that is designed and intended to utilize a renewable fuel to provide at least ninety percent of its total annual heat input.

(3) A baseload electric generation facility or an individual electric generating unit at a baseload electric generation facility is required to meet the emissions performance standard in effect when:

(a) The new baseload electric generation facility or new electric generating unit at an existing baseload electric generation facility is issued a notice of construction approval or a site certification agreement;

(b) The existing facility or a unit is upgraded; or

(c) The existing facility or a unit is subject to a new long-term financial commitment.

(4) A baseload electric cogeneration facility or unit is required to meet the emissions performance standard in effect when:

(a) The new baseload electric cogeneration facility or new cogeneration unit is issued a notice of construction approval or a site certification agreement;

(b) The existing facility or unit is upgraded; or

(c) The existing facility or unit is subject to a change in ownership.

(5) A new baseload electric generation or cogeneration facility becomes an existing baseload electric generation or cogeneration facility the day it commences commercial operation.

NEW SECTION

WAC 173-407-130 Emissions performance standard under Part II. (1) Beginning July 1, 2008, all baseload electric generation and cogeneration facilities and units are not allowed to emit to the atmosphere total greenhouse gases at a rate greater than one thousand one hundred pounds per megawatt-hour, annual average.

(2) All baseload electric generation facilities and units in operation on or before June 30, 2008, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new long-term financial commitment.

(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded.

(4) Compliance with the emissions performance standard may be through:

(a) Use of fuels and power plant designs that comply with the emissions performance standard without need for greenhouse gases emission controls; or

(b) Use of greenhouse gases emission controls and greenhouse gases sequestration methods meeting the requirements of WAC 173-407-220 or 173-218-115 as appropriate.

(5) The greenhouse gases emissions performance standard in subsection (1) of this section applies to all baseload electric generation for which electric utilities enter into long-term financial commitments on or after July 1, 2008.

NEW SECTION

WAC 173-407-140 Calculating greenhouse gases emissions and determining compliance for baseload electric generation facilities under Part II. (1) The owner or operator of a baseload electric generation facility or unit that must demonstrate compliance with the emissions performance standard in WAC 173-407-130(1) shall demonstrate compliance annually, using the data identified below:

(a) Fuels and fuel feed stocks.

(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric generation facility or unit.

(ii) Fuel usage and heat content is to be monitored, and reported as directed by WAC 173-407-230.

(b) Electrical output in MWh as measured and recorded per WAC 173-407-230.

(c) Regulated greenhouse gases emissions from the baseload electric generation facility or unit as monitored, reported and calculated in WAC 173-407-230.

(d) The owner or operator of a baseload electric generation facility or unit may adjust its greenhouse gases emissions to account for the usage of renewable resources. If the owner or operator of a baseload electric generation facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(2) By January 31 of each year, the owner or operator of each baseload electric generation facility or unit subject to

the monitoring and compliance demonstration requirements of this rule will:

(a) Calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the total MWh produced in that year; and

(b) Submit that calculation and all supporting information to ecology.

NEW SECTION

WAC 173-407-150 Calculating greenhouse gases emissions and determining compliance for baseload electric cogeneration facilities under Part II. (1) To use this section for determining compliance with the greenhouse gases emissions performance standard, a facility must have certified to FERC under the provisions of 18 CFR 292 Subpart B as a qualifying cogeneration facility.

(2) The owner or operator of a baseload electric cogeneration facility or unit that must demonstrate compliance with the emissions performance standard in WAC 173-407-130(1) shall demonstrate compliance annually, using the data identified below:

(a) Fuels and fuel feed stocks.

(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric cogeneration facility or unit.

(ii) Fuel and fuel feed stocks usage and heat content is to be monitored, and reported as directed by WAC 173-407-230.

(b) Electrical output will be the electrical output measured in MWh as directed by WAC 173-407-230.

(c) All useful thermal energy and useful energy used for nonelectrical generation uses will be converted to units of megawatts energy equivalent (MWeq) using the conversion factor of 3.413 million British thermal units per megawatt hour (MMBtu/MWh).

(d) Regulated greenhouse gases emissions from the baseload electric cogeneration facility or unit as monitored, reported and calculated in WAC 173-407-230.

(e) The owner or operator of a baseload electric cogeneration facility or unit may adjust its greenhouse gases emissions to account for the usage of renewable resources. If the owner or operator of a baseload electric cogeneration facility adjusts its greenhouse gases emissions to account for the use of renewable resources, the greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(3) Bottoming-cycle cogeneration facilities. The formula to determine compliance of a bottoming-cycle cogeneration facility or unit with the emissions performance standard will be jointly developed by ecology and the facility. To the extent possible, the facility specific formula must be based on the one for topping-cycle facilities identifying the amount of energy converted to electricity, thermal losses, and energy from the original fuel(s) used to provide useful thermal energy in the industrial process. The formula should be specific to the installed equipment, other thermal energy uses in the facility, and specific operating conditions of the facility.

(4) Topping-cycle cogeneration facilities. Compliance of a topping-cycle facility or unit with the emissions performance standard will be as follows:

(a) Determine annual electricity produced in MWh.

(b) Determine the annual electrical energy equivalent of the useful thermal energy output in MWh_{eq}.

(c) Determine the annual regulated greenhouse gases emissions produced in pounds.

(5) By January 31 of each year, the owner or operator of each baseload electric cogeneration facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the sum of the MWh and MWh_{eq} produced in that year; and

(b) Submit that calculation and all supporting information to ecology.

NEW SECTION

WAC 173-407-200 Requirement for and timing of sequestration plan or sequestration program submittals under Part II. (1) A sequestration plan for a source that begins sequestration after the start of commercial operation shall be submitted when:

(a) A site certification application is submitted to EFSEC for a new baseload electric generation facility or baseload electric cogeneration facility or new unit at an existing baseload electric generation or cogeneration facility;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(c) A notice of construction application is submitted to ecology or a local authority for a new baseload electric generation facility or baseload electric cogeneration facility or unit at a baseload electric generation or cogeneration facility;

(d) A notice of construction application is submitted to ecology or a local authority for an upgrade to an existing baseload electric generation facility or unit or an existing baseload electric cogeneration facility or unit and the upgrade is not an exempt upgrade;

(e) A baseload electric generation facility or unit or baseload cogeneration facility or unit enters a new long-term financial commitment with an electric utility to provide baseload power and the facility or unit does not comply with the emissions performance standard in effect at the time the new long-term financial commitment occurs; or

(f) A qualifying ownership interest change occurs and the facility or unit does not comply with the emissions performance standard in effect at the time the change in ownership occurs.

(2) A sequestration program is required to be submitted when:

(a) A site certification application is submitted to EFSEC for new baseload electric generation facility or unit or baseload electric cogeneration facility or unit;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(c) A notice of construction application is submitted to ecology or a local authority for a new baseload electric generation facility or unit or baseload electric cogeneration facility or unit;

(d) A notice of construction application is submitted to ecology or a local authority for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit and the upgrade is not an exempt upgrade;

(e) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit enters a new long-term financial commitment with an electric utility to provide baseload power if the facility or unit does not comply with the emissions performance standard in effect at the time the new long-term financial commitment occurs; or

(f) A qualifying ownership interest change occurs and the facility does not comply with the emissions performance standard in effect at the time the change in ownership occurs.

NEW SECTION

WAC 173-407-210 Types of permanent sequestration under Part II. Specific requirements for permanent geologic sequestration of greenhouse gases can be found in WAC 173-218-115. Requirements for approval of sequestration plans or sequestration programs for other (nongeologic) types of permanent sequestration containment systems are found in WAC 173-407-220.

NEW SECTION

WAC 173-407-220 Requirements for nongeologic permanent sequestration plans under Part II. In order to meet the emissions performance standard, all baseload electric generation facilities or individual units that are subject to this rule, and must sequester greenhouse gases to meet the emissions performance standard, will submit sequestration plans or sequestration programs for approval to EFSEC or ecology, as appropriate.

(1) Sequestration plans must include:

(a) Financial requirements. Each owner or operator of a baseload electric generation or cogeneration facility or unit utilizing other sequestration as a method to comply with the emissions performance standard in WAC 173-407-130 is required to provide a letter of credit as a condition of plant operation sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan, including construction and operation of necessary equipment, and any other significant costs.

(i) The owner or operator of a proposed sequestration project shall establish a letter of credit to cover all expenses for construction and operation of necessary equipment, and any other significant costs. The cost estimate for the sequestration project shall be revised annually to include any changes in the project and to include cost changes due to inflation.

(ii) Closure and post-closure financial assurances. The owner or operator shall establish a closure and post-closure letter of credit to cover all closure and post-closure expenses. The owner or operator must designate ecology or EFSEC, as appropriate, as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure account shall cover all costs of closure and post-closure care identified in the closure and post-closure plan. The closure and post-closure cost estimate shall be revised annually to include any changes in the sequestration project and to include cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure account is enforceable regardless of whether the requirement is a specific condition of the permit.

(b) The application for approval of a sequestration plan shall include (but is not limited to) the following:

(i) A current site map showing the boundaries of the permanent sequestration project containment system(s) and all areas where greenhouse gases will be stored.

(ii) A technical evaluation of the proposed project, including but not limited to, the following:

(A) The name of the area in which the sequestration will take place;

(B) A description of the facilities and place of greenhouse gases containment system;

(C) A complete site description of the site, including but not limited to the terrain, the geology, the climate (including rain and snowfall expected), any land use restrictions that exist at the time of the application or will be placed upon the site in the future;

(D) The proposed calculated maximum volume of greenhouse gases to be sequestered and aerial extent of the location where the greenhouse gases will be stored using a method acceptable to and filed with ecology; and

(E) Evaluation of the quantity of sequestered greenhouse gases that may escape from the containment system at the proposed project.

(iii) A public safety and emergency response plan for the proposed project. The plan shall detail the safety procedures concerning the sequestration project containment system and residential, commercial, and public land use within one mile, or as necessary to identify potential impacts, of the outside boundary of the project area.

(iv) A greenhouse gases loss detection and monitoring plan for all parts of the sequestration project. The approved greenhouse gases loss detection and monitoring plan shall address identification of potential release to the atmosphere.

(v) A detailed schedule of annual benchmarks for sequestration of greenhouse gases.

(vi) Any other information that the department deems necessary to make its determination.

(vii) A closure and post-closure plan.

(c) In order to monitor the effectiveness of the implementation of the sequestration plan, the owner or operator shall submit a detailed monitoring plan that will be able to

detect failure of the sequestration method to place the greenhouse gases into a sequestered state. The monitoring plan will be sufficient to detect losses of sequestered greenhouse gases at a level of no greater than twenty percent of the leakage rate allowed in the definition of permanent sequestration. The monitoring shall continue for the longer of twenty years beyond either the end of placement of the greenhouse gases into a sequestration containment system, or the date upon which it is determined that all of the greenhouse gases has achieved a state at which it is now stably sequestered in that environment.

(d) If the sequestration plan fails to sequester greenhouse gases as provided in the plan, the owner or operator of the baseload electric generation or cogeneration facility or unit is no longer in compliance with the emissions performance standard.

(2) **Public notice and comment.** Ecology must provide public notice and a public comment period before approving or denying any sequestration plan or program plan.

(a) Public notice. Public notice shall be made only after all information required by the permitting authority has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include analyses of the effects on the local, state and global environment in the case of failure of the sequestration plan or program plan. The plan must be available for public inspection in at least one location near the proposed project.

(b) Public comment.

(i) The public comment period must be at least thirty days long or as specified in the public notice.

(ii) The public comment period must extend through the hearing date.

(iii) Ecology shall make no final decision on any sequestration plan or sequestration program until the public comment period has ended and any comments received during the public comment period have been considered.

(c) Public hearings.

(i) Ecology will hold a public hearing within the thirty-day public comment period. Ecology will determine the location, date, and time of the public hearing.

(ii) Ecology must provide at least thirty days prior notice of a hearing on a sequestration plan or sequestration program.

NEW SECTION

WAC 173-407-230 Emissions and electrical production monitoring, recordkeeping and reporting requirements under Part II. (1) Monitoring and recordkeeping requirements. For all baseload electric generation and cogeneration facilities or units subject to WAC 173-407-120, the following parameters shall be monitored and reported as explained below:

(a) Electrical output: Electrical output as measured at the point of connection with the local electrical distribution network or transmission line, as appropriate. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard;

(b) Useful thermal energy output: Determine quantity of energy supplied to nonelectrical production uses through monitoring of both the energy supplied and unused energy returned by the thermal energy user or uses. This can be accomplished through:

(i) Measurement of the supply and return streams of the mass pressure and temperature of the steam or thermal fluid.

(ii) Use of thermodynamic calculations as approved by ecology.

(iii) Measurements will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard;

(c) Regulated greenhouse gases emissions.

(i) The regulated greenhouse gases emissions are the emissions from the main plant exhaust stack and any bypass stacks or flares. For baseload electric generation and cogeneration facilities or units utilizing CO_2 controls and sequestration to comply with the greenhouse gases emissions performance standard, direct and fugitive CO_2 emissions from the CO_2 separation and compression process are included.

(ii) Carbon dioxide (CO_2).

(A) For baseload electric generation and cogeneration facilities or units subject to WAC 173-407-120, producing 25 MW or more of electricity, CO_2 emissions will be monitored by a continuous emission monitoring system meeting the requirements of 40 CFR Part 75.10, 75.13 and Appendix F. If allowed by the requirements of 40 CFR Part 72, a facility may estimate CO_2 emissions through fuel carbon content monitoring and methods meeting the requirements of 40 CFR Part 75.10, 75.13 and Appendix G.

(B) For baseload electric generation and cogeneration facilities or units subject to WAC 173-407-120 producing less than 25 MW of electricity, the owner or operator may either utilize a continuous emission monitoring system meeting the requirements of 40 CFR Part 75.10, 75.13 and Appendix F, or through fuel carbon content monitoring and methods meeting the requirements of 40 CFR Part 75.10, 75.13 and Appendix G.

(C) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 CFR 75, the baseload electric generation facility operator or operator will substitute data according to the process in 40 CFR Part 75.

(D) Continuous emission monitors for CO_2 will be installed at a location meeting the requirements of 40 CFR Part 75, Appendix A. The CO_2 and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 CFR Part 75, Appendix B.

(iii) Nitrous oxide (N_2O).

(A) For baseload electric generation or cogeneration facilities or units subject to WAC 173-407-120 producing 25 MW or more of electricity.

(I) For the first year of operation, N_2O emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(II) For succeeding years, N_2O emissions will be estimated through use of generating unit specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing at varying loads and through at least four separate test periods spaced evenly throughout the first year of commercial operation.

(B) For baseload electric generation or cogeneration facilities or units subject to WAC 173-407-120 producing less than 25 MW of electricity, the annual N_2O emissions will be estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(iv) Methane (CH_4).

(A) For baseload electric generation or cogeneration facilities or units subject to WAC 173-407-120 producing 25 MW or more of electricity.

(I) For the first year of operation, CH_4 emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(II) For succeeding years, CH_4 emissions will be estimated through use of plant specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing at varying loads and through at least four separate test periods spaced evenly through the first year of commercial operation.

(B) For baseload electric generation or cogeneration facilities or units subject to WAC 173-407-120 producing less than 25 MW of electricity. The annual CH_4 emissions will be estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility;

(d) Fuel usage and heat content information.

(i) Fossil fuel usage will be monitored by continuous fuel volume or weight measurement as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(ii) Renewable energy fuel usage will be monitored by continuous fuel volume or weight measurement as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(iii) Heat content of fossil fuels shall be tested at least once per calendar year. The owner or operator of the baseload electric generation facility or unit shall submit a proposed fuel content monitoring program to ecology for its approval. Upon request and submission of appropriate documentation of fuel heat content variability, ecology may allow a source to:

(A) Test the heat content of the fossil fuel less often than once per year; or

(B) Utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(iv) Renewable energy fuel heat content will be tested monthly or on a different frequency approved by ecology. A different frequency will be based on the variability of the heat content of the renewable energy fuel.

(A) If the baseload electric generation or cogeneration facilities or units subject to WAC 173-407-120 using a mixture of renewable and fossil fuels does not adjust its greenhouse gases emissions by the heat input from the renewable energy fuels, the monitoring of the heat content of the renewable energy fuels is not required.

(B) Upon request and with appropriate documentation, ecology may allow a source to utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(2) Reporting requirements. The results of the monitoring required by this section shall be reported to ecology and the permitting authority annually.

(a) Facilities or units subject to the reporting requirements of 40 CFR Part 75. Annual emissions of CO_2, N_2O and CH_4 will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year. The report may be an Excel™ or CSV format copy of the report submitted to EPA with the emissions for N_2O and CH_4 appended to the report.

(b) For facilities or units not subject to the reporting requirements of 40 CFR Part 75. Annual emissions of CO_2, N_2O and CH_4 and supporting information will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year.

NEW SECTION

WAC 173-407-240 Enforcement of the emissions performance standard under Part II. (1) Any power plant subject to WAC 173-407-120 that does not meet the emissions performance standard on schedule shall be subject to enforcement under chapter 70.94 RCW.

These penalties can include:

(a) Financial penalties shall be assessed after any year of failure to meet a sequestration benchmark established in the sequestration plan or sequestration program. Each pound of greenhouse gases above the emissions performance standard will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of approval to construct the source or to operate the source.

(2) If a new, modified or upgraded baseload electric generation or cogeneration facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program will be required to be submitted no later than one hundred fifty calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program is to be submitted to ecology or EFSEC, as appropriate, for approval.

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility operated under an approved sequestration plan or sequestration program shall have the burden of proving to ecology, EFSEC, or the decision-making authority in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration shall be a condition to obtaining relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark shall be reported by January 31 of the year following the year during which the event occurred or as part of the routine sequestration monitoring reports. Upon request by ecology, the owner(s) or operator(s) of the sequestration project source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that the failure to meet a sequestration benchmark could not have been prevented through careful planning and design and if a bypass of equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) Maintenance. Failure to meet a sequestration benchmark due to scheduled maintenance shall be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations.

(a) Enforcement of an ecology or local air agency permitting authority notice of construction will take place under the authority of chapter 70.94 RCW. Enforcement of an ecology approved sequestration plan or sequestration program will be in accordance with this section.

(b) Enforcement of any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.150.

PART III
LONG-TERM FINANCIAL COMMITMENTS; RELATIONSHIP OF ECOLOGY AND THE WUTC; AND RELATIONSHIP OF ECOLOGY AND THE GOVERNING BOARDS OF CONSUMER-OWNED UTILITIES UNDER CHAPTER 80.80 RCW

NEW SECTION

WAC 173-407-300 Procedures for determining the emissions performance standard of a long-term financial commitment and addressing electricity from unspecified sources and specified sources under Part II. (1) The following procedures are adopted by the department to be utilized by the department under RCW 80.80.060 and to be available to and utilized by the governing boards of consumer-owned utilities pursuant to RCW 80.80.070 when evaluating a potential long-term financial commitment when the long-term financial commitment includes electricity from unspecified sources, electricity from one or more specified sources, and/or provisions to meet load growth with electricity from unspecified and/or specified sources.

(2) For each year of a long-term financial commitment for electric power, the regulated greenhouse gases emissions from specified and unspecified sources of power are not to exceed the emissions performance standard in WAC 173-407-130(1), in effect on the date the long-term contract is executed. The emissions performance standard for a long-term financial commitment for electricity that includes electricity from specified and unspecified sources is calculated using a time-weighted average of all sources of generation and emissions in the years in which they are contributing electricity and emissions in the commitment. Each source's proportional contribution to emissions per each MWh delivered under the contract is added together and summed for each year and divided by the number of years in the term of the commitment.

(3) An extension of an existing long-term financial commitment is treated as a new commitment, not an extension of an existing commitment.

(4) Annual and lifetime calculations of greenhouse gases emissions.

(a) The time-weighted average emissions shall be calculated, for every year of the contract, using the formula in subsection (5) of this section. The calculation of the pounds of greenhouse gases per megawatt-hour is based upon the delivered electricity, including the portion from specified and unspecified sources, of the total portfolio for the year for which the calculation is being made.

(b) The average greenhouse gases emissions per MWh of the power supply portfolio over the life of the long-term financial commitment is compared to the emissions performance standard. The calculation of the pounds of greenhouse gases per MWh is based on the expected annual delivery contracted or expected to be supplied by each specified and unspecified source's portion of the total portfolio of electricity to be provided under the contract for the year for which the calculation is being made.

(c) Default values adopted in this procedure shall be used for each source unless actual emissions are known or specified by the manufacturer. A default greenhouse gases emissions value of an average pulverized coal plant per WAC

173-407-300 (5)(b) shall be used for unspecified sources in the procedure.

(5) The time-weighted average calculation shall be performed using the regulated greenhouse gases emissions factors as follows:

(a) For a specified source, utilize the manufacturer's emissions specification or the measured emission rate for a specified generator. When there is no available information on greenhouse gases emissions from a specified source, utilize the following:

(i) Combined cycle combustion turbines that begin operation after July 1, 2008 = 1,100 lbs/MWh or as updated by rule in 2012 and every five years thereafter.

(ii) Steam turbines using pulverized coal = 2,600 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(iii) Integrated gasification combined cycle turbines = 1,800 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(iv) Simple cycle combustion turbines = 1,800 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(v) Combined cycle combustion turbines that begin operation before July 1, 2008 = 1,100 lbs/MWh.

(b) Electricity from unspecified sources = 2,600 lbs/MWh.

(c) Renewable resources = 0 lbs/MWh.

Example Calculation

$$EPS = \frac{(F_1 MW x\ T_1) + (F_2 MW x\ T_2) + (F_3 MW x\ T_3) + \ldots (F_n MW x\ T_n)}{Total\ Hours}$$

where:

EPS	=	Emissions performance standard
F	=	EPS of each type of source expressed as MW
T	=	Percentage of time used for that source
Total Hours	=	Total hours that power was available to customers in the year (8,760 or less)

NEW SECTION

WAC 173-407-310 Relationship of ecology and Washington utilities and transportation commission under Part II. (1) The Washington utilities and transportation commission (commission) shall consult with ecology to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. Ecology shall report to the commission whether baseload electric generation will comply with the greenhouse gases emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company. (RCW 80.80.060(7).)

(2) Ecology's consultation with the commission:

(a) In assisting the commission to apply the emissions verification procedures adopted, ecology will compare the commission's procedures to the ecology procedures found in WAC 173-407-130, 173-407-140, and 173-407-230.

(b) In consulting with the commission to determine if a long-term financial commitment for baseload electric generation meets the greenhouse gases emissions performance standard, ecology shall consider whether the commitment meets WAC 173-407-300.

(3) When conducting the consultation and reporting processes, ecology will conclude this process of consultation and assistance within thirty days of receiving all necessary information from the commission to determine compliance.

NEW SECTION

WAC 173-407-320 Relationship of ecology and the governing boards of consumer-owned utilities under Part II. (1) RCW 80.80.070(2) requires the governing boards of consumer-owned utilities to "review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040." During this consultation process, ecology shall ensure that the governing boards are utilizing the method in WAC 173-407-300 to determine whether the long-term financial commitment for baseload electric generation meets the emissions performance standard. Ecology's assistance will be limited to that assistance necessary for the board to interpret, clarify or otherwise determine that the proposed long-term financial commitment for baseload electric generation will comply with the emissions performance standard.

(2) RCW 80.80.070(5) also requires the governing boards of consumer-owned utilities to "apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040, and may request assistance from the department in doing so." The procedures adopted by the department to be utilized by the governing boards are found in WAC 173-407-300. Ecology shall provide consultation or further assistance to the governing boards of a consumer-owned utility to apply such procedures if the governing board makes such a request.

(3) When consulting or providing assistance under subsections (1) and (2) of this section, ecology will conclude this process of consultation and assistance within thirty days unless the governing board requesting the assistance grants additional time.

NEW SECTION

WAC 173-407-400 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.

WSR 08-06-026
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed February 22, 2008, 4:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-048.

Title of Rule and Other Identifying Information: WAC 220-88B-030 Emerging commercial fishery—Eligibility for coastal experimental fishery permits—Terms and conditions of use—Renewal—Vessel restriction—Incidental catch.

Hearing Location(s): Shilo Inn, 707 Ocean Shores Boulevard N.W., Ocean Shores, WA 98569, on June 6-7, 2008, at 8:00 a.m.

Date of Intended Adoption: June 20, 2008, conference call.

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 June 5, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by May 23, 2008, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The total allowable harvest is reduced as a precautionary action to match up with estimates of population production corresponding to known habitat. Modifies existing rule to further restrict the amount of harvest possible in a specified geographical area. This geographical restriction will limit area impacts to prevent overharvesting the spot-shrimp stocks within the subareas of the Washington coast.

Reasons Supporting Proposal: New analyses suggest that the total allowable catch is set at too high a level and that the catch is not being proportionately harvested from the existing habitat.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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: Morris Barker, 1111 Washington Street S.E., Olympia, (360) 902-2826; Implementation: Lew Atkins, 1111 Washington Street S.E., Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., 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: Rule will cap the allowable harvest coastwide and set subarea quotas within the overall cap.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Some fisheries will experience increased costs if they have to travel further from port to harvest the product - this only applies to those who are currently not making the further trips from port.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? Some fishers may chose not to travel further from port to access the available harvest and they will forego that harvest opportunity which may reduce their revenue from sales.

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:

a. Cost per employee;

b. Cost per hour of labor; or

c. Cost per one hundred dollars of sales.

There are less that twenty permit holders operating in this fishery and this does not qualify as 10% under the defined business category.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The agency has not taken any special steps to reduce the cost of these rules on small businesses - the decrease in the allowable catch is to a level the fleet is not currently harvesting and the geographic shift to capping subareas will present only a minor hardship for a few vessels.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The agency will hold a public hearing under the auspices of the fish and wildlife commission public rule-making policy, as guided by the Administrative Procedure Act.

8. A List of Industries That Will Be Required to Comply with the Rule: Emerging commercial fishery ocean spot shrimp permit holders.

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 rules do not involve or affect hydraulics.

February 22, 2008
Loreva M. Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 04-21, filed 2/10/04, effective 3/12/04)

WAC 220-88B-030 Emerging commercial fishery—Eligibility for coastal experimental fishery permits—Terms and conditions of use—Renewal—Vessel restriction—Incidental catch. (1) No individual may hold more than one Washington coastal spot shrimp experimental fishery permit.

(2) Coastal spot shrimp experimental fishery permits are not transferable. Only the vessel designated on the emerging commercial fishery license and coastal spot shrimp experimental fishery permit may be used to fish for or deliver spot shrimp.

(3) A coastal spot shrimp experimental fishery permit will be issued only to a natural person who:

(a) Held such a permit the previous year; and

(b) Can demonstrate by valid Washington fish receiving tickets that at least 1,000 cumulative round weight pounds of spot shrimp taken from waters of the Pacific Ocean adjacent to the state of Washington were landed from the person's designated vessel or vessels during the previous two calendar years. Landings of spot shrimp reported as "tails" on fish receiving tickets will be converted to round pounds by multiplying the reported weight of tails by two.

(4) Coastal spot shrimp experimental fishery permits may be revoked by the director, and future permits denied by the director, for failure to comply with conditions specified in the permits or violations of other fishing regulations. A coastal spot shrimp experimental fishery permit will not be renewed if the emerging commercial fishery license is revoked or future fishing privileges of the licensee are suspended.

(5) The director may issue a coastal spot shrimp experimental fishery permit to another person if a permittee fails to make the requisite landings, if the person's experimental coastal spot shrimp experimental fishery permit is revoked, or if no application for an emerging commercial fishery license is received by March 31st of each year. The total number of permits issued, including replacement permits, shall not exceed fifteen. Selection of persons to receive replacement permits shall be by gear or gear replacement type, and replacement permits will be offered in descending order first to persons who made the largest total of Washington coastal spot shrimp landings in each gear type during the original qualifying period, and then in descending order to persons who made the largest total of Washington coastal spot shrimp landings in each gear type. If no persons with coastal spot shrimp landings wish to participate, the director may offer a replacement permit by random drawing.

(6) Coastal spot shrimp experimental fishery permits are only valid for the year issued and expire on December 31st of the year issued with the expiration of the emerging commercial fishery license.

(7) The total allowable catch of spot shrimp taken from Washington territorial waters west of the Bonilla-Tatoosh line and from adjacent waters of the Pacific Ocean during a calendar year is ((~~250,000~~)) 200,000 pounds round weight, provided that not more than 100,000 pounds ((~~may~~)) be taken south of 47°04.00' N. latitude and no more than 100,000 pounds be taken north of 47°04.00' N. latitude.

(8) ((~~Beginning January 1, 2003, through December 31, 2005, the allowable catch shall be allocated as follows: 175,000 pounds available to all permit holders and 75,000 pounds available to fishers who were converted from trawl to pot permits.~~)) Beginning January 1, 2006, the allowable catch is available to all permit holders.

(9) Vessel restriction: A coastal spot shrimp experimental fishery permit will not be issued to a person who designates a vessel greater than ten feet longer than the vessel designated as of March 31, 2003, provided that if the vessel designated as of March 31, 2003, is ten or more feet greater than the vessel used by the person to initially qualify for a coastal spot shrimp experimental fishery permit, the person may not designate a vessel greater in length than the vessel designated as of March 31, 2003.

(10) Incidental catch:

(a) It is unlawful to retain more than 50 pounds round weight of other shrimp species. It is ((~~lawful~~)) permissible to retain octopus and squid.

(b) It is unlawful to retain salmon.

(c) It is unlawful to retain any bottomfish species.

WSR 08-06-029
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed February 25, 2008, 3:48 p.m.]

This memo serves as notice that the department of health is withdrawing the CR-102 regarding revising rules for radiation protection fees filed on February 6, 2008, and published as WSR 08-04-114. The original proposal was to consider revising the medical license fee terminology to reflect current terminology and regulatory references, and combine the current two health physics service provider fee categories into a single fee category. This revision will be reconsidered after the 2008 legislative session.

Please contact Arden Scroggs at (360) 236-3221 or arden.scroggs@doh.wa.gov, if you have any questions about this request.

Mary C. Selecky
Secretary

WSR 08-06-033
PROPOSED RULES
ENERGY FACILITY SITE EVALUATION COUNCIL
[Filed February 26, 2008, 2:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-024 and 02-23-039.

Title of Rule and Other Identifying Information: This proposal will create the following two chapters to implement chapter 80.80 RCW in which the 2007 legislature directed the energy facility site evaluation council (EFSEC) to adopt rules by June 30, 2008, to implement and enforce a greenhouse gases emissions performance standard and to establish criteria for evaluating sequestration plans and implement chapter 80.70 RCW for carbon dioxide (CO_2) mitigation: Chapter 463-85 WAC, Greenhouse gases emissions performance standard and sequestration plans and programs for baseload electric generating facilities; and chapter 463-80 WAC, Carbon dioxide mitigation program for thermal electric generating facilities.

Hearing Location(s): Ecology Headquarters Building, Auditorium, 300 Desmond Drive S.E., Lacey, WA, on April 8, 2008, at 6:00 p.m.; and at the Spokane County Public Health Center, 1101 West College Avenue, Room 140, Spokane, WA, on April 10, 2008, at 6:00 p.m. EFSEC hearings

are being conducted in concert with the department of ecology.

Date of Intended Adoption: June 10, 2008.

Submit Written Comments to: Allen Fiksdal, P.O. Box 43172, Olympia, WA 98504-3172, e-mail allenf@cted.wa.gov, fax (360) 956-2158, received by 5:00 p.m., April 18, 2008.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6800, by April 1, 2008. If you have a hearing loss, call 711 for Washington Relay Service. If you have a speech disability, call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to adopt, as directed in chapter 80.80 RCW, a greenhouse gases emissions performance standard for baseload electric generation and establish criteria to implement and enforce the emissions performance standard; and under chapter 80.70 RCW set the procedure for implementing carbon dioxide mitigation standards and develop procedures for listing independent qualified organizations who could receive payment for implementing CO_2 mitigation under chapter 80.70 RCW. The proposal will:

(1) Create a new chapter 463-85 WAC to implement and enforce the greenhouse gases emissions performance standard for baseload electric generation, as directed in chapter 80.80 RCW.

(2) Create a new chapter 463-80 WAC that sets the procedure for calculating the carbon dioxide emissions from a fossil fuel-fired power facility under EFSEC jurisdiction and the options allowed for mitigation as set by chapter 80.70 RCW. The proposed rule sets how EFSEC will develop and maintain a list of independent qualified organizations who could receive payment for implementing CO_2 mitigation under chapter 80.70 RCW.

Reasons Supporting Proposal: Executive Order 07-02 established goals for the statewide reduction of greenhouse gases emissions within Washington over the next several decades as one of the methods of addressing climate change. These emissions reductions goals were also adopted within ESSB 6001 and codified in chapter 80.80 RCW. The legislature passed chapter 80.80 RCW in 2007 with the intent to establish statutory goals for statewide reductions in greenhouse gases emissions and to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions. RCW 80.80.040 directs the energy facility site evaluation council to adopt rules by June 30, 2008, to implement and enforce a greenhouse gases emissions performance standard and to establish criteria for evaluating sequestration plans. Chapter 80.70 set CO_2 mitigation requirements and directs the council to develop procedures and maintain a list of independent qualified organizations to implement payment to a third party for CO_2 mitigation.

Statutory Authority for Adoption: ESSB 6001, codified as chapter 80.80 RCW and RCW 80.50.040(1).

Statute Being Implemented: Chapters 80.80 and 80.70 RCW.

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

Name of Proponent: Energy facility site evaluation council, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Allen Fiksdal, Olympia, Washington, (360) 956-2152.

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

Small Business Economic Impact Statement

The statement prepared by the department of ecology can also be used for the proposed EFSEC rules [see WSR 08-06-021].

A copy of the statement may be obtained by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail caca461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail caca461@ecy.wa.gov. The statement prepared by the department of ecology can also be used for the proposed EFSEC rules.

February 26, 2008
Allen J. Fiksdal
EFSEC Manager

Chapter 463-80 WAC

CARBON DIOXIDE MITIGATION PROGRAM FOR THERMAL ELECTRIC GENERATING FACILITIES

NEW SECTION

WAC 463-80-005 Work in unison. The requirements of this chapter, are based upon chapter 80.70 RCW and are separate and distinct from the requirements found in chapter 463-85 WAC - greenhouse gases performance standard that are based upon chapter 80.80 RCW. These two requirements are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard under chapters 80.80 RCW and 463-85 WAC. Once that standard is met, the requirements of chapters 80.70 RCW and 463-80 WAC are applied.

NEW SECTION

WAC 463-80-010 Policy and purpose. It is the policy of the state to require mitigation of the emissions of carbon dioxide (CO_2) from all new and certain modified fossil-fueled thermal electric generating facilities with station-generating capability of greater than 25 megawatts of electricity (MWe). This chapter applies to fossil-fueled thermal electric generating facilities with station-generating capability of greater than 350 MWe.

NEW SECTION

WAC 463-80-020 Definitions. The definitions in this section are found in RCW 80.70.010 and apply throughout this chapter unless clearly stated otherwise. The definitions are reprinted below.

"Applicant" has the meaning provided in RCW 80.50.020 and is subject to RCW 80.70.020 (1)(a).

"Carbon credit" means a verified reduction in carbon dioxide or carbon dioxide equivalents that is registered with a state, national, or international trading authority or exchange that has been recognized by EFSEC.

"Carbon dioxide equivalents" means a metric measure used to compare the emissions of various greenhouse gases based upon their global warming potential.

"Certificate holder" means the company that holds a site certification agreement and is authorized to construct and operate an energy facility under chapter 80.50 RCW.

"Cogeneration credit" means the carbon dioxide emissions that EFSEC, department, or authority, as appropriate, estimates would be produced on an annual basis by a standalone industrial and commercial facility equivalent in operating characteristics and output to the industrial or commercial heating or cooling process component of the cogeneration plant.

"Cogeneration plant" means a fossil-fueled thermal power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

"Commercial operation" means the date that the first electricity produced by a facility is delivered for commercial sale to the power grid.

"Department" means the department of ecology.

"EFSEC" or "council" means the energy facility site evaluation council created by RCW 80.50.030.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Independent qualified organization" means a third-party company or organization that is independent of any energy facility that emits CO_2 and is recognized by the council to receive payment for selection, monitoring, and evaluation of CO_2 emissions mitigation activities.

"Mitigation plan" means a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits.

"Mitigation project" means one or more of the following:

(a) Projects or actions that are implemented by the certificate holder directly or through its agent, or by an independent qualified organization to mitigate the emission of carbon dioxide produced by the fossil-fueled thermal electric generation facility. This term includes, but is not limited to, the use of energy efficiency measures, clean and efficient transportation measures, qualified alternative energy resources, demand side management of electricity consumption, and carbon sequestration programs;

(b) Direct application of combined heat and power (cogeneration);

(c) Verified carbon credits traded on a recognized trading authority or exchange; or

(d) Enforceable and permanent reductions in carbon dioxide or carbon dioxide equivalents through process change, equipment shutdown, or other activities under the control of the applicant and approved as part of a carbon dioxide mitigation plan.

"Permanent" means that emission reductions used to offset emission increases are assured for the life of the corresponding increase, whether unlimited or limited in duration.

"Qualified alternative energy resource" has the same meaning as in RCW 19.29A.090.

"Site certification agreement" means the document as recommended by EFSEC and approved by the governor that lists the requirements and conditions for construction and operation of an energy facility, including any attached or associated permits or authorizations, for example a prevention of deterioration permit or notice of construction.

"Station generating capability" means the maximum load a generator can sustain over a given period of time without exceeding design limits, and measured using maximum continuous electric generation capacity, less net auxiliary load, at average ambient temperature and barometric pressure.

"Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1)(a) and (b), the amount of carbon dioxide emitted over a thirty-year period based on the manufacturer's or designer's guaranteed total net station generating capability, new equipment heat rate, an assumed sixty percent capacity factor for facilities under EFSEC's jurisdiction and taking into account any enforceable limitations on operational hours or fuel types and use; and

(b) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1)(c) and (d), the amount of carbon dioxide emitted over a thirty-year period based on the proposed increase in the amount of electrical output of the facility that exceeds the station generation capability of the facility prior to the applicant applying for certification pursuant to RCW 80.70.020(1), new equipment heat rate, an assumed sixty percent capacity factor for facilities under EFSEC's jurisdiction, and taking into account any enforceable limitations on operational hours or fuel types and use.

NEW SECTION

WAC 463-80-030 Carbon dioxide mitigation program applicability. (1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under RCW 80.50.020 (15)(a), for which an application for site certification is made to EFSEC after July 1, 2004; and

(b) Fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to EFSEC to increase the output of carbon dioxide emissions by fifteen percent or more through permanent changes in facility operations or modification of equipment.

(2) **New facilities.** Any fossil-fueled thermal electric generating facility is required to mitigate CO_2 emissions as

described in chapter 80.70 RCW, if the facility meets the following criteria:

(a) An application was received after July 1, 2004;

(b) The station-generating capability is 350 MWe or greater;

(c) The facility is a fossil-fueled floating thermal electric generation facility subject to regulation by the energy facility site evaluation council.

(3) **Modifying existing fossil-fueled thermal electric generating facilities.** A fossil-fueled thermal electric generating facility seeking to modify the facility or any electrical generating units is required to mitigate the increase of the emission of CO_2, as described in RCW 80.70.020, when the following occur:

(a) The application was received after July 1, 2004;

(b) The unmodified station generating capability is 350 MWe or greater;

(c) The increase to the facility or units is the greater of the following measures:

(i) An increase in station-generating capability of more than 25 MWe; or

(ii) An increase in CO_2 emissions output by fifteen percent or more.

(4) **Examples of fossil-fueled thermal electric generation units.** The following are some examples of fossil-fueled thermal electric generating units:

(a) Coal, oil, natural gas, or coke fueled steam generating units (boilers) supplying steam to a steam turbine - electric generator;

(b) Simple cycle combustion turbine attached to an electric generator;

(c) Combined cycle combustion turbines (with and without duct burners) attached to an electric generator and supplying steam to a steam turbine - electric generator;

(d) Coal gasification units, or similar devices, where the synthesis gas produced is used to fuel a combustion turbine, boiler or similar device used to power an electric generator or provide hydrogen for use in fuel cells;

(e) Hydrocarbon reformer emissions where the hydrogen produced is used in fuel cells.

NEW SECTION

WAC 463-80-040 Carbon dioxide mitigation program costs. Reasonable and necessary costs for EFSEC's carbon dioxide mitigation program shall be charged to applicants and certificate holders as authorized by RCW 80.70.060 and 80.50.071.

NEW SECTION

WAC 463-80-050 Calculating total carbon dioxide emissions to be mitigated. (1) Step 1 is to calculate the total quantity of CO_2. The total quantity of CO_2 is referred to as the maximum potential emissions of CO_2. The maximum potential emissions of CO_2 is defined as the annual CO_2 emission rate. The annual CO_2 emission rate is derived by the following formula unless a differing analysis is necessary or appropriate for the electric generating process and type of equipment:

$$CO_{2rate} = \frac{F_s \times K_s}{2204.6} \times T_s + \frac{F_1 \times K_1}{2204.6} \times T_1 + \frac{F_2 \times K_2}{2204.6} \times T_2 \quad \frac{F_3 \times K_3}{2204.6} \times T_{3\ldots} \quad \frac{F_n \times K_n}{2204.6} \times T_n$$

where:

CO_{2rate}	=	Maximum potential emissions in metric tons per year
F_{1-n}	=	Maximum design fuel firing rate in MMBtu/hour calculated as manufacturer or designer's guaranteed total net station generating capability in MWe times the new equipment heat rate in Btu/MWe. Determined based on higher heating values of fuel
K_{1-n}	=	Conversion factor for the fuel(s) being evaluated in lb CO_2/MMBtu for fuel F_n
T_{1-n}	=	Hours per year fuel F_n is allowed to be used. The default is 8760 hours unless there is a limitation on hours in a site certification agreement
F_s	=	Maximum design supplemental fuel firing rate in MMBtu/hour, at higher heating value of the fuel
K_s	=	Conversion factor for the supplemental fuel being evaluated in lb CO_2/MMBtu for fuel F_n given fuel
T_s	=	Hours per year supplemental fuel F_n is allowed. The default is 8760 hours unless there is a limitation on hours in a site certification agreement

(a) When there are multiple new fossil-fueled electric generating units, the above calculation will be performed for each unit and the total CO_2 emissions of all units will be summed.

(b) When a unit or facility is allowed to use multiple fuels, the maximum allowed hours on the highest CO_2 producing fuels will be utilized for each fuel until the total of all hours per fuel add up to the allowable annual hours.

(c) When a new unit or facility is allowed to use multiple fuels without restriction, this calculation will be performed assuming that the fuel with the highest CO_2 emission rate is used 100% of the time.

(d) When the annual operating hours are restricted for any reason, the total of all T_{1-n} hours equals the annual allowable hours of operation in the site certification agreement.

(e) Fuel to CO_2 conversion factors (derived from the EPA's AP-42, Compilation of Air Pollutant Emission Factors):

Fuel	K_n lb/MMBtu
#2 oil	158.16
#4 oil	160.96
#6 oil	166.67
Lignite	287.50
Sub-bituminous coal	267.22
Bituminous coal, low volatility	232.21
Bituminous coal, medium volatility	241.60
Bituminous coal, high volatility	262.38
Natural gas	117.6

Fuel	K_n lb/MMBtu
Propane	136.61
Butane	139.38
Petroleum coke	242.91
Coal coke	243.1
Other fossil fuels	Calculate based on carbon content of the fossil fuel and application of the gross heat content (higher heating value) of the fuel
Nonfossil fuels	00.00

(2) **Step 2 - Insert the annual CO_2 rate to determine the total carbon dioxide emissions to be mitigated.** The formula below includes specifications that are part of the total carbon dioxide definition:

Total CO_2 Emissions = CO_{2rate} x 30 x 0.6

(3) **Step 3 - Determine and apply the cogeneration credit (if any).** Where the cogeneration unit or facility qualifies for cogeneration credit, the cogeneration credit is the annual CO_2 emission rate (in metric tons per year) and is calculated as shown below or similar method:

$$CO_{2credit} = \frac{H_s}{2204.6} \times (K_a) \div n$$

where:

$CO_{2credit}$	=	The annual CO_2 credit for cogeneration in metric tons/year.
H_s	=	Annual heat energy supplied by the cogeneration plant to the "steam host" per the contract or other binding obligation/agreement between the parties in MMBtu/yr as substantiated by an engineering analysis.
K_a	=	The time weighted average CO_2 emission rate constant for the cogeneration plant in lb CO_2/MMBtu supplied. The time-weighted average is calculated similarly to the above method described in subsection (1) of this section.
n	=	Efficiency of new boiler that would provide the same quantity of thermal energy. Assume n = 0.85 unless applicant provides information supporting a different value.

Calculate the metric tons of the cogeneration credit over the 30 year period.

Cogeneration Credit = $CO_{2credit}$ x 30

(4) **Step 4 - Apply the mitigation factor.**

(a) RCW 80.70.020(4) states that "*Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for twenty percent of the total carbon dioxide emissions produced by the facility.*"

(b) The CO_2 emissions mitigation quantity is determined by the following formula:

Mitigation Quantity = Total CO_2 Emissions x 0.2 - Cogeneration Credit

where:

Mitigation quantity	=	The total CO_2 emissions to be mitigated in metric tons.
CO_{2rate}	=	The annual maximum CO_2 emissions from the generating facility in tons/year.
0.2	=	The mitigation factor in RCW 80.70.020(4).

(5) **Additional restrictions for modifications to an existing facility not involving installation of new generating units.** The quantity of CO_2 to be mitigated is calculated by the same methods used for the new generating units with the following restrictions:

(a) The quantity of CO_2 subject to mitigation is only that resulting from the modification and does not include the CO_2 emissions occurring prior to the modification;

(b) An increase in operating hours or other operational limitations established in a site certification agreement is not an exempt modification under this regulation. However, only increased CO_2 emissions related to the increase in operating hours or changes to any other operational restriction are subject to the CO_2 mitigation program requirements;

(c) The annual emissions (CO_{2rate}) is the difference between the premodification condition and the postmodification condition, but using the like new heat rate for the combustion equipment; and

(d) The cogeneration credit may be used, but only if it is a new cogeneration credit, not a cogeneration agreement or arrangement established prior to July 1, 2004, or used in a prior CO_2 mitigation evaluation.

NEW SECTION

WAC 463-80-060 Carbon dioxide mitigation plan requirements and options. (1) **Once the total carbon dioxide emissions mitigation quantity is calculated, what is next?** The facility must mitigate that level of carbon dioxide emissions. A CO_2 mitigation plan is required and must be approved as part of a site certification agreement. A mitigation plan is a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits (RCW 80.70.010).

The approved mitigation plan must be fully implemented and operational in accordance with the schedule in the site certification agreement. The applicant may request an extension of the mitigation project implementation deadline. The request must be submitted in writing to EFSEC before the implementation deadline. The request must fully document the reason(s) more time is needed to implement the mitigation project and propose a revised schedule.

(2) **What are the mitigation plan options?** The options are identified in RCW 80.70.020(3), which states that "*An applicant for a fossil-fueled thermal electric generation facility shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:*

(a) Payment to a third party to provide mitigation;

(b) Direct purchase of permanent carbon credits; or

(c) Investment in applicant-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration)."

(3) **What are the requirements of the payment to a third-party option?** The payment to a third party option requirements are found in RCW 80.70.020 (5) and (6). Subsection (5) identifies the mitigation rate for this option and describes the process for changing the mitigation rate. Subsection (6) describes the payment options.

The initial mitigation rate is **$1.60 per metric ton** of carbon dioxide to be mitigated. If there is a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the cogeneration credit. The mitigation rate will change when EFSEC adjusts it through the process described in RCW 80.70.020 (5)(a) and (b). The total payment amount = mitigation rate x mitigation quantity.

An applicant may choose between **a lump sum payment or partial payment over a period of five years.** The **lump sum payment** is described in RCW 80.70.020 (6)(a) and (b). The payment amount is the mitigation quantity multiplied by the per ton mitigation rate. The entire payment amount is due to the independent qualified organization no later than one hundred twenty days after the start of commercial operation.

The alternative to a one-time payment is a **partial payment** described in RCW 80.70.020 (6)(c). Under this alternative, twenty percent of the total payment is due to the independent qualified organization no later than one hundred twenty days after the start of commercial operation. A payment of the same amount (or an adjusted amount if the rate is changed under RCW 80.70.020 (5)(a)) is due on the anniversary date of the initial payment for the next four consecutive years. In addition, the applicant is required to provide a letter of credit or comparable security for the remaining 80% at the time of the first payment. The letter of credit (or comparable security) must also include possible rate changes.

(4) **What are the requirements of the permanent carbon credits option?** RCW 80.70.030 identifies the criteria and specifies that these credits cannot be resold without approval from EFSEC. The permanent carbon credit criteria of RCW 80.70.030(1) are as follows:

(a) Credits must derive from real, verified, permanent, and enforceable carbon dioxide or carbon dioxide equivalents emission mitigation not otherwise required by statute, regulation, or other legal requirements;

(b) The credits must be acquired after July 1, 2004; and

(c) The credits may not have been used for other carbon dioxide mitigation projects.

(5) **What are the requirements for the applicant-controlled mitigation projects option?** RCW 80.70.040 identifies the requirements for applicant controlled mitigation projects. Subsections (1) through (5) specify the criteria. The direct investment cost of the applicant controlled mitigation project including funds used for selection, monitoring, and evaluation of mitigation projects cannot be required by EFSEC to exceed the cost of making a lump sum payment to a third party per subsection (3) of this section.

The applicant controlled mitigation project must be:

(a) Implemented through mitigation projects conducted directly by, or under the control of the site certification agreement holder;

(b) Approved by EFSEC and incorporated as a condition of the site certification agreement; and

(c) Operational within one year after the start of commercial operation. Failure to implement an approved mitigation plan is subject to enforcement under chapter 80.50 RCW.

(d) The certificate holder may not use more than twenty percent of the total funds for the selection, monitoring, and evaluation of mitigation projects, and the management and enforcement of contracts.

NEW SECTION

WAC 463-80-070 Carbon dioxide mitigation option statement and mitigation plan submittal and approval. (1) Applicants must provide EFSEC with a statement selecting the mitigation option(s) in:

(a) Applications for site certification; or

(b) Requests to amend site certification agreements under chapter 463-66 WAC where changes to the facility will increase CO_2 emissions by fifteen percent or more.

(2) Applicants choosing to use the payment to a third party or the permanent carbon credit option must provide EFSEC with the documentation to show how the requirements will be satisfied before a recommendation to the governor is issued or an amendment to a site certification agreement is approved.

(3) Applicants seeking to use the applicant controlled mitigation projects option must submit the entire mitigation plan to EFSEC. EFSEC will review the plan for consistency with the requirements of chapter 80.70 RCW.

(4) Approval of the mitigation plan will be by:

(a) The governor for approval of the application for site certification, or an amendment to the site certification agreement under WAC 463-66-080; or

(b) EFSEC for approval of an amendment to the site certification agreement under WAC 463-66-070.

NEW SECTION

WAC 463-80-080 Enforcement. Applicants or facilities violating the carbon dioxide mitigation program requirements are subject to the enforcement provisions of chapter 80.50 RCW.

NEW SECTION

WAC 463-80-090 Independent qualified organizations list. (1) EFSEC shall develop and maintain a list of independent qualified organizations as required by RCW 80.70.050.

(2) To develop or update the independent qualified organization list EFSEC shall issue a request for qualifications through use of a mailing list maintained by EFSEC and publication in a regional newspaper in both eastern and western Washington, and other appropriate forums.

(3) Proposals from independent qualified organizations shall, at a minimum, contain the following information:

(a) A demonstration of how the company or organization has successfully developed and managed programs to implement:

• Energy efficiency;
• Renewable energy projects;
• Clean and efficient transportation measures;
• Demand side management of electricity consumption; and
• Carbon sequestration programs.

(b) A complete description of the company or organization's specific expertise in the science and economics of greenhouse gas emissions mitigation, including proven ability to:

• Specify preferred offset types;
• Develop and issue requests for proposals;
• Evaluate and recommend projects;
• Assemble diverse portfolios;
• Negotiate offset contracts;
• Design monitoring and verification protocols, manage the implementation of offset contracts; and
• Maintain an offset registry and retired tons.

(c) Proven experience and demonstrated ability should include staff or organization experience. A new organization made up of experienced employees, or an existing organization with demonstrated accomplishments, should both be able to qualify. However, proven experience and demonstrated ability should be in the specific areas listed in this subsection.

(4) Using best professional judgment, EFSEC staff shall review each proposal and make recommendations to EFSEC whether a company or organization should be placed on the independent qualified organization list.

(5) After reviewing the EFSEC staff recommendations, and prior to making a decision to add a company or an organization to its list of independent qualified organizations, EFSEC may request the organization to testify at a public meeting or hearing to gain additional information and knowledge regarding the organization's experience and qualifications.

(6) Based on the EFSEC staff recommendation and information from public meeting(s) or hearing(s) (if held) EFSEC shall approve or deny companies' or organizations' placement on the list of independent qualified organizations.

(7) EFSEC may remove a company or organization from the independent qualified organization list at the request of the organization, or if EFSEC determines the organization is no longer capable or qualified to carry out CO_2 mitigation programs or activities.

(8) EFSEC shall update its list as it deems appropriate using the process described in this section.

NEW SECTION

WAC 463-80-100 Independent qualified organization use of funds. (1) An independent qualified organization shall not use more than twenty percent of the total funds it receives for CO_2 mitigation for any of its activities in the selection, monitoring, or evaluation of a project.

(2) No independent qualified organization shall use any funds received for CO_2 mitigation to lobby federal, state or local agencies, their elected officials, officers, or employees.

(3) If EFSEC finds that an independent qualified organization has violated subsections (1) or (2) of this section, EFSEC may:

(a) Require the independent qualified organization to refund to the applicant or certificate holder the amount EFSEC determines was wrongfully spent; and

(b) Remove the organization from its list of independent qualified organizations.

(4) An organization found by EFSEC to have violated subsections (2) or (3) of this section and removed from EFSEC's list of independent qualified organizations may not apply or request listing on EFSEC's list for a period of four years after removal from the list.

NEW SECTION

WAC 463-80-110 Independent qualified organization oversight. (1) EFSEC may appoint up to three persons to inspect and audit independent qualified organization mitigation plans, performance measures, compliance activities, and financial records of projects funded by certificate holders.

(2) Persons that EFSEC appoints should have expertise in energy issues, carbon dioxide mitigation, or other areas that would benefit EFSEC's understanding of the independent qualified organization's or company's carbon dioxide mitigation activities, operations, and performance.

(3) EFSEC may remove a member of an oversight board for "due cause."

NEW SECTION

WAC 463-80-120 Biennial reports. (1) Each independent qualified organization on the list maintained by EFSEC shall file a biennial report with EFSEC.

(2) The biennial report shall include but not be limited to:

(a) A report on the performance of each carbon dioxide project listing the amount of carbon dioxide reduction the project has achieved;

(b) An estimate of the carbon dioxide mitigation projected for each mitigation project for the next biennium; and

(c) A statement of the cost for each mitigation project including the cost for each metric ton of carbon dioxide mitigated.

NEW SECTION

WAC 463-80-130 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.

Chapter 463-85 WAC

GREENHOUSE GASES EMISSIONS PERFORMANCE STANDARD AND SEQUESTRATION PLANS AND PROGRAMS FOR BASELOAD ELECTRIC GENERATING FACILITIES IMPLEMENTING CHAPTER 80.80 RCW

NEW SECTION

WAC 463-85-005 Work in unison. The requirements of this chapter are based upon chapter 80.80 RCW and are separate and distinct from the requirements found in chapter 463-80 WAC carbon dioxide mitigation that are based upon chapter 80.70 RCW. These two requirements are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard under this chapter. Once that standard is met, the requirements of chapters 80.70 RCW and 463-80 WAC are applied.

NEW SECTION

WAC 463-85-100 Policy and purpose. It is the intent of the legislature, under chapter 80.80 RCW, to establish statutory goals for the statewide reduction in greenhouse gases emissions. The legislature further intends by chapter 80.80 RCW to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions.

NEW SECTION

WAC 463-85-110 Definitions. The following definitions are applicable for this chapter.

"Average available greenhouse gases emissions output" means the level of greenhouse gases emissions as surveyed and determined by the energy policy division of the department of community, trade, and economic development under RCW 80.80.050.

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent. For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale.

"Baseload electric cogeneration facility" means a cogeneration facility that provides baseload electric generation.

"Benchmark" means a planned quantity of the greenhouse gases to be sequestered each calendar year at a sequestration facility as identified in the sequestration plan or sequestration program.

"Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for electrical power production.

"Change in ownership" as related to cogeneration plants means a new ownership interest in the electric generation portion of the cogeneration facility or unit.

"Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets Federal Energy Regulatory Commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 824a-3), as amended. In general, a cogeneration facility is comprised of equipment and processes which through the sequential use of energy is used to produce electric energy and useful thermal energy (such as heat or steam) that is used for industrial, commercial, heating, or cooling purposes.

"Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

"Commence commercial operation" means, in regard to a unit serving an electric generator, to have begun to produce steam or other heated medium, or a combustible gas used to generate electricity for sale or use, including test generation.

"Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

"Department" or "ecology" means the department of ecology.

"Electric generating unit" is the equipment required to convert the thermal energy in a fuel into electricity. In the case of a steam electric generation unit, it is comprised of all equipment from fuel delivery to the plant site through an individual boiler, any installed emission control equipment, and ending with the generation of electricity in a dedicated steam turbine/generator. Where a steam turbine/generator is supplied by two or more boiler units, all boilers contributing to that steam turbine/generator comprise a single electric generating unit. All combustion units/boilers/combined-cycle turbines that produce steam for use in a single steam turbine/generator unit are part of the same electric generating unit.

Examples:

(a) For an integrated gasification combined-cycle combustion turbine plant, it is comprised of all equipment from fuel delivery to the unit through the combustion processes, any installed emission control equipment, and ending with the generation of electricity.

(b) For a combined-cycle natural gas fired combustion turbine it is the point where natural gas is delivered to the plant site and ends with the generation of electricity from the combustion turbine and from steam produced and used on a steam turbine.

(c) Fuel cells fueled by hydrogen produced in a reformer utilizing nonrenewable fuels or by a gasifier producing hydrogen from nonrenewable fuels.

"EFSEC" or "council" means the energy facility site evaluation council.

"Electric utility" means an electrical company or a consumer-owned utility.

"Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

"MWh" = megawatt-hour electricity.

"MWh_{eq}" = megawatt-hour equivalent electrical energy of useful thermal energy output. 1 MWh_{eq} = 3.413 million Btu of thermal energy.

"New ownership interest" means a change in the ownership structure of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility affecting at least:

(a) Five percent of the market value of the power plant or cogeneration facility; or

(b) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multi-unit generation facility.

"Permanent sequestration" means the retention of greenhouse gases in a containment system using a method and in accordance with standards approved by the department that creates a high degree of confidence that substantially ninety-nine percent of the greenhouse gases will remain contained for at least one thousand years.

"Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

"Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council. A power plant may be comprised of one or more individual electrical generating units, each unit of which can be operated or owned separately from the other units.

"Regulated greenhouse gases emissions" is the mass of carbon dioxide emitted plus the mass of nitrous oxide emitted plus the mass of methane emitted. Regulated greenhouse gases emissions include carbon dioxide produced by a sulfur dioxide control system such as a wet limestone scrubber system.

"Renewable fuel" means:

(a) Landfill gas;

(b) Biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;

(c) By-products of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; or

(d) Gas from sewage treatment facilities.

"Renewable resources" means a renewable fuel plus electricity generation facilities fueled by:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy; or

(e) Ocean thermal, wave, or tidal power.

"Sequential use of energy" means:

(a) For a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard; or

(b) For a bottoming-cycle cogeneration facility, the use of reject heat from a thermal application or process, at least some of which is then used for power production.

"Sequestration plan" means a comprehensive plan describing how a plant owner or operator will comply with the emissions performance standard by means of sequestering greenhouse gases, where the sequestration will start after electricity is first produced, but within five years of the start of commercial operation.

"Sequestration program" means a comprehensive plan describing how a baseload electric generation plant's owner or operator will demonstrate compliance with the emissions performance standard at start of commercial operation and continuing unchanged into the future. The program plan is a description of how the facility meets the emissions performance standard based on the characteristics of the baseload electric generation facility or unit or by sequestering greenhouse gases emissions to meet the emissions performance standard with the sequestration starting on or before the start of commercial operation.

"Supplementary firing" means an energy input to:

(a) A cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility;

(b) The electric generating process of a bottoming-cycle cogeneration facility; or

(c) Any baseload electric generation unit to temporarily increase the thermal energy that can be converted to electrical energy.

"Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful electrical power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy.

"Total energy input" means the total energy supplied by all fuels used to produce electricity in a baseload electric generation facility or unit.

"Total energy output" of a topping-cycle cogeneration facility or unit is the sum of the useful electrical power output and useful thermal energy output.

"Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade

includes the installation, replacement or modification of equipment that increases the heat input or fuel usage as specified in existing generation air quality permits in effect as of July 22, 2007. Upgrade does not include:

(a) Routine or necessary maintenance;

(b) Installation of emission control equipment;

(c) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or

(d) Installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

"Useful energy output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.

"Useful thermal energy output" of a cogeneration facility means the thermal energy:

(a) That is made available to and used in an industrial or commercial process (net of any heat contained in condensate return and/or makeup water);

(b) That is used in a heating application (e.g., space heating, domestic hot water heating); or

(c) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller).

"Waste gas" is refinery gas and other fossil fuel derived gases with a heat content of more than 300 Btu/standard cubic foot. Waste gas does not include gaseous renewable energy sources.

NEW SECTION

WAC 463-85-120 Greenhouse gases emissions performance standard applicability. (1) This rule is applicable to all baseload electric generation and cogeneration facilities and units under chapter 80.50 RCW that:

(a) Are new and are permitted for construction and operation after June 30, 2008, that utilize fossil fuel or nonrenewable fuels for all or part of their fuel requirements.

(b) Are existing and that commence operation on or before June 30, 2008, when the facility or unit's owner or operator engages in an action listed in subsection (3) or (4) of this section.

(2) This rule is not applicable to any baseload electric generation facility or unit or cogeneration facility or unit that is designed and intended to utilize a renewable fuel to provide at least ninety percent of its total annual heat input.

(3) A baseload electric generation facility or an individual electric generating unit at a baseload electric generation facility is required to meet the emissions performance standard in effect when:

(a) The new baseload electric generation facility or new electric generating unit at an existing baseload electric generation facility is issued a notice of construction approval or a site certification agreement;

(b) The existing facility or a unit is upgraded; or

(c) The existing facility or a unit is subject to a new long-term financial commitment.

(4) A baseload electric cogeneration facility or unit is required to meet the emissions performance standard in effect when:

(a) The new baseload electric cogeneration facility or new cogeneration unit is issued a notice of construction approval or a site certification agreement;

(b) The existing facility or unit is upgraded; or

(c) The existing facility or unit is subject to a change in ownership.

(5) A new baseload electric generation or cogeneration facility becomes an existing baseload electric generation or cogeneration facility the day it commences commercial operation.

NEW SECTION

WAC 463-85-130 Emissions performance standard. (1) Beginning July 1, 2008, all baseload electric generation and cogeneration facilities and units are not allowed to emit to the atmosphere total greenhouse gases at a rate greater than 1100 pounds per megawatt-hour, annual average.

(2) All baseload electric generation facilities and units in operation on or before June 30, 2008, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new long-term financial commitment.

(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded.

(4) Compliance with the emissions performance standard may be through:

(a) Use of fuels and power plant designs that comply with the emissions performance standard without need for greenhouse gases emission controls; or

(b) Use of greenhouse gases emission controls and greenhouse gases sequestration methods meeting the requirements of WAC 463-85-220 or 173-218-115 as appropriate.

(5) The greenhouse gases emissions performance standard in subsection (1) of this section applies to all baseload electric generation for which electric utilities enter into long-term financial commitments on or after July 1, 2008.

NEW SECTION

WAC 463-85-140 Calculating greenhouse gases emissions and determining compliance for baseload electric generation facilities. (1) The owner or operator of a baseload electric generation facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall demonstrate compliance annually, using the data identified below.

(a) Fuels and fuel feed stocks.

(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric generation facility or unit.

(ii) Fuel usage and heat content is to be monitored, and reported as directed by WAC 463-85-230.

(b) Electrical output in MWh as measured and recorded per WAC 463-85-230.

(c) Regulated greenhouse gases emissions from the baseload electric generation facility or unit as monitored, reported and calculated in WAC 463-85-230.

(d) The owner or operator of a baseload electric generation facility or unit may adjust its greenhouse gases emissions to account for the usage of renewable resources. If the owner or operator of a baseload electric generation facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by EFSEC or ecology as appropriate.

(2) By January 31 of each year, the owner or operator of each baseload electric generation facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the total MWh produced in that year; and

(b) Submit that calculation and all supporting information to EFSEC or ecology as appropriate.

NEW SECTION

WAC 463-85-150 Calculating greenhouse gases emissions and determining compliance for baseload cogeneration facilities. (1) To use this section for determining compliance with the greenhouse gases emissions performance standard, a facility must have certified to FERC under the provisions of 18 CFR 292 Subpart B as a qualifying cogeneration facility.

(2) The owner or operator of a baseload electric cogeneration facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall demonstrate compliance annually, using the data identified below.

(a) Fuels and fuel feed stocks.

(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric cogeneration facility or unit.

(ii) Fuel and fuel feed stocks usage and heat content is to be monitored, and reported as directed by WAC 463-85-230.

(b) Electrical output will be the electrical output measured in MWh as directed by WAC 463-85-230.

(c) All useful thermal energy and useful energy used for nonelectrical generation uses will be converted to units of megawatts energy equivalent (MW_{eq}) using the conversion factor of 3.413 million British thermal units per megawatt hour (MMBtu/MWh).

(d) Regulated greenhouse gases emissions from the baseload electric cogeneration facility or unit as monitored, reported and calculated in WAC 463-85-230.

(e) The owner or operator of a baseload electric cogeneration facility or unit may adjust its greenhouse gases emissions to account for the usage of renewable resources. If the owner or operator of a baseload electric cogeneration facility adjusts its greenhouse gases emissions to account for the use of renewable resources, the greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(3) Bottoming-cycle cogeneration facilities. The formula to determine compliance of a bottoming-cycle cogeneration facility or unit with the emissions performance standard will be jointly developed by ecology and the facility. To the extent possible, the facility specific formula must be based on the one for topping-cycle facilities identifying the amount of energy converted to electricity, thermal losses, and energy from the original fuel(s) used to provide useful thermal energy in the industrial process. The formula should be specific to the installed equipment, other thermal energy uses in the facility, and specific operating conditions of the facility.

(4) Topping-cycle cogeneration facilities. Compliance of a topping-cycle facility or unit with the emissions performance standard will be as follows:

(a) Determine annual electricity produced in MWh.

(b) Determine the annual electrical energy equivalent of the useful thermal energy output in MWh_{eq}.

(c) Determine the annual regulated greenhouse gases emissions produced in pounds.

(5) By January 31 of each year, the owner or operator of each baseload electric cogeneration facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the sum of the MWh and MWh_{eq} produced in that year; and

(b) Submit that calculation and all supporting information to EFSEC or ecology as appropriate.

NEW SECTION

WAC 463-85-200 Requirement for and timing of plan or program plan submittals. (1) A sequestration plan for a source that begins sequestration after the start of commercial operation shall be submitted when:

(a) A site certification application is submitted to EFSEC for a new baseload electric generation facility or baseload electric cogeneration facility or new unit at an existing baseload electric generation or cogeneration facility;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(c) A baseload electric generation facility or unit or baseload cogeneration facility or unit enters a new long-term financial commitment with an electric utility to provide baseload power and the facility or unit does not comply with the emissions performance standard in effect at the time the new long-term financial commitment occurs; or

(d) A qualifying ownership interest change occurs and the facility or unit does not comply with the emissions performance standard in effect at the time the change in ownership occurs.

(2) A sequestration program is required to be submitted when:

(a) A site certification application is submitted to EFSEC for new baseload electric generation facility or unit or baseload electric cogeneration facility or unit;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(c) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit enters a new long-term financial commitment with an electric utility to provide baseload power if the facility or unit does not comply with the emissions performance standard in effect at the time the new long-term financial commitment occurs; or

(d) A qualifying ownership interest change occurs and the facility does not comply with the emissions performance standard in effect at the time the change in ownership occurs.

NEW SECTION

WAC 463-85-210 Requirements for geologic permanent sequestration plans. Specific requirements for permanent geologic sequestration of greenhouse gases can be found in WAC 173-218-115. Requirements for approval of sequestration plans or sequestration programs for other (nongeologic) types of permanent sequestration containment systems are found in WAC 463-85-220.

NEW SECTION

WAC 463-85-220 Requirements for nongeologic permanent sequestration plans. In order to meet the emissions performance standard, all baseload electric generation facilities or individual units that are subject to this rule, and must sequester greenhouse gases to meet the emissions performance standard, will submit sequestration plans or sequestration programs for approval to EFSEC or ecology, as appropriate.

(1) Sequestration plans must include:

(a) Financial requirements. Each owner or operator of a baseload electric generation or cogeneration facility or unit utilizing other sequestration as a method to comply with the emission performance standard in WAC 463-85-130 is required to provide a letter of credit as a condition of plant operation sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan, including construction and operation of necessary equipment, and any other significant costs.

(i) The owner or operator of a proposed sequestration project shall establish a letter of credit to cover all expenses for construction and operation of necessary equipment, and any other significant costs. The cost estimate for the sequestration project shall be revised annually to include any changes in the project and to include cost changes due to inflation.

(ii) Closure and post-closure financial assurances. The owner or operator shall establish a closure and post-closure letter of credit to cover all closure and post-closure expenses. The owner or operator must designate EFSEC as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure account shall cover all costs of closure and post-closure care identified in the closure and post-closure plan. The closure and post-closure cost estimate shall be revised annually to include any changes in the sequestration project and to include cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure account is enforceable regardless of whether the requirement is a specific condition of the permit.

(b) The application for approval of a sequestration plan shall include (but is not limited to) the following:

(i) A current site map showing the boundaries of the permanent sequestration project containment system(s) and all areas where greenhouse gases will be stored.

(ii) A technical evaluation of the proposed project, including but not limited to, the following:

(A) The name of the area in which the sequestration will take place;

(B) A description of the facilities and place of greenhouse gases containment system;

(C) A complete site description of the site, including but not limited to the terrain, the geology, the climate (including rain and snowfall expected), any land use restrictions that exist at the time of the application or will be placed upon the site in the future;

(D) The proposed calculated maximum volume of greenhouse gases to be sequestered and aerial extent of the location where the greenhouse gases will be stored using a method acceptable to and filed with EFSEC or ecology as appropriate; and

(E) Evaluation of the quantity of sequestered greenhouse gases that may escape from the containment system at the proposed project.

(iii) A public safety and emergency response plan for the proposed project. The plan shall detail the safety procedures concerning the sequestration project containment system and residential, commercial, and public land use within one mile, or as necessary to identify potential impacts, of the outside boundary of the project area.

(iv) A greenhouse gases loss detection and monitoring plan for all parts of the sequestration project. The approved greenhouse gases loss detection and monitoring plan shall address identification of potential release to the atmosphere;

(v) A detailed schedule of annual benchmarks for sequestration of greenhouse gases;

(vi) Any other information that the department deems necessary to make its determination;

(vii) A closure and post-closure plan.

(c) In order to monitor the effectiveness of the implementation of the sequestration plan the owner or operator shall submit a detailed monitoring plan that will be able to detect failure of the sequestration method to place the greenhouse gases into a sequestered state. The monitoring plan will be sufficient to detect losses of sequestered greenhouse

gases at a level of no greater than twenty percent of the leakage rate allowed in the definition of permanent sequestration. The monitoring shall continue for the longer of twenty years beyond either the end of placement of the greenhouse gases into sequestration containment system, or the date upon which it is determined that all of the greenhouse gases has achieved a state at which it is now stably sequestered in that environment.

(d) If the sequestration plan fails to sequester greenhouse gases as provided in the plan, the owner or operator of the baseload electric generation or cogeneration facility or unit is no longer in compliance with the emissions performance standard.

(2) **Public notice and comment.** ESFEC must provide public notice and a public comment period before approving or denying any sequestration plan or program plan.

(a) Public notice. Public notice shall be made only after all information required by the permitting authority has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include analyses of the effects on the local, state and global environment in the case of failure of the sequestration plan or program plan. The plan must be available for public inspection in at least one location near the proposed project.

(b) Public comment.

(i) The public comment period must be at least thirty days long or as specified in the public notice.

(ii) The public comment period must extend through the hearing date.

(iii) EFSEC shall make no final decision on any sequestration plan or sequestration program until the public comment period has ended and any comments received during the public comment period have been considered.

(c) Public hearings.

(i) EFSEC will hold a public hearing within the thirty-day public comment period. EFSEC will determine the location, date, and time of the public hearing.

(ii) EFSEC must provide at least thirty days prior notice of a hearing on a sequestration plan or sequestration program.

NEW SECTION

WAC 463-85-230 Emissions and electrical production monitoring, recordkeeping and reporting requirements. (1) Monitoring and recordkeeping requirements. For all baseload electric generation and cogeneration facilities or units subject to WAC 463-85-120, the following parameters shall be monitored and reported as explained below:

(a) Electrical output: Electrical output as measured at the point of connection with the local electrical distribution network or transmission line, as appropriate. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard;

(b) Useful thermal energy output: Determine quantity of energy supplied to nonelectrical production uses through monitoring of both the energy supplied and unused energy returned by the thermal energy user or uses. This can be accomplished through:

(i) Measurement of the supply and return streams of the mass pressure and temperature of the steam or thermal fluid.

(ii) Use of thermodynamic calculations as approved by ecology.

(iii) Measurements will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard; and

(c) Regulated greenhouse gases emissions.

(i) The regulated greenhouse gases emissions are the emissions from the main plant exhaust stack and any bypass stacks or flares. For baseload electric generation and cogeneration facilities or units utilizing CO_2 controls and sequestration to comply with the greenhouse gases emissions performance standard, direct and fugitive CO_2 emissions from the CO_2 separation and compression process are included.

(ii) Carbon dioxide (CO_2).

(A) For baseload electric generation and cogeneration facilities or units subject to WAC 463-85-120, producing 350 MW or more of electricity, CO_2 emissions will be monitored by a continuous emission monitoring system meeting the requirements of 40 CFR Part 75.10, 75.13 and Appendix F. If allowed by the requirements of 40 CFR Part 72, a facility may estimate CO_2 emissions through fuel carbon content monitoring and methods meeting the requirements of 40 CFR Part 75.10, 75.13 and Appendix G.

(B) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 CFR 75, the baseload electric generation facility operator or operator will substitute data according to the process in 40 CFR Part 75.

(C) Continuous emission monitors for CO_2 will be installed at a location meeting the requirements of 40 CFR Part 75, Appendix A. The CO_2 and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 CFR Part 75, Appendix B.

(iii) Nitrous oxide (N_2O). For baseload electric generation or cogeneration facilities or units subject to WAC 463-85-120 producing 350 MW or more of electricity.

(A) For the first year of operation, N_2O emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(B) For succeeding years, N_2O emissions will be estimated through use of generating unit specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing at varying loads and through at least four separate test periods spaced evenly throughout the first year of commercial operation.

(iv) Methane (CH_4). For baseload electric generation or cogeneration facilities or units subject to WAC 173-407-120 producing 350 MW or more of electricity.

(A) For the first year of operation, CH_4 emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of

Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(B) For succeeding years, CH_4 emissions will be estimated through use of plant specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing at varying loads and through at least four separate test periods spaced evenly through the first year of commercial operation.

(d) Fuel usage and heat content information.

(i) Fossil fuel usage will be monitored by continuous fuel volume or weight measurement as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(ii) Renewable energy fuel usage will be monitored by continuous fuel volume or weight measurement as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(iii) Heat content of fossil fuels shall be tested at least once per calendar year. The owner or operator of the baseload electric generation facility or unit shall submit a proposed fuel content monitoring program to ecology for its approval. Upon request and submission of appropriate documentation of fuel heat content variability, ecology may allow a source to:

(A) Test the heat content of the fossil fuel less often than once per year; or

(B) Utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(iv) Renewable energy fuel heat content will be tested monthly or on a different frequency approved by EFSEC. A different frequency will be based on the variability of the heat content of the renewable energy fuel.

(A) If the baseload electric generation or cogeneration facilities or units subject to WAC 463-85-120 using a mixture of renewable and fossil fuels does not adjust its greenhouse gases emissions by the heat input from the renewable energy fuels, the monitoring of the heat content of the renewable energy fuels is not required.

(B) Upon request and with appropriate documentation, EFSEC may allow a source to utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(2) Reporting requirements. The results of the monitoring required by this section shall be reported to EFSEC and ecology annually.

(a) Facilities or units subject to the reporting requirements of 40 CFR Part 75. Annual emissions of CO_2, N_2O and CH_4 will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year. The report may be an Excel™ or CSV format copy of the report submitted to EPA with the emissions for N_2O and CH_4 appended to the report.

(b) For facilities or units not subject to the reporting requirements of 40 CFR Part 75. Annual emissions of CO_2, N_2O and CH_4 and supporting information will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year.

NEW SECTION

WAC 463-85-240 Enforcement of the emissions performance standard on schedule. Any power plant subject to WAC 463-85-120 that does not meet the emissions performance standard on schedule shall be subject to enforcement under chapter 80.50 RCW.

(1) These penalties can include:

(a) Financial penalties shall be assessed after any year of failure to meet a sequestration benchmark established in the sequestration plan or sequestration program. Each pound of greenhouse gases above the emissions performance standard will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of approval to construct the source or to operate the source.

(2) If a new, modified or upgraded baseload electric generation or cogeneration facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program will be required to be submitted no later than one hundred fifty calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program is to be submitted to EFSEC, as appropriate, for approval.

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility operated under an approved sequestration plan or sequestration program shall have the burden of proving to EFSEC in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration shall be a condition to obtaining relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark shall be reported by January 31 of the year following the year during which the event occurred or as part of the routine sequestration monitoring reports. Upon request by EFSEC the owner(s) or operator(s) of the sequestration project source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that the failure to meet a sequestration benchmark could not have been prevented through careful planning and design and if a bypass of equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) Maintenance. Failure to meet a sequestration benchmark due to scheduled maintenance shall be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess

emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations. Enforcement of any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.150.

NEW SECTION

WAC 463-85-400 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.

WSR 08-06-049
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Securities Division)

[Filed February 28, 2008, 1:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-073.

Title of Rule and Other Identifying Information: The securities division is proposing to amend its rules in light of amendments by the Securities and Exchange Commission (SEC) to related rules concerning the filing of notices of sales of securities in private and limited transactions that are exempt from registration. In particular, the securities division is considering amending the rules set forth in WAC 460-44A-500 and 460-44A-502 through 460-44A-506 to permit the filing of the newly adopted Temporary Form D as well as copies of the Form D to be filed electronically with the SEC. In addition, the securities division is proposing amendments to allow for the electronic filing of Form D through a designee of the securities administrator.

Hearing Location(s): State of Washington, Department of Financial Institutions, 150 Israel Road S.W., Room 220, Tumwater, WA 98501, on April 9, 2008, at 1:00 p.m.

Date of Intended Adoption: April 10, 2008.

Submit Written Comments to: Faith L. Anderson, Associate General Counsel, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail fanderson@dfi.wa.gov, fax (360) 704-6480, by April 8, 2008.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, by April 2, 2008, TTY (360) 664-8126 or (360) 902-8774.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The SEC has adopted amendments to Form D and has adopted rules to require the electronic filing of Form D through its Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR") as set forth in Securities Act Release No. 33-8891 (Feb. 6, 2008), *Available at* http://www.sec.gov/rules/final/2008/33-8891.pdf. Because the securities division has adopted the filing of Form D as the method for providing notification of a claim of exemption in connection with the exemptions from securities registration set forth in WAC 460-44A-500 through 460-44A-508, the division is now proposing to amend its rules to permit the filing of both the temporary and final Forms D as recently adopted by the SEC. In addition, in order to further coordinate its rules with related federal rules, the securities division is proposing to:

- Adopt the text of the new federal safe harbor from general solicitation or general advertising necessitated by the availability of Forms D on the SEC web site as set forth in 17 C.F.R. 230.502(c) (effective September 15, 2008);
- Adopt the filing extension set forth in 17 C.F.R. 230.053 (a)(1) (effective September 15, 2008) for Forms D filed in reliance on WAC 460-44A-505 and 460-44A-506 where the filing deadline falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following;
- Adopt the text of the amendments to the SEC rules setting forth the requirements for filing amendments to previously filed Forms D and for making annual filings. See 17 C.F.R. 230.503 (a)(2) and (3) (effective September 15, 2008); and
- Amend its rules to provide for the future electronic filing of Form D through a designee of the administrator once an electronic filing system acceptable to the administrator has been implemented.

The text of WAC 460-44A-500 and 460-44A-502 through 460-44A-506 marked to show the proposed amendments is filed with this notice.

Reasons Supporting Proposal: These rules should be amended as proposed to maintain their uniformity with those of the federal SEC.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320(1), 21.20.320(9), 21.20.320(17).

Statute Being Implemented: Chapter 21.20 RCW.

Rule is necessary because of federal law, 17 C.F.R. Parts 230, 232 and 239.

Name of Proponent: Department of financial institutions, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Faith L. Anderson, 150 Israel Road S.W., Olympia, WA 98501, (360) 725-7825; Implementation: Scott Jarvis, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700; and Enforcement: Michael E. Stevenson, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8824.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency believes

that the amendments will lower the cost of compliance to small business. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

February 28, 2008
Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 00-04-094, filed 2/2/00, effective 3/4/00)

WAC 460-44A-500 Preliminary notes. (1) The rules of WAC 460-44A-501 through 460-44A-508 relate to transactions exempted from the registration requirements of the Federal Securities Act of 1933 that are also exempted or preempted from RCW 21.20.140. WAC 460-44A-504 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 504 or Rule 147. WAC 460-44A-505 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 505. WAC 460-44A-506 establishes certain conditions for offerings exempted under Securities and Exchange Commission Rule 506. Unless expressly provided otherwise, such transactions are not exempt from anti-fraud, civil liability, or other provisions of the federal and state securities laws. Issuers are reminded of their obligation to provide such further material information, if any, as may be necessary to make the information required under these rules, in light of the circumstances under which it is furnished, not misleading.

(2) Attempted compliance with the exemption of WAC 460-44A-504, 460-44A-505, or 460-44A-506 does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(3) These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(4) In any proceeding involving the rules in WAC 460-44A-501 through 460-44A-508, the burden of proving the exemption, an exception from a definition or condition, or preemption, is upon the person claiming it.

(5) For offerings commenced but not completed prior to the amendment of WAC 460-44A-501 through 460-44A-508, issuers may opt to follow the rules in effect at the date of filing notice of the offering.

(6) Securities offered and sold outside the United States in accordance with Securities and Exchange Commission Regulation S need not be registered under chapter 21.20 RCW. Regulation S may be relied upon for such offers and sales even if coincident offers and sales are made in accordance with Regulation D and WAC 460-44A-501 through 460-44A-508 inside the United States. Thus, for example, persons who are offered and sold securities in accordance with Regulation S would not be counted in the calculation of the number of purchasers under Regulation D and WAC 460-44A-501 through 460-44A-508. Similarly proceeds from such sales would not be included in the aggregate offering price. The provisions of this subsection, however, do not apply if the issuer elects to rely solely on Regulation D for offers or sales to persons made outside the United States.

(7) These rules have been amended in recognition of the amendment of Regulation D by the Securities and Exchange Commission (SEC) to authorize the filing of Form D in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) as described in Securities and Exchange Commission Securities Act Release No. 8891. WAC 460-44A-503 (1)(b) authorizes an issuer to file Temporary Form D (17 CFR 239.500T) while that form remains in effect or a copy of the notice of sales on Form D filed electronically with the SEC (17 CFR 239.500) until an electronic filing system acceptable to the administrator of securities of the department of financial institutions is implemented that permits the electronic filing of Form D with the administrator or his or her designee.

AMENDATORY SECTION (Amending WSR 98-11-014, filed 5/12/98, effective 6/12/98)

WAC 460-44A-502 General conditions to be met. The following conditions shall be applicable to offers and sales made under WAC 460-44A-504 or 460-44A-505:

(1) "Integration." All sales that are part of the same offering under these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

Note: The term "offering" is not defined in the securities acts. If the issuer offers or sells securities for which the safe harbor rule in WAC 460-44A-502(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e. are considered "integrated") depends on the particular facts and circumstances. Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States in compliance with Securities and Exchange Commission Regulation S.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under these rules:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

See Securities and Exchange Commission Release No. 33-4552 (November 6, 1962).

(2) Information requirements.

(a) When information must be furnished.

If the issuer sells securities under WAC 460-44A-505 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in WAC 460-44A-502 (2)(b) to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information when it sells securities under WAC 460-44A-504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to WAC 460-44A-502 (2)(a), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal and state securities laws.

(b) Type of information to be furnished.

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) Nonfinancial statement information. If the issuer is eligible to use Regulation A, the same kind of information as would be required in Part II of Form 1-A, 17 CFR Sec. 239.90. If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.

(B) Financial statement information.

(I) Offerings up to $2,000,000. The information required in Item 310 of Regulation S-B, 17 CFR Sec. 228.310, except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(II) Offerings up to $5,000,000. The financial statement information required in Form SB-2, 17 CFR Sec. 239.10. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(C) If the issuer is a foreign private issuer eligible to use Form 20-F, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by (2)(b)(i)(B)(I) or (II) of this subsection, as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information required by Securities and Exchange Commission Regulation D, Rule 502 (b)(2)(ii) as appropriate.

(iii) Exhibits required to be filed with the administrator of securities or the securities and exchange commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K and Form 10-KSB report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under WAC 460-44A-505 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under WAC 460-44A-502 (2)(b)(i) or (ii).

(vi) For business combinations or exchange offers, in addition to information required by Form S-4, 17 CFR Sec. 239.25, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with (b)(i) of this subsection.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (4)(b) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(3) Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

Provided, however, that publication by an issuer of a notice in accordance with 17 CFR Sec. 230.135c or filing with the Securities and Exchange Commission by an issuer of a notice of sales on Form D (17 CFR 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form, shall not be deemed to constitute general solicitation or general advertising for purposes of this section: Provided further, that, if the requirements of 17 CFR Sec. 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

(4) Limitations on resale. Securities acquired in a transaction under WAC 460-44A-501 through 460-44A-505 shall have the status of restricted securities acquired in a nonpublic offering transaction under section 4(2) of the Securities Act of 1933 and RCW 21.20.320(1) and cannot be resold without registration under the Securities Act of Washington or an exemption therefrom. The issuer shall exercise reasonable care to assure that the securities are restricted and that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Securities Act of 1933, which reasonable care may be demonstrated by the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act of 1933, and the Washington administrator of securities has not reviewed or recommended the offering or offering circular and the securities have not been registered under the Securities Act of Washington, chapter 21.20 RCW, and, therefore, cannot be resold unless they are registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW or unless an exemption from registration is available; and

(c) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW and setting forth or referring to the restrictions on transferability and sale of the securities.

(d) A written disclosure or legend will be deemed to comply with the provisions of WAC 460-44A-502 (4)(b) or (c) if it complies with the North American Securities Administrators Association Uniform Disclosure Guidelines on Legends, NASAA Reports CCH Para. 1352 (1989).

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, WAC 460-44A-502 (2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

AMENDATORY SECTION (Amending WSR 98-11-014, filed 5/12/98, effective 6/12/98)

WAC 460-44A-503 Filing of notice and payment of fee. (1) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506 and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D ((~~checking box~~)) marking Rule 506 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering in reliance on Securities and Exchange Commission Rule 505 and WAC 460-44A-505, the issuer shall file the initial notice on Securities and Exchange Commission Form D ((~~checking box~~)) marking Rule 505 (((~~and box ULOE~~))) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of securities in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-505, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following;

(C) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D ((~~checking box~~)) marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

(D) For an offering in reliance on Securities and Exchange Commission Rule 147 and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) ((~~Unless previously filed, the issuer shall include with the initial notice an executed uniform consent to service of process on Form U-2.~~)) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, ((~~"Form D" is defined as the document,~~)) the initial notice on Securities and Exchange Commission Form D shall consist of either the Temporary Form D (17 CFR 239.500T) as adopted by the Securities and Exchange Commission ((~~and~~)) while that form remains in effect ((~~on~~)) from September ((~~1, 1996~~)) 15, 2008 through March 15, 2009, ((~~entitled *Form D; Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption,* including Part E and the Appendix~~)) or the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.

(c) ((~~Section E of the initial notice~~)) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

((~~(2)~~)) (d) By filing for the exemption of WAC 460-44A-504 or 460-44A-505, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504 or 460-44A-505.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

(x) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

AMENDATORY SECTION (Amending WSR 00-23-027, filed 11/7/00, effective 12/8/00)

WAC 460-44A-504 Exemption for limited offers and sales of securities not exceeding $1,000,000 to not more than twenty purchasers. (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.504 and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, 33-6996, 33-7300, ((~~and~~)) 33-7644, and 33-8891, or in compliance with the Securities Act of 1933, Rule 230.147 as made effective in Release No. 33-5450, that satisfy the conditions in subsections (2) and (3) of this section shall be exempt under RCW 21.20.320(9).

(2) General conditions to be met. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503 and 460-44A-508.

(3) Specific conditions to be met.

(a) Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this section, as defined in WAC 460-44A-501(3), shall not exceed $1,000,000, within or without this state, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this section in reliance on any exemption under RCW 21.20.320(9) or sections 3(a) (11) or 3(b) of the Securities Act of 1933 or in violation of RCW 21.20.140 or section 5(a) of the Securities Act of 1933.

(b) No commissions. No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in the state of Washington.

(c) Limitation on number of purchasers. There are no more than or the issuer reasonably believes that there are no

more than twenty purchasers of securities in this state from the issuer in any offering in reliance on this section.

(d) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(e) Disqualifications. No exemption under this section shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262 is disqualified for any of the reasons listed in WAC 460-44A-505 (2)(d) unless inapplicable or waived as set forth in WAC 460-44A-505 (2)(d)(vi) and (vii).

(f) Notice filing. The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(g) Advice about the limitations on resale.

The issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in WAC 460-44A-502 (4)(b).

(4) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.

(5) WAC 460-44A-504 is not the exclusive method by which issuers may make offerings under Securities and Exchange Commission Rules 504 and 147. For example, offers and sales of an issuer in compliance with Securities and Exchange Commission Rule 504 or Rule 147 may also be registered by qualification under chapter 21.20 RCW. An issuer that qualifies may elect to register an offering pursuant to the Small Company Offering Registration (SCOR) program as set out in chapter 460-17A WAC.

(6) Issuers are reminded that nothing in these rules alters their obligation under RCW 21.20.010. RCW 21.20.010(2) renders it unlawful "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading…" In addition, issuers must otherwise comply with the anti-fraud provisions of the federal and state securities laws. No format for disclosure is prescribed. However, issuers may wish to consider the question and answer disclosure format of the SCOR Form of chapter 460-17A WAC in determining the disclosure they make. If the SCOR form is used, the issuer should indicate that the Form is being used for an exempt offering under this section rather than in an offering registered under chapter 21.20 RCW and chapter 460-17A WAC.

AMENDATORY SECTION (Amending WSR 94-03-061, filed 1/14/94, effective 2/14/94)

WAC 460-44A-505 Uniform offering exemption for limited offers and sales of securities not exceeding $5,000,000. (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503; 230.505; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, ((~~and~~)) 33-6996, and 33-8891 that satisfy the conditions in subsection (2) of this section shall be exempt transactions under RCW 21.20.320(17).

(2) Conditions to be met.

(a) General conditions. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 505 (17 CFR Sec. 230.505) of the Federal Securities and Exchange Commission.

(b) Specific conditions.

(i) No commission, fee, or other remuneration shall be paid or given directly or indirectly, to any person for soliciting any prospective purchaser that is not an accredited investor in the state of Washington unless such person is registered in this state as a broker-dealer or salesperson.

(ii) It is a defense to a violation of (b)(i) of this subsection if the issuer sustains the burden of proof to establish that he did not know and in the exercise of reasonable care could not have known that the person who offered or sold the security was not appropriately registered in this state.

(c) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(d) No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.262:

(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Securities Act of Washington, chapter 21.20 RCW,

or any other state's securities law, within five years prior to the filing of the notice required under this exemption.

(ii) Has been convicted within ten years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(iii) Is currently subject to any state administrative enforcement order or judgment entered by the Washington state administrator of securities or any other state's securities administrator within five years prior to the filing of the notice required under this section or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.

(iv) Is subject to an order or judgment of the Washington state administrator of securities or any other state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any filing with this or any state entered within five years prior to the filing of the notice required under this exemption.

(vi) The prohibitions of (d)(i), (ii), (iii), and (v) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under (d) of this subsection may act in a capacity other than that for which the person is licensed or registered.

(vii) Any disqualification caused by (d) of this subsection is automatically waived if the Washington state administrator of securities or the state securities administrator or other agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption of this section be denied.

(viii) It is a defense to a violation of this paragraph (d) if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.

(e) The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(3) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.

(4) The Washington state administrator of securities may, by rule or order, waive the conditions of this section.

(5) The exemption authorized by this section shall be known and may be cited as the "Washington uniform limited offering exemption."

AMENDATORY SECTION (Amending WSR 98-11-014, filed 5/12/98, effective 6/12/98)

WAC 460-44A-506 Conditions pertaining to the offer and sale of securities pursuant to Rule 506 of the Securities Act of 1933. (1) Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503; 230.506; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, ((~~and~~)) 33-6996, and 33-8891 shall satisfy the conditions in subsections (2) and (3) of this section.

(2) To qualify for preemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 506 (17 CFR Sec. 230.506) of the Federal Securities and Exchange Commission.

(3) Offers or sales which are exempted under this section may not be combined in the same offering with offers or sales exempted under any other rule or section of chapter 21.20 RCW; however, nothing in this limitation shall act as an election. Should for any reason an offering fail to comply with all of the conditions for this section, the issuer may claim the availability of any other applicable exemption.

WSR 08-06-051
PROPOSED RULES
COUNTY ROAD ADMINISTRATION BOARD

[Filed February 28, 2008, 2:07 p.m.]

Supplemental Notice to WSR 07-11-118.

Preproposal statement of inquiry was filed as WSR 07-22-061.

Title of Rule and Other Identifying Information: WAC 136-400-010, 136-400-020, 136-400-030, 136-400-040, 136-400-050, 136-400-060, 136-400-065, 136-400-070, 136-400-080, 136-400-090, 136-400-100, 136-400-110 and 136-400-120, ferry capital improvement projects.

Hearing Location(s): County Road Administration Board, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on April 17, 2008, at 2:00 p.m.

Date of Intended Adoption: April 17, 2008.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, e-mail karen@crab.wa.gov, fax (360) 586-0386 by April 15, 2008.

Assistance for Persons with Disabilities: Contact Karen Pendleton by April 11, 2008, TTY (800) 833-6382 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To better define and establish new rules for the county ferry capital improvement program.

Statutory Authority for Adoption: Chapter 36.79 RCW.

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

Name of Proponent: [County road administration board], governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Monsen, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989.

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.

February 28, 2008
Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-010 Purpose and authority. RCW 47.56.725(4) provides that the county road administration board may evaluate requests for county ferry capital improvement funds by Pierce, Skagit, Wahkiakum, and Whatcom counties, and, if approved by the board, submit said requests to the legislature for funding. This chapter describes the manner in which the county road administration board will implement the provisions of the act.

AMENDATORY SECTION (Amending Order 85, filed 10/23/91, effective 11/23/91)

WAC 136-400-020 County and project eligibility. (1) Counties eligible to apply for county ferry capital improvement funds are Pierce, Skagit, Wahkiakum, and Whatcom.

(2) For the project to be eligible it must be included in both the county's six-year transportation program and its ferry system fourteen-year long range capital improvement plan as described in WAC 136-400-040.

(3) Any county holding an approved and executed county ferry capital improvement program contract is ineligible to submit a project funding application for additional ferry capital improvement funds until the existing contract is fully performed or has been mutually terminated.

AMENDATORY SECTION (Amending Order 85, filed 10/23/91, effective 11/23/91)

WAC 136-400-030 Definition of ferry capital improvement projects. County ferry capital improvement projects shall include the following:

(1) Purchase of new vessels;

(2) Major vessel refurbishment (e.g., engines, structural steel, controls) that substantially extends the life of the vessel;

(3) Facility refurbishment/replacement (e.g., complete replacement, major rebuilding or redecking of a dock) that substantially extends the life of the facility;

(4) Installation of items that substantially improve ferry facilities or operations; and/or

(5) Construction of infrastructure that provides new or additional access or increases the capacity of terminal facilities((~~; and/or~~

~~(6) Emergency repairs to correct damage to vessels or facilities caused by accidents or natural phenomena~~)).

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-040 Six-year transportation program and ferry system fourteen-year plan submittal. (1) Each county's six-year transportation program and ferry system fourteen-year long range ((~~ferry~~)) capital improvement plan shall be prepared and adopted in accordance with RCW 36.81.121 and 36.54.015, respectively, and one copy shall be forwarded to the county road administration board no later than December 31((~~st~~)) of each year.

(2) Any proposed county ferry capital improvement project must be included in both the county's six-year transportation program and ferry system fourteen-year ((~~ferry~~)) capital improvement plan ((~~submitted in each odd-numbered year shall include all projects for which the county may request ferry capital improvement funds during the biennium beginning on July 1st of that year. Project cost estimates shall be considered preliminary until a project application is submitted.~~)) and must remain on both during all of the phases of the project including:

(a) At the time a county requests a call for projects;

(b) At the time the county submits a project funding application; and

(c) Until the project is completed or the project is otherwise terminated.

(3) The county ferry capital improvement project cost estimates that are included in the county's six-year transportation programs and ferry system fourteen-year plans shall be considered preliminary and are not binding on actual county ferry capital improvement project applications.

NEW SECTION

WAC 136-400-045 Call for projects. Beginning at the 2009 regular spring county road administration board meeting, and continuing once every four years thereafter, one or more of the WAC 136-400-010 named counties are invited to attend said meeting and request the county road administration board issue a call for projects. Based on the information

provided by the counties and no later than the regular summer meeting the same year, the county road administration board, and at their sole discretion, may issue a call for projects and may include in the call additional or clarifying terms consistent with all other rules governing the county ferry capital improvement program.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-050 Project application. Upon a call for projects by the county road administration board, each application by a county for county ferry capital improvement funds shall be made no later than ((~~January 1st of even-numbered years for the biennium beginning on July 1st of the next odd-numbered year. The information submitted to the county road administration board shall include the application form and sufficient engineering drawings to accurately describe the project~~)) December 31 of the same year.

Project applications shall be submitted on application forms supplied by the county road administration board and shall include the following information:

(1) Project description and scope;

(2) Engineering drawings accurately describing the complete project;

(3) Engineering analysis and cost estimate;

(((~~3~~))) (4) Evidence ((~~of application for outside~~)) the applicant first sought funding through the public works trust fund or any other available revenue source; and

(((~~(4) Plan for utilization of outside funding that has been, will be, or may be awarded; and~~)))

(5) Comprehensive project financial plan including match funding amounts and sources as required by WAC 136-400-065 and amortization and cash flow schedules.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-060 Technical review committee. (1) A technical review committee shall be created to review project applications for county ferry capital improvement funds and present recommendations to the county road administration board for approval, denial or further action on the applications.

(2) The committee shall be composed of the following members or their designees:

(a) Executive director of the county road administration board((~~, WSDOT assistant secretary for transaid, WSDOT~~));

(b) Washington state department of transportation highways and local programs director;

(c) A Washington state department of transportation marine ((~~division~~)) engineer((~~, and~~));

(d) One public works department representative((~~s~~)) from each of the ((~~four participating~~)) WAC 136-400-010 named counties((~~.~~

~~The county representatives~~)), each of whom shall serve as an ex officio, nonvoting member((~~s~~)) of the technical review committee.

(3) The technical review committee shall ((~~recommend approval of projects that have been submitted in a timely manner and that~~)) ensure that the project applications:

(((~~(1)~~))) (a) Meet the applicable statutes and the standards of this chapter; ((~~and~~

~~(2)~~))) (b) Adhere to commonly held engineering practices and cost effectiveness; and

(c) Are complete and meet the project application requirements listed in WAC 136-400-050, including evidence the applicant first sought funding through the public works trust fund, or other available revenue source.

(4) The technical review committee shall ((~~recommend an appropriate local match on a project-by-project basis based upon the availability of local matching funds~~)) also develop a written report on each project application. The written report will include the following elements:

(a) A project summary;

(b) A committee evaluation; and

(c) A committee recommendation based upon WAC 136-400-065 guidance and including any additional or clarifying terms established by the county road administration board's call for projects.

(5) The technical review committee's written report((~~s~~)) on each project ((~~recommended for approval~~)) application shall be submitted to the county road administration board no later than thirty days prior to ((~~its~~)) the next regularly scheduled spring meeting after the project application deadline.

(6) Technical review committee meetings shall be convened on an "as needed" basis by the executive director of the county road administration board, who shall serve as chairperson.

NEW SECTION

WAC 136-400-065 Project financing. (1) The maximum contribution by the county ferry capital improvement program is ten million dollars for any one project and five hundred thousand dollars total annual reimbursement to one county.

(2) Depending on whether a county applicant has formed a ferry district pursuant to RCW 36.54.110 and generated revenue to finance the project, project cost sharing for each applicant shall be as follows:

(a) If ferry district revenues finance greater than thirty percent of the proposed project costs, the ferry capital improvement program may contribute up to the remaining project cost, subject to the maximum described in subsection (1) of this section;

(b) If ferry district revenues finance greater than five percent but less than or equal to thirty percent of the proposed project costs, the ferry capital improvement program may contribute up to fifty percent of the project cost, subject to the maximum described in subsection (1) of this section;

(c) If ferry district revenues finance less than or equal to five percent of the project costs, or the county has not formed a ferry district, the ferry capital improvement program may contribute up to thirty percent of the project cost, subject to the maximum described in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-070 County road administration board action. (1) The county road administration board shall

review project applications, along with the ((~~recommendations~~)) reports of the technical review committee, at its next regular spring meeting ((~~in even-numbered years~~)) following the project application deadline.

(2) At that time ((~~it shall approve those projects which it finds:~~

~~(1) Meet the applicable statutes and the standards of this chapter; and~~

~~(2) Adhere to commonly held engineering practices and cost effectiveness, specifying the amount of approved funding which it recommends for such projects.~~

~~The board shall determine a local matching percentage on a case-by-case basis, considering the availability of local matching funds and the recommendation of the technical review committee. Emergent projects may be considered by the county road administration board at any time upon recommendation by the executive director. The board shall require evidence that each applicant has first sought funding through the public works trust fund, and other available revenue sources~~)), the county road administration board may approve, deny or return the application to the technical review committee for further review.

(3) If the county road administration board returns the application to the technical review committee, the board may develop supplemental questions and criteria for the technical review committee to address.

(4) Final action by the county road administration board on project applications must occur no later than at the next regularly scheduled summer meeting following project application deadline.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-080 Funding by the legislature. County ferry capital improvement project requests approved by the county road administration board shall be submitted to the legislature for funding out of amounts available under RCW ((~~46.68.100(3)~~)) 46.68.090 (2)(h) as part of the biennial or supplemental budget request of the county road administration board.

The county road administration board shall, within ten days of the signing of the transportation budget, notify each county having an approved project of such approval and of the amount of county ferry capital improvement funding allocated to each approved project. The county road administration board shall offer each county a contract for each approved project setting forth the terms and conditions under which funds will be provided.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-090 Limitation on use of county ferry capital improvement funds. County ferry capital improvement funds may be used for project design, construction, and right of way costs incurred after legislative approval. ((~~Emergency project costs may be eligible for retroactive payment upon approval by the county road administration board.~~))

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-100 Terms of ((~~CRAB~~)) county road administration board/county contract. The ((~~CRAB~~)) county road administration board/county contract shall include, but not be limited to, the following provisions:

(1) Such ((~~contract shall be valid and binding (and the county shall be entitled to receive ferry capital improvement funds) only if such~~)) contract ((~~is~~)) must be signed and returned to the county road administration board within forty-five days of its mailing by the county road administration board.

(2) The project will be constructed in accordance with:

(a) The information furnished to the county road administration board; and

(b) The plans and specifications prepared under the supervision of the county engineer.

(3) The county will notify the county road administration board when a contract has been awarded ((~~and~~)), when construction has started, and when the project has been completed.

(4) The county road administration board will reimburse counties based on ((~~the basis of~~)) progress vouchers received and approved on individual projects, subject to the availability of county ferry capital improvement funds appropriated by the legislature.

(5) The county will reimburse the county road administration board in the event that a project post audit reveals ineligible expenditure of county ferry capital improvement funds. Said funds will be returned to the ((~~county-wide~~)) county fuel tax account for distribution in accordance with RCW 46.68.120.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-110 Voucher approval and payment. The county road administration board shall prepare and distribute to all counties with approved county ferry capital improvement projects, voucher forms for use in requesting ((~~progress and final~~)) annual payments for each approved county ferry capital improvement project.

((~~The county constructing each ferry capital improvement project may submit vouchers monthly as the work progresses and shall submit a final voucher after completion of each project for payment of the approved and funded share of the project cost.~~))

The county road administration board shall approve such vouchers for payment to the county submitting the voucher. County ferry capital improvement fund warrants shall be transmitted directly to each county submitting a voucher. In the event that project funds remain unspent after the final project payment has been made, the unspent balance will be returned to the county-wide fuel tax account for distribution in accordance with RCW 46.68.120.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-120 Audit requirements. Audits of county ferry capital improvement projects may be conducted by the state auditor's office and will normally be conducted in conjunction with the county audits required by RCW 43.09.260 and 36.80.080. Special audits of specific county ferry capital improvement projects not required by these statutes may be accomplished at the request, and at the expense, of the county road administration board.

An audit of any county ferry capital improvement project shall include, but not be limited to, a review of the county's compliance with the provisions of the statute and these rules. The audit shall also include a review of the financial accounting and reporting of those funds associated with and received for the county ferry capital improvement project.

In the event that an exception is noted in the audit report, the county road administration board shall evaluate the noted discrepancy. Discrepancies may be cause for the county road administration board to order the payback of improperly expended county ferry capital improvement funds as provided in the county road administration board/county contract. Any such funds returned by a county to the county road administration board shall be returned to the ((~~county-wide~~)) county fuel tax account for distribution in accordance with RCW 46.68.120.

WSR 08-06-070
PROPOSED RULES
HORSE RACING COMMISSION
[Filed March 4, 2008, 6:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-02-040.

Title of Rule and Other Identifying Information: WAC 260-70-640 Permitted medication.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on April 10, 2008, at 9:30 a.m.

Date of Intended Adoption: April 10, 2008.

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 April 7, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by April 7, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to increase the permitted concentration of Flunixin from 20 micrograms per milliliter to 50 micrograms per milliliter in serum or plasma.

Reasons Supporting Proposal: Will raise the permitted concentrations to a level consistent with other racing jurisdictions (e.g., California) thus create consistency from jurisdiction to jurisdiction.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

March 3, 2008
R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-036, filed 3/12/07, effective 4/12/07)

WAC 260-70-640 Permitted medication. Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Failure to administer permitted medication to a horse on a program of permitted medication is a violation of these rules.

(1) The use of one of three approved nonsteroidal anti-inflammatory drugs (NSAIDs) is permitted under the following conditions:

(a) The drug may not exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least twenty-four hours before the post time for the race in which the horse is entered:

(i) Phenylbutazone - 5 micrograms per milliliter;

(ii) Flunixin - ((~~20~~)) 50 nanograms per milliliter;

(iii) Ketoprofen - 10 nanograms per milliliter.

(b) No NSAID, including the approved NSAIDs listed in this rule, may be administered within the twenty-four hours before post time for the race in which the horse is entered.

(c) The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 1 microgram per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs must be discontinued at least forty-eight hours before the post time for the race in which the horse is entered.

(2) Any horse to which a NSAID has been administered is subject to having a blood and/or urine sample(s) taken at the direction of an official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

WSR 08-06-071
WITHDRAWAL OF PROPOSED RULES
PUBLIC EMPLOYMENT RELATIONS COMMISSION
(By the Code Reviser's Office)
[Filed March 4, 2008, 8:07 a.m.]

WAC 391-08-650, 391-08-905, 391-08-915, 391-08-925, 391-08-935, 391-08-940, 391-08-950, 391-08-960, 391-08-970, 391-25-071, 391-25-436, 391-35-010, 391-55-071 and 391-55-200, proposed by the public employment relations commission in WSR 07-17-070 appearing in issue 07-17 of the State Register, which was distributed on September 5, 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 08-06-075
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed March 4, 2008, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-003.

Title of Rule and Other Identifying Information: The department is amending WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN) and 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www1.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on April 8, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 9, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 8, 2008.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These two WAC sections are being amended to comply with federal Medicaid standard changes that became effective January 1, 2007. Additionally, HRSA is removing the dollar amounts from the payment standards to eliminate the necessity of amending the WAC every year. The current dollar amounts will be listed in the department's eligibility A-Z manual and the internet link to the manual is included in the WAC.

Reasons Supporting Proposal: To be in compliance with federal standards.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, and 74.09.500.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Mary Beth Ingram, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1327.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organization[s].

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 354.05.328 [34.05.328] (5)(b)(vii) relating only to client medical or financial eligibility.

February 27, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN). (1) ((~~Beginning January 1, 2006, the medically needy income level (MNIL) is:~~

~~(a) One person~~	~~$603~~
~~(b) Two persons~~	~~$603~~
~~(c) Three persons~~	~~$667~~
~~(d) Four persons~~	~~$742~~
~~(e) Five persons~~	~~$858~~
~~(f) Six persons~~	~~$975~~
~~(g) Seven persons~~	~~$1,125~~
~~(h) Eight persons~~	~~$1,242~~
~~(i) Nine persons~~	~~$1,358~~
~~(j) Ten persons and more~~	~~$1,483~~))

Changes to the medically needy income level (MNIL) occur on January 1st of each calendar year. Current income standards can be found at http://www1.dshs.wa.gov/pdf/esa/manual/Standards_C_MedAsst_Chart.pdf.

(2) ((~~The MNIL~~)) Medically needy standards for ((~~a~~)) persons who ((~~meets~~)) meet institutional status requirements ((~~is~~)) are in WAC ((~~388-513-1305(3)~~)) 388-513-1395. The standard for a client who lives in an alternate living facility can be found in WAC 388-513-1305.

(3) Find the resource standards for institutional programs in WAC 388-513-1350. The institutional standard chart can

be found at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(((~~(3)~~))) (4) Countable resource standards for the MN program ((~~is~~)) are:

(a) One person	$2,000
(b) ((~~Two persons~~)) A legally married couple	$3,000
(c) For each additional family member add	$50

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards. (1) The SSI payment standards, also known as the federal benefit rate (FBR), ((~~beginning~~)) change each January 1.((~~, 2006 are:~~

~~(a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)~~

~~Individual~~	~~$603~~
~~Individual with an ineligible spouse~~	~~$603~~
~~Couple~~	~~$904~~

~~(b) Shared living (in the home of another)~~

~~Individual~~	~~$402~~
~~Individual with an ineligible spouse~~	~~$402~~
~~Couple~~	~~$603~~

~~(c) Living in an institution~~

~~Individual~~	~~$30~~))

(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) See WAC 388-513-1305 for standards of clients living in an alternate living facility.

(4) The SSI-related CNIL standards are the same as the SSI payment standards for single persons and couples. Those paying out shelter costs have a higher standard than people who have supplied shelter.((~~:~~

(((~~(a) Single person~~	~~$603~~
~~(b) Married couple - both eligible~~	~~904~~
~~(c) Supplied shelter - single person~~	~~402~~
~~(d) Supplied shelter couple - both eligible~~	~~603~~))

(((~~(4)~~))) (5) The countable resource standards for SSI and SSI-related CN medical programs are:

(a) One person	$2,000
(b) A legally married couple	$3,000

WSR 08-06-078
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed March 4, 2008, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-05-066.

Title of Rule and Other Identifying Information: WAC 468-300-700 (1)(s) Preferential loading. The proposed WAC rule allows a reservation system on the Port Townsend - Keystone ferry route due to temporarily reduced capacity.

Hearing Location(s): Washington State Ferries, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, on Tuesday, April 8, 2008, at 1:00 p.m.

Date of Intended Adoption: April 8, 2008.

Submit Written Comments to: Raymond G. Deardorf, WSF Planning Director, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, e-mail Deardorf@wsdot.wa.gov, fax (206) 515-3499, by April 8, 2008.

Assistance for Persons with Disabilities: Contact Washington state ferries by April 8, 2008, TTY dial 511 (WA) or (206) 515-3400.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed WAC rule allows a reservation system on the Port Townsend - Keystone ferry route due to temporarily reduced capacity.

No major effects are anticipated.

Reasons Supporting Proposal: The rule is a mitigating measure as a result of reduced vessel capacity on the Port Townsend - Keystone ferry route.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.140.

Statute Being Implemented: RCW 47.56.030, 47.60.-140.

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

Name of Proponent: Washington state department of transportation, ferries division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Raymond G. Deardorf, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3491.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered this rule and determined that it does not affect more than 10% of one industry or 20% of all industry.

A cost-benefit analysis is not required under RCW 34.05.328. The probable benefits to the traveling public of a reservation system on the Port Townsend - Keystone ferry route are greater than the probable cost of administration, particularly since Washington state ferries already administers a reservation system for certain other ferry routes. A reservation system on this ferry route will benefit the traveling public by advance scheduling of ferry travel on a route with temporarily reduced capacity.

March 4, 2008
Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 03-08-072, filed 4/1/03, effective 5/2/03)

WAC 468-300-700 Preferential loading. In order to protect public health, safety and commerce; to encourage more efficient use of the ferry system; and to reduce dependency on single occupant private automobiles:

(1) Preferential loading privileges on vessels operated by Washington state ferries (WSF), exempting vehicles from the standard first-come first-served rule, shall be granted in the order set forth below:

(a) An emergency medical vehicle, medical unit, aid unit, or ambulance dispatched to and returning from an emergency or nonemergency call while in service. Up to one additional vehicle may accompany a qualifying emergency medical vehicle or authorized med-evac when going to, but not when returning from, an emergency.

(b) A public police or fire vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call. However, these vehicles will receive priority loading when they are returning from either an emergency or nonemergency call to Vashon Island or the San Juan Islands.

(c) A public utility or public utility support vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call.

(d) Where a vehicle occupant states that an extended wait would cause detrimental health risks to a vehicle occupant, that vehicle will be allowed preferential loading whenever the afflicted occupant has provided a medical form certified by a physician that such preferential loading is required.

However, when that vehicle occupant has not submitted the proper medical form, preferential loading will be permissible based upon appropriate terminal staff determination.

(e) Preferential loading may be granted for vehicles carrying passengers needing to attend to a family member subject to risk of physical threat/harm or medical emergencies which requires the customer's timely access to the vessel's destination.

(f) A visibly marked school vehicle owned, operated, or sponsored by a school** when operating on regular schedules preapproved by the WSF or when advance notice is provided to each affected WSF terminal (**as defined in RCW 28A.150.010 (K-12), RCW 28A.150.020 (public schools), RCW 28A.195.010 (K-12 private schools), and RCW 28B.195.070 (secondary schools)).

(g) A visibly marked, preapproved or regularly scheduled publicly or privately owned public transportation vehicle** operating under a Washington state utilities and transportation commission certificate for public convenience and necessity (**as defined in RCW 81.68.010 (regular route/fixed termini), RCW 81.70.010 (charter and excursion)).

(h) A visibly marked nonprofit or publicly supported transportation vehicle** having provided each affected WSF terminal with advance notice and displaying a WSF permit making it readily identifiable as a public transportation vehicle (**as defined in chapter 81.66 RCW (private, nonprofit special needs)).

(i) A visibly marked and randomly scheduled private for profit transportation vehicle** operating under a Washington state utilities and transportation commission certificate for public convenience and necessity traveling on routes where WSF is the only major access for land-based traffic only when that private for profit transportation vehicle has provided each affected WSF terminal with a preapproved schedule and/or advance notice of its proposed sailing(s), (**as defined in chapter 81.68 RCW (regular route/fixed termini), chapter 81.70 RCW (charter and excursion), chapter 81.66 RCW (private nonprofit special needs), chapter 46.72 RCW (private, for hire)).

(j) A ride-sharing vehicle for persons with special transportation needs** transporting a minimum of three elderly and/or disabled riders or two elderly and/or disabled riders and an attendant displaying WSF ride-share registration program permit only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (**as defined in RCW 46.74.010 (ride sharing for persons with special transportation needs)).

(k) A visibly marked, public ride-share vehicle** owned by a transit agency and leased out to members of the public through the transit agency's registration program only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (**as defined in RCW 46.74.010 (commuter ride sharing)).

(l) A privately owned commuter ride-share vehicle** that visibly displays WSF approved identification markings readily identifiable by the public. There must be a minimum of three occupants in any such vehicle to receive preferential loading. Any such ride-share vehicle must be registered and in good standing in the WSF ride-share registration program (**as defined by RCW 46.74.010 (commuter ride sharing)).

(m) Specific to the Anacortes-San Juan Islands routes, a vehicle carrying livestock and traveling on routes where Washington state ferries is the only major access for land-based traffic, where such livestock (i) is raised for commercial purposes and is recognized by the department of agriculture, county agriculture soil and conservation service, as raised on a farm; or (ii) is traveling to participate in a 4H event sanctioned by a county extension agent.

(n) Specific to the Seattle-Bainbridge and Edmonds-Kingston ferry routes, where a vehicle occupant claims that an extended wait would cause detrimental health risks to their livestock en route to veterinarian services not available in the local community, that vehicle will be allowed preferential loading whenever the vehicle occupant has provided a medical form certified by a veterinarian that such preferential loading is required.

(o) Specific to the Fauntleroy-Vashon, Seattle-Bainbridge, Mukilteo-Clinton, and Anacortes-San Juan ferry routes, any mail delivery vehicle with proper documentation from the U.S. Postal Service showing that such vehicle is in the actual process of delivering mail.

(p) Specific to the Anacortes-San Juan Islands routes, a vehicle 20 ft. and over in length and 10,000 lbs. or greater in weight, provided that the vehicle is carrying or returning from carrying article(s) of commerce for purchase or sale in commercial activity.

(q) Vehicles 20 feet and over in length engaged in the conduct of commerce and/or transportation of passengers where and when WSF management has determined that the sale of vehicle space may promote higher utilization of available route capacity and an increase in revenues.

(r) An oversized or overweight vehicle (20 ft. and over in length, and/or over 8 1/2 ft. in width, and 80,000 lbs. or greater in weight) requiring transport at special times due to tidal conditions, vessel assignments, or availability of space.

(s) Vehicles under 20 feet in length and passengers traveling with reservations on routes serving Port Townsend.

(t) A scheduled bicycle group as determined by WSF only when a representative of that group has provided WSF with advance notice of the proposed travel schedule.

(2) Preferential loading privileges shall be subject to the following conditions:

(a) Privileges shall be granted only where physical facilities are deemed by WSF management to be adequate to allow granting the privilege and achieving an efficient operation.

(b) Subject to specified exceptions, documentation outlining qualifications for preferential loading and details of travel will be required in advance from all agencies, companies, or individuals requesting such privileges.

(c) Privileges may be limited to specified time periods as determined by WSF management.

(d) Privileges may require a minimum frequency of travel, as determined by WSF management.

(e) Privileges may be limited to a specific number of vehicle deck spaces and passenger capacity for any one sailing.

(f) Privileges may require arriving at the ferry terminal at a specified time prior to the scheduled sailing.

(3) To obtain more information about the documentation required and conditions imposed under subsection (2) of this section, call WSF's general information number, (206) 464-6400, or a terminal on a route for which the preferential boarding right is requested.

WSR 08-06-083
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed March 5, 2008, 7:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-24-061.

Title of Rule and Other Identifying Information: WAC 232-28-353 2007 Deer special permits and 232-28-354 2007 Elk special permits.

Hearing Location(s): Red Lion Inn, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on April 11-12, 2008, at 8:00 a.m.

Date of Intended Adoption: April 11-12, 2008.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by Friday, March 21, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by April 9, 2008, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-28-353: Deer special permit hunting seasons are assessed and adjusted annually in response to deer population changes and agricultural damage complaints. Changes made to this WAC will: Adjust special hunting season deer permits for 2008 in response to deer population changes and damage complaints; provide for recreational harvest of deer; help to reduce agricultural damage and provide for population control of deer where needed.

WAC 232-28-354: Elk special permit hunting seasons are assessed and adjusted annually in response to elk population changes and agricultural damage complaints. Changes made to this WAC will: Adjust special hunting season elk permits for 2008 in response to elk population changes and damage complaints; provide for recreational harvest of elk; help to reduce agricultural damage; and provide for population control of elk where needed.

Reasons Supporting Proposal: WAC 232-28-353, provides recreational deer hunting opportunity and protects deer from overharvest. Addresses deer damage problems.

WAC 232-28-354, provides recreational elk hunting opportunity and protects elk from overharvest. Addresses agricultural damage caused by elk.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

Statute Being Implemented: RCW 77.12.047, 77.12.-020, 77.12.570, 77.12.210.

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

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

March 5, 2008
Loreva M. Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Orders 07-62 and 07-62A, filed 5/3/07 and 8/10/07, effective 6/3/07 and 9/10/07)

WAC 232-28-353 ((~~2007~~)) 2008 Deer special permits.

SPECIAL DEER PERMIT HUNTING SEASONS
(Open to Permit Holders Only)

Hunters must purchase a deer hunting license prior to purchase of a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice; however, Multiple Season Permit holders may apply for archery, muzzleloader, or modern firearm permit hunts. Hunters drawn for a special permit hunt must comply with weapon restrictions and dates listed for the hunt.

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Modern Firearm Deer Permit Hunts (Only modern firearm deer tag holders may apply.)				
Sherman	Oct. ((~~13-28~~)) 11-26	Whitetail, antlerless	GMU 101	((~~75~~)) 50
Kelly Hill	Oct. ((~~13-26~~)) 11-24 & Nov. ((~~5~~)) 3-19	Whitetail, antlerless	GMU 105	((~~150~~)) 50
Douglas	Oct. ((~~13-26~~)) 11-24 & Nov. ((~~5~~)) 3-19	Whitetail, antlerless	GMU 108	((~~300~~)) 100
((~~Aladdin A~~	~~Oct. 13-26 & Nov. 5-19~~	~~Whitetail, antlerless~~	~~GMU 111~~	~~75~~))
Aladdin ((~~B~~))	Nov. ((~~21-25~~)) 26-30	Whitetail, any buck	GMU 111	50
((~~Selkirk~~	~~Oct. 13-26 & Nov. 5-19~~	~~Whitetail, antlerless~~	~~GMU 113~~	~~50~~))
49 Degrees North	Oct. ((~~13-26~~)) 11-24 & Nov. ((~~5~~)) 3-19	Whitetail, antlerless	GMU 117	((~~350~~)) 175
Huckleberry A	Oct. ((~~13-26~~)) 11-24 & Nov. ((~~5~~)) 3-19	Whitetail, antlerless	GMU 121	((~~600~~)) 300
Mt. Spokane A	Oct. ((~~13-26~~)) 11-24 & Nov. ((~~5~~)) 3-19	Whitetail, antlerless	GMU 124	((~~400~~)) 300
Mica Peak A	Oct. ((~~13-21~~)) 11-19	Whitetail, antlerless	GMU 127	150
Cheney A	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 130	200
Roosevelt	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 133	200
Harrington	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 136	125
Steptoe	Oct. ((~~13-21~~)) 11-19 & Nov. ((~~5~~)) 3-19	Antlerless	GMU 139	300
Almota A	Oct. ((~~13-21~~)) 11-19 & Nov. ((~~5~~)) 3-19	Antlerless	GMU 142	100
Palouse	Nov. ((~~5~~)) 3-19	Whitetail, 3 pt. min.	GMUs 127-142	625
Mayview A	Nov. 1-12	Antlerless	GMU 145	50
Prescott A	Nov. 1-12	Antlerless	GMU 149	50
Blue Creek	Nov. ((~~5-19~~)) 3-16	Whitetail, antlerless	GMU 154	((~~100~~)) 80
Dayton A	Nov. ((~~5-19~~)) 3-16	Whitetail, antlerless	GMU 162	((~~150~~)) 80
Dayton B	Nov. ((~~5-19~~)) 3-16	Antlerless	Deer Area 1010	75
Marengo	Nov. 1-12	Whitetail, antlerless	GMU 163	((~~75~~)) 50
Peola	Nov. 1-12	Whitetail, antlerless	GMU 178	50
Blue Mtns. Foothills A	Nov. ((~~5~~)) 3-19	Whitetail, 3 pt. min. or antlerless	GMUs 149, 154, 162-166	100
Blue Mtns. Foothills B	Nov. ((~~5~~)) 3-19	Whitetail, 3 pt. min. or antlerless	GMUs 145, 172-181	50
East Okanogan A	Nov. 1-18	Any whitetail	GMU 204	50
East Okanogan B	Oct. ((~~13-28~~)) 11-26	Whitetail, antlerless	GMU 204	100
West Okanogan A	Nov. 1-18	Any whitetail	GMUs 218-242	100
West Okanogan B	Oct. ((~~13-21~~)) 11-19	Whitetail, antlerless	GMUs 218-242	100
Sinlahekin A	Nov. 1-18	Any whitetail	GMU 215	50
Sinlahekin B	Oct. ((~~13-21~~)) 11-19	Whitetail, antlerless	GMU 215	((~~75~~)) 50
Chewuch A	Nov. 1-18	Any deer	GMU 218	((~~20~~)) 15
Pearrygin A	Nov. 1-18	Any deer	GMU 224	((~~20~~)) 15
Gardner A	Nov. 1-18	Any deer	GMU 231	((~~15~~)) 10
Pogue A	Nov. 1-18	Any deer	GMU 233	((~~15~~)) 10
Chiliwist A	Nov. 1-18	Any deer	GMU 239	((~~15~~)) 10
Alta A	Nov. 1-18	Any deer	GMU 242	((~~15~~)) 10
Manson	Nov. 1-18	Any deer	GMU 243	5
Chiwawa A	Nov. 1-18	Any deer	GMU 245	((~~38~~)) 30
Slide Ridge A	Nov. 1-18	Any deer	GMU 246	((~~20~~)) 16
Entiat A	Nov. 1-18	Any deer	GMU 247	((~~65~~)) 52
Big Bend A	Nov. 1-18	Antlerless	GMU 248	150
Swakane A	Nov. 1-18	Any deer	GMU 250	((~~40~~)) 32

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Mission A	Nov. 1-18	Any deer	GMU 251	((~~35~~)) 28
Mission B	Oct. 13-28	Antlerless	GMU 251	((~~210~~)) 168
St. Andrews	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 254	115
Foster Creek A	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 260	75
Foster Creek B	Nov. 1-18	Antlerless	GMU 260	75
Withrow A	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 262	50
Badger	Nov. 1-18	Antlerless	GMU 266	15
Ritzville A	Nov. 1-18	3 pt. min. or antlerless	GMU 284	5
Desert A	Nov. 1-12	Any deer	GMU 290	15
Desert B	Nov. ((~~26 - Dec. 2~~)) 24-30	Antlerless	GMU 290	75
Naneum A	Nov. ((~~12-18~~)) 10-16	Any buck	GMU 328	((~~17~~)) 16
Quilomene A	Nov. ((~~5-18~~)) 3-16	3 pt. min.	GMU 329	((~~15~~)) 14
Teanaway A	Nov. ((~~12-18~~)) 10-16	Any buck	GMU 335	((~~19~~)) 16
L.T. Murray A	Nov. ((~~12-18~~)) 10-16	Any buck	GMUs 336, 340	((~~18~~)) 17
Bethel A	Nov. ((~~5-18~~)) 3-16	Any buck	GMU 360	((~~15~~)) 5
Cowiche A	Nov. ((~~5-18~~)) 3-16	Any buck	GMU 368	10
Alkali A	Nov. ((~~17-25~~)) 15-23	Any buck	GMU 371	((~~75~~)) 53
Alkali B	Nov. ((~~17-25~~)) 15-23	Antlerless	GMU 371	((~~70~~)) 35
Kahlotus A	Dec. 9-15	Antlerless	GMU 381	((~~75~~)) 50
East Klickitat A	Oct. ((~~13-26~~)) 11-24	3 pt. min. or antlerless	GMU 382	((~~45~~)) 30
Grayback A	Oct. ((~~13-26~~)) 11-24	3 pt. min. or antlerless	GMU 388	((~~55~~)) 25
Grayback B	Nov. ((~~15-18~~)) 11-18	3 pt. min.	GMU 388	50
Sauk	Nov. 13-16	2 pt. min.	GMU 437	25
Stillaguamish	Nov. 13-16	Any buck	GMU 448	10
Snoqualmie	Nov. 13-16	Any buck	GMU 460	25
Green River A	((~~Oct. 27 - Nov. 2~~)) Nov. 1-7	Any buck	GMU 485	10
Lincoln A	Oct. ((~~13~~)) 11-31	Any deer	GMU 501	40
Stella A	Oct. ((~~13~~)) 11-31	Any deer	GMU 504	35
Mossyrock A	Oct. ((~~13~~)) 11-31	Any deer	GMU 505	85
Stormking A	Oct. ((~~13~~)) 11-31	Any deer	GMU 510	30
South Rainier A	Oct. ((~~13~~)) 11-31	Any deer	GMU 513	30
Packwood A	Oct. ((~~13~~)) 11-31	Any deer	GMU 516	50
Winston A	Oct. ((~~13~~)) 11-31	Any deer	GMU 520	50
Yale A	Oct. ((~~13~~)) 11-31	Any deer	GMU 554	15
Coweeman A	Oct. ((~~13~~)) 11-31	Any deer	GMU 550	20
Toutle A	Oct. ((~~13~~)) 11-31	Any deer	GMU 556	25
Lewis River A	Oct. ((~~13~~)) 11-31	Any deer	GMU 560	((~~35~~)) 20
Washougal A	Oct. ((~~13~~)) 11-31	Any deer	GMU 568	10
Siouxon A	Oct. ((~~13~~)) 11-31	Any deer	GMU 572	((~~35~~)) 20
Wind River A	Oct. ((~~13~~)) 11-31	2 pt. min. or antlerless	GMU 574	10
Wind River B	Nov. ((~~15-18~~)) 11-18	2 pt. min.	GMU 574	40
West Klickitat A	Oct. ((~~13~~)) 11-31	2 pt. min. or antlerless	GMU 578	((~~30~~)) 15
West Klickitat B	Nov. ((~~15-18~~)) 11-18	2 pt. min	GMU 578	40
Pysht	Oct. ((~~13~~)) 11-31	Any deer	GMU 603	15
Olympic A	Oct. ((~~13~~)) 11-31	Any deer	GMU 621	35
Kitsap	Oct. ((~~13~~)) 11-31	Any deer	GMU 627	20
Skokomish A	Oct. ((~~13~~)) 11-31	Any deer	GMU 636	20
Wynoochee A	Oct. ((~~13~~)) 11-31	Any deer	GMU 648	110
Wynoochee B	Nov. 1-11	Any buck	GMU 648	10
Satsop A	Nov. 1-11	Any buck	GMU 651	10
Mashel A	Oct. ((~~13~~)) 11-31	((~~Any deer~~)) 2 pt. min or antlerless	GMU 654	40
North River A	Oct. ((~~13~~)) 11-31	Any deer	GMU 658	70
Minot Peak	Oct. ((~~13~~)) 11-31	Any deer	GMU 660	20
Capitol Peak A	Oct. ((~~13~~)) 11-31	Any deer	GMU 663	15
Capitol Peak B	Nov. 1-11	Any buck	GMU 663	10

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Deschutes	Oct. ((~~13~~)) 11-31	Any deer	GMU 666	80
Skookumchuck A	Oct. ((~~13~~)) 11-31	Any deer	GMU 667	20
Skookumchuck B	Nov. 1-11	Any buck	GMU 667	10
Muzzleloader Only Deer Permit Hunts (Only muzzleloader tag holders may apply.)				
Green Bluff	Dec. 9-31	Whitetail, antlerless	That portion of GMU 124 east of Hwy 2	90
Mayview B	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 145	25
Prescott B	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 149	25
Blue Mtns. Foothills C	Nov. 20 - Dec. 8	Whitetail, 3 pt. min. or antlerless	GMUs 149, 154, 162, 166	60
Wannacut A	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 209	((~~50~~)) 25
Chiwawa B	Nov. 19-30	Any deer	GMU 245	3
Chiwawa C	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 245	((~~70~~)) 56
Swakane B	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 250	((~~35~~)) 28
Mission C	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 251	((~~45~~)) 36
Foster Creek C	Dec. 1-31	Antlerless	GMU 260	100
Moses Coulee A	Nov. 1-18	Any deer	GMU 269	20
Moses Coulee B	Dec. 1-31	Antlerless	GMU 269	100
Ritzville B	Nov. 19-30	Mule deer, 3 pt. min. or antlerless; any white-tailed deer	GMU 284	5
Benge A	Dec. 1-15	Antlerless	Deer Area 2010	20
Lakeview A	Nov. 1-18	Antlerless	Deer Area 2011	10
Desert C	Oct. 25-31	Any deer	GMU 290	2
Naneum B	Nov. 5-11	Any buck	GMU 328	2
Quilomene B	Oct. ((~~6-12~~)) 4-10	3 pt. min.	GMU 329	2
Teanaway C	Nov. 5-11	Any buck	GMU 335	2
L.T. Murray B	Nov. 5-11	Any buck	GMUs 336, 340	((~~2~~)) 4
Alkali C	((~~Dec. 1-8~~)) Nov. 29 - Dec. 6	Any buck	GMU 371	((~~11~~)) 8
Alkali D	((~~Dec. 1-8~~)) Nov. 29 - Dec. 6	Antlerless	GMU 371	((~~15~~)) 10
Whitcomb A	Sept. ((~~10-15~~)) 8-13	Antlerless	Deer Area 3071	7
Whitcomb B	Sept. ((~~16-21~~)) 14-19	Antlerless	Deer Area 3071	7
Whitcomb C	Sept. ((~~24~~)) 22 - Oct. ((~~5~~)) 3	Any deer	Deer Area 3071	7
Paterson A	Sept. ((~~18-24~~)) 8-13	Antlerless	Deer Area 3072	10
Paterson B	Sept. ((~~16-21~~)) 14-19	Antlerless	Deer Area 3072	10
Paterson C	Sept. ((~~24~~)) 22 - Oct. ((~~5~~)) 3	Any deer	Deer Area 3072	10
Kahlotus B	Nov. 20 - Dec. 8	Any deer	GMU 381	((~~25~~)) 50
East Klickitat B	Nov. 21-30	3 pt. min. or antlerless	GMU 382	((~~20~~)) 15
Grayback C	Oct. ((~~6-12~~)) 4-10	3 pt. min. or antlerless	GMU 388	((~~10~~)) 5
West Klickitat C	Dec. 1-15	2 pt. min. or antlerless	GMU 578	((~~30~~)) 15
Mossyrock B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 505	10
Stormking B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 510	5
South Rainier B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 513	5
Packwood B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 516	5
Winston B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 520	5
Coweeman B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 550	30
Yale B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 554	2
Toutle B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 556	3
Lewis River B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 560	5
Washougal B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 568	10
Siouxon B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 572	5
Wind River C	Oct. ((~~6-12~~)) 4-10	2 pt. min. or antlerless	GMU 574	1
Olympic B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 621	20
North River B	Oct. ((~~6-12~~)) 4-10	Any deer	GMU 658	5
Archery Only Deer Permit Hunts (Only archery deer tag holders may apply.)				
Chiwawa D	Dec. 1-12	Any deer	GMU 245	((~~27~~)) 16
Entiat B	Nov. 20-29	Any deer	GMU 247	((~~160~~)) 128
Entiat C	Nov. 30 - Dec. 8	Any deer	GMU 247	((~~150~~)) 120

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Big Bend B	Nov. 20 - Dec. 8	Any deer	GMU 248	10
Desert D	Nov. 13-((~~26~~)) 25	Any deer	GMU 290	((~~12~~)) 16
Naneum C	Nov. 20 - Dec. 8	Any buck	GMU 328	((~~13~~)) 8
Quilomene C	Nov. 20 - Dec. 8	3 pt. min.	GMU 329	((~~12~~)) 11
Teanaway D	Nov. 20 - Dec. 8	Any buck	GMU 335	13
L.T. Murray C	Nov. 20 - Dec. 8	Any buck	GMUs 336, 340	((~~6~~)) 7
Alkali E	Dec. ((~~9~~)) 7-25	Any deer	GMU 371	((~~99~~)) 46
Special Modern Firearm Deer Permit Hunts for Hunters 65 or older				
Ferry A	Oct. 11-19	Antlerless	GMU 101	20
Blue Mtns. Foothills D	Oct. ((~~13-21~~)) 11-19	Antlerless	GMUs 145, 149	30
East Okanogan C	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 204	((~~15~~)) 10
Wannacut B	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 209	((~~20~~)) 10
Sinlahekin C	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 215	((~~25~~)) 10
Chewuch B	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 218	((~~35~~)) 10
Pearrygin B	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 224	((~~35~~)) 20
Gardner B	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 231	((~~25~~)) 15
Pogue B	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 233	((~~20~~)) 10
Chiliwist B	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 239	((~~25~~)) 10
Alta B	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 242	((~~25~~)) 15
Chiwawa E	Oct. 13-28	Antlerless	GMU 245	((~~15~~)) 12
Entiat E	Oct. 13-28	Antlerless	GMU 247	((~~15~~)) 12
Swakane C	Oct. 13-28	Antlerless	GMU 250	((~~15~~)) 12
Mission D	Oct. 13-28	Any deer	GMU 251	((~~15~~)) 12
Bridgeport A	Oct. 13-21	Antlerless	GMUs 248, 260	20
Palisades A	Oct. 13-21	Antlerless	GMUs 266, 269	10
Sunnyside A	Oct. 13-21	Antlerless	GMU 372	15
Horse Heaven Hills A	Oct. 13-21	Antlerless	GMU 373	10
Kahlotus C	Oct. 13-21	Antlerless	GMU 381	((~~15~~)) 10
East Klickitat C	Oct. ((~~13-26~~)) 11-24	3 pt. min. or antlerless	GMU 382	((~~20~~)) 15
Grayback D	Oct. ((~~13-26~~)) 11-24	3 pt. min. or antlerless	GMU 388	((~~10~~)) 5
Lincoln B	Oct. ((~~13~~)) 11-31	Any deer	GMU 501	5
Stella B	Oct. ((~~13~~)) 11-31	Any deer	GMU 504	5
Mossyrock C	Oct. ((~~13~~)) 11-31	Any deer	GMU 505	15
Stormking C	Oct. ((~~13~~)) 11-31	Any deer	GMU 510	5
South Rainier C	Oct. ((~~13~~)) 11-31	Any deer	GMU 513	5
Packwood C	Oct. ((~~13~~)) 11-31	Any deer	GMU 516	5
Winston C	Oct. ((~~13~~)) 11-31	Any deer	GMU 520	5
Yale C	Oct. ((~~13~~)) 11-31	Any deer	GMU 554	5
Toutle C	Oct. ((~~13~~)) 11-31	Any deer	GMU 556	10
Lewis River C	Oct. ((~~13~~)) 11-31	Any deer	GMU 560	5
Washougal C	Oct. ((~~13~~)) 11-31	Any deer	GMU 568	10
Siouxon C	Oct. ((~~13~~)) 11-31	Any deer	GMU 572	5
Wind River D	Oct. ((~~13~~)) 11-31	2 pt. min. or antlerless	GMU 574	2
West Klickitat D	Oct. ((~~13~~)) 11-31	2 pt. min. or antlerless	GMU 578	5
Copalis	Oct. ((~~13~~)) 11-31	Any deer	GMU 642	20
North River C	Oct. ((~~13~~)) 11-31	Any deer	GMU 658	10
Williams Creek	Oct. ((~~13~~)) 11-31	Any deer	GMU 673	20
Disabled Hunter Deer Permits (Hunters must use method/weapon listed on their tag. All weapon types may apply unless otherwise noted.)				
Ferry B	Oct. 11-19	Antlerless	GMU 101	20
East Okanogan D	Restricted to general early season by tag choice	Antlerless	GMU 204	((~~15~~)) 10
Wannacut C		Antlerless	GMU 209	((~~20~~)) 10
Sinlahekin D		Antlerless	GMU 215	((~~25~~)) 15
Chewuch C		Antlerless	GMU 218	((~~35~~)) 20
Pearrygin C		Antlerless	GMU 224	((~~35~~)) 15
Gardner C		Antlerless	GMU 231	((~~25~~)) 10
Pogue C		Antlerless	GMU 233	((~~20~~)) 10

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Chiliwist C		Antlerless	GMU 239	((~~25~~)) 15
Alta C		Antlerless	GMU 242	((~~25~~)) 10
Chiwawa F	Oct. 13-28	Antlerless, modern firearm only	GMU 245	((~~15~~)) 12
Entiat F	Oct. 13-28	Antlerless, modern firearm only	GMU 247	((~~25~~)) 20
Mission E	Oct. 13-28	Any deer, modern firearm only	GMU 251	((~~25~~)) 20
Bridge Port B	Restricted to general early season by tag choice	Any deer	GMUs 248, 260	15
Palisades B		Any deer	GMUs 266, 269	5
Sunnyside B	Restricted to general early season by tag choice	Antlerless	GMU 372	10
Kahlotus D		Antlerless	GMU 381	10
East Klickitat D		3 pt. min. or antlerless	GMU 382	((~~20~~)) 15
Grayback E		3 pt. min. or antlerless	GMU 388	((~~10~~)) 5
Green River B	((~~Oct 27 - Nov. 2~~)) Nov. 1-7	Any deer, modern firearm only	GMU 485	5
Lincoln C	Restricted to general early season by tag choice	Any deer	GMU 501	3
Stella C		Any deer	GMU 504	3
Mossyrock D		Any deer	GMU 505	5
Stormking D		Any deer	GMU 510	3
South Rainier D		Any deer	GMU 513	3
Packwood D		Any deer	GMU 516	3
Winston D		Any deer	GMU 520	3
Yale D		Any deer	GMU 554	3
Toutle D		Any deer	GMU 556	5
Lewis River D		Any deer	GMU 560	2
Washougal D		Any deer	GMU 568	10
Siouxon D		Any deer	GMU 572	3
Wind River E		2 pt. min. or antlerless	GMU 574	1
West Klickitat E		2 pt. min. or antlerless	GMU 578	3
Capitol Peak C		Any deer	GMU 663	30
Skookumchuck C		Any deer	GMU 667	30
North River D		Any deer	GMU 658	5
Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)				
Modern Firearm Only				
Ferry C	Oct. 11-19	Antlerless	GMU 101	30
Blue Mtns. Foothills E	Oct. ((~~13-21~~)) 11-19	Antlerless	GMUs 149, 154, ((~~162-~~))163, Deer Area 1010	40
Blue Mtns. Foothills F	Oct. ((~~13-21~~)) 11-19	Antlerless	GMUs 145, 172-181	40
East Okanogan E	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 204	((~~70~~)) 35
Wannacut D	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 209	((~~40~~)) 20
Sinlahekin E	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 215	((~~80~~)) 40
Chewuch D	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 218	((~~135~~)) 65
Pearrygin D	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 224	((~~135~~)) 70
Gardner D	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 231	((~~50~~)) 25
Pogue D	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 233	((~~40~~)) 20
Chiliwist D	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 239	((~~80~~)) 40
Alta D	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 242	((~~90~~)) 45
Chiwawa G	Oct. ((~~13-28~~)) 11-26	Antlerless	GMU 245	((~~85~~)) 68
Entiat G	Oct. ((~~13-28~~)) 11-26	Antlerless	GMU 247	((~~55~~)) 44
Swakane D	Oct. ((~~13-28~~)) 11-26	Antlerless	GMU 250	((~~30~~)) 24
Mission F	Oct. ((~~13-28~~)) 11-26	Antlerless	GMU 251	((~~210~~)) 168
Bridge Port C	Oct. ((~~13-21~~)) 11-19	Antlerless	GMUs 248, 260	175
Palisades C	Oct. ((~~13-21~~)) 11-19	Antlerless	GMUs 266, 269	50
Lakeview C	Oct. ((~~13-21~~)) 11-19	Any deer	Deer Area 2011	10
Benge B	Oct. 23-31	Antlerless	Deer Area 2010	20
Desert E	Sept. 22-23	Any deer	GMU 290	2

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Horse Heaven Hills B	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 373	10
Kahlotus E	Oct. ((~~13-21~~)) 11-19	Antlerless	GMU 381	((~~20~~)) 15
Grayback F	Oct. ((~~13-26~~)) 11-24	Any deer	GMU 388	((~~20~~)) 15
East Klickitat E	Oct. ((~~13-26~~)) 11-24	Any deer	GMU 382	((~~30~~)) 25
Green River C	((~~Oct. 27 - Nov. 2~~)) Nov. 1-7	Antlerless	GMU 485	5
Lincoln D	Oct. ((~~13~~)) 11-31	Any deer	GMU 501	10
Stella D	Oct. ((~~13~~)) 11-31	Any deer	GMU 504	10
Mossyrock E	Oct. ((~~13~~)) 11-31	Any deer	GMU 505	10
Stormking E	Oct. ((~~13~~)) 11-31	Any deer	GMU 510	10
South Rainier E	Oct. ((~~13~~)) 11-31	Any deer	GMU 513	10
Packwood E	Oct. ((~~13~~)) 11-31	Any deer	GMU 516	10
Winston E	Oct. ((~~13~~)) 11-31	Any deer	GMU 520	10
Yale E	Oct. ((~~13~~)) 11-31	Any deer	GMU 554	10
Toutle E	Oct. ((~~13~~)) 11-31	Any deer	GMU 556	60
Lewis River E	Oct. ((~~13~~)) 11-31	Any deer	GMU 560	10
Washougal E	Oct. ((~~13~~)) 11-31	Any deer	GMU 568	10
Siouxon E	Oct. ((~~13~~)) 11-31	Any deer	GMU 572	10
Wind River F	Oct. ((~~13~~)) 11-31	Any deer	GMU 574	((~~15~~)) 10
West Klickitat F	Oct. ((~~13~~)) 11-31	Any deer	GMU 578	((~~15~~)) 10
Satsop B	Oct. ((~~13~~)) 11-31	Any deer	GMU 651	10
Skookumchuck D	Oct. ((~~6~~)) 4-31	Any deer	GMU 667	60
North River E	Oct. ((~~13~~)) 11-31	Any deer	GMU 658	10
Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)				
Muzzleloader Only				
Ferry D	Oct. 4-10	Antlerless	GMU 101	10
East Okanogan F	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 204	((~~10~~)) 5
Wannacut E	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 209	((~~10~~)) 5
Pogue E	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 233	((~~10~~)) 5
Chiliwist E	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 239	((~~10~~)) 5
Alta E	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 242	((~~10~~)) 5
Mission G	Oct. 1-((~~12~~)) 10	Any deer	GMU 251	((~~20~~)) 16
Ritzville C	Oct. ((~~6-12~~)) 4-10	Antlerless	GMU 284	50
Desert F	Sept. 8-9	Any deer	GMU 290	2
Whitcomb D	((~~Sept. 1-7~~)) Aug. 30 - Sept. 5	Antlerless	Deer Area 3071	7
Paterson ((~~B~~)) D	((~~Sept. 1-7~~)) Aug. 30 - Sept. 5	Antlerless	Deer Area 3072	10
Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and be accompanied by an adult during the hunt.)				
Archery Only				
Desert G	Sept. 15-16	Any deer	GMU 290	2

Special Deer Permits - Second Deer Tag
These permits are only valid when a second license and tag is purchased. Hunters must use the method/weapon listed on their tag. The second deer license and tag type must be the same tag type as the first one. These 2nd deer special permit hunts will not affect hunters' accumulated points.

Hunt Name	Second Tag Season	Special Restrictions	Boundary Description	Permits
Huckleberry B	Restricted to general seasons by tag choice	Whitetail, antlerless	GMU 121	((~~400~~)) 150
Mt. Spokane B	Restricted to general seasons by tag choice	Whitetail, antlerless	GMU 124	((~~500~~)) 450
Almota B	Restricted to general seasons by tag choice	Antlerless	GMU 142	100
Mica Peak B	Modern firearm and archery general season only, depending on tag choice	Whitetail, antlerless	GMU 127	((~~200~~)) 150
Northeast	Archery tag required. Any open archery hunt. Must use archery equipment.	Whitetail, antlerless	GMUs 105, 108, 121, 124	400
Clarkston	Dec. 9-31. Archery tag required. Must use archer equipment.	Antlerless	Deer Area 1021	30
Benge C	Dec. 16-31	Antlerless	Deer Area 2010	20

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Lakeview C	Jan. 1-30	Antlerless	Deer Area 2011	20
Methow	Sept. 4 - Oct. 12	Antlerless	Deer Area 2012	((~~50~~)) 100
High Prairie	Restricted to general early season by tag choice	Antlerless	Deer Area 3088	50
Shaw	Restricted to general seasons by tag choice	Any deer	Deer Area 4004	((~~50~~)) 20
Lopez		Any deer	Deer Area 4005	50
Orcas		Any deer	Deer Area 4006	50
Decatur		Any deer	Deer Area 4007	50
Blakely		Any deer	Deer Area 4008	50
Cypress		Any deer	Deer Area 4009	50
San Juan		Any deer	Deer Area 4010	50
Camano		Antlerless	Deer Area 4011	50
Whidbey		Antlerless	Deer Area 4012	125
Vashon-Maury		Antlerless	Deer Area 4013	125
Guemes		Antlerless	Deer Area 4926	50
Anderson		Antlerless	Deer Area 6014	50
((~~Advanced Hunter Education (AHE)~~)) Master Hunter Special Deer Permit Hunts: Only ((~~AHE~~)) master hunters may apply; antlerless only hunts will not affect accumulated points; any weapon may be used.				
Lakeview D	Dec. 9-31	Antlerless	Deer Area 2011	20

Hunter Education Instructor Incentive Permits

- Special deer permits will be allocated through a random drawing to those hunter education instructors that qualify.
- Permit hunters must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons.
- Qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing.
- Instructors who are drawn, accept a permit, and are able to participate in the hunt, will not be eligible for these incentive permits for a period of ten years thereafter.
- Permittees may purchase a second license for use with the permit hunt only.

Area	Dates	Restrictions	GMUs	Permits
Region 1	All general season and permit seasons established for GMUs included with the permit	Any white-tailed deer	Any 100 series GMU except GMU 157	2
Region 2		Any white-tailed deer	GMUs 204-215	2
Region 2		Any deer	GMUs 215-251	1
Region 2		Any deer	GMU 290	1
Region 3		Any deer	GMUs 335-368, 382, 388	1
Region 4		Any deer	Any 400 series GMU except GMU 485	2
Region 5		Legal buck for 500 series GMU of choice or antlerless	Any 500 series GMU open for a general deer hunting season or a special deer permit hunting season	6
Region 6		Legal buck for GMU of choice	GMUs 654, 660, 672, 673, 681	1

AMENDATORY SECTION (Amending Order 07-166, filed 8/9/07, effective 9/9/07)

WAC 232-28-354 ((~~2007~~)) 2008 Elk special permits.

Special Elk Permit Hunting Seasons
(Open to Permit Holders Only)

Hunters must purchase an elk hunting license prior to purchase of a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice; however, Multiple Season Permit holders may apply for Eastern or Western Washington archery, muzzleloader, or modern firearm permit hunts. Applicants must have purchased the proper tag for these hunts. The elk tag prefixes required to apply for each hunt are shown in the following table. Hunters drawn for a special permit hunt must comply with weapon restrictions and dates listed for the hunt.

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Modern Firearm Bull Permit Hunts (Only modern firearm elk tag holders may apply.)					
Prescott A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 149	((~~2~~)) 3

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Blue Creek A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 154	((~~2~~)) 4
Watershed	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2	3 pt. min. or Antlerless	EA, EF, EM	GMU 157	45
Dayton A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 162	((~~13~~)) 21
Tucannon A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	Elk Area 1014	((~~4~~)) 6
Wenaha West A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	((~~GMU 169~~)) Elk Area 1008	((~~17~~)) 15
Wenaha East A	Oct. 20 - Nov. 2	Any bull	EF	Elk Area 1009	15
Mountain View A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 172	((~~6~~)) 16
Peola A	Oct. 20 - Nov. 2	Any bull	EF	GMU 178	1
Couse A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 181	1
Mission A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 251	2
Colockum A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMUs 328, 329	((~~9~~)) 3
Teanaway A	Dec. 19-30	Any bull	EF	GMU 335	((~~22~~)) 14
Teanaway ((~~A-1~~)) B	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 335	1
Peaches Ridge A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMUs 336, 346	((~~135~~)) 140
Little Naches A	Oct. 1-10	Any bull	EF	GMU 346	15
Observatory A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMUs 340, 342	((~~80~~)) 73
Goose Prairie A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMUs 352, 356	((~~96~~)) 89
Bethel A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 360	((~~62~~)) 48
Rimrock A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 364	((~~123~~)) 120
Cowiche A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	GMU 368	((~~24~~)) 18
Klickitat Meadows A	((~~Oct. 22 - Nov. 4~~)) Oct. 20 - Nov. 2	Any bull	EF	Elk Area 3068	1
Nooksack A	Oct. ((~~13~~)) 11 - Nov. ((~~11~~)) 10	Any bull	WF	GMU 418	7
Green River	((~~Oct. 27 - Nov. 2~~)) Nov. 1-7	Any bull	WF	GMU 485	((~~3~~)) 5
Margaret A	Nov. ((~~3-12~~)) 1-10	Any bull	WF	GMU 524	((~~35~~)) 36
Toutle A	Nov. ((~~3-12~~)) 1-10	Any bull	WF	GMU 556	((~~130~~)) 131
Clearwater	Oct. 1-10	Any bull	WA, WF, WM	GMU 615	2
Matheny	Oct. 1-10	Any bull	WA, WF, WM	GMU 618	3
Olympic A	Nov. 1-((~~9~~)) 10	3 pt. min.	WF	GMU 621, EXCEPT for Elk Area 6071	((~~14~~)) 16
Skokomish A	Nov. 1-((~~9~~)) 10	3 pt. min.	WF	GMU 636	((~~9~~)) 10
Wynoochee	Oct. 1-10	Any bull	WA, WF, WM	GMU 648	1
White River A	Nov. ((~~3-12~~)) 1-10	Any bull	WF	GMU 653	40
Modern Firearm Elk Permit Hunts (Only modern firearm elk tag holders may apply.)					
Aladdin A	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2	Any elk	EF	GMU 111	15
Selkirk A	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2	Any elk	EF	GMU 113	20
49 Degrees North A	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2 & Dec. 16-31	((~~Any elk~~)) Antlerless	EF	GMU 117	45
Blue Creek B	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2	Antlerless	EF	GMUs 149, 154	((~~100~~)) 75

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Prescott B	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2	Antlerless	EF	GMU 149	75
Dayton B	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2	Antlerless	EF	GMU 163 and Elk Area 1011	100
Dayton C	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2	Antlerless	EF	GMU 149 and Elk Area 1012	100
Peola ((~~A~~)) B	((~~Oct. 27 - Nov. 4~~)) Oct. 25 - Nov. 2	Antlerless	EF	GMU 178	50
Couse B	Oct. 1-12	Antlerless	EF	GMU 181	30
Mountain View B	((~~Oct. 27 - Nov. 6~~)) Oct. 25 - Nov. 2	Antlerless	EF	Elk Area 1013	((~~20~~)) 10
((~~Lick Creek A~~	~~Oct. 27 - Nov. 4~~	~~Antlerless~~	~~EF~~	~~GMU 175~~	~~25~~))
Malaga A	Sept. 8-30	Any elk	EF	Elk Area 2032	((~~5~~)) 3
Malaga B	Sept. 15-25	Antlerless	EF	Elk Area 2032	35
Malaga C	Nov. 6 - Dec. 31	Antlerless	EF	Elk Area 2032	((~~100~~)) 50
Malaga D	Nov. 6 - Dec. 18	Any elk	EF	Elk Area 2032	((~~7~~)) 5
Peshastin A	Sept. 15 - Oct. 5	Antlerless	EF	Elk Area 2033	20
Peshastin B	Oct. 13-31	Any elk	EF	Elk Area 2033	5
West Bar A	Oct. 27-31	Antlerless	EF	GMU 330	5
West Bar B	Nov. 1-4	Antlerless	EF	GMU 330	5
Teanaway ((~~B~~)) C	Dec. 19 - Jan. 13, ((~~2008~~)) 2009	Antlerless	EF	GMU 335	100
Taneum A	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 336	150
Manastash A	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 340	250
Umtanum A	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 342	((~~250~~)) 200
((~~Cleman~~	~~Dec. 1-15~~	~~Antlerless~~	~~EF~~	~~Elk Area 3944~~	~~50~~))
Little Naches B	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 346	150
Nile A	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 352	50
Bumping ((~~B~~)) A	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 356	100
Bethel B	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 360	100
Rimrock B	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 364	((~~150~~)) 200
Cowiche B	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Antlerless	EF	GMU 368	((~~150~~)) 200
Klickitat Meadows B	((~~Oct. 31 - Nov. 4~~)) Oct. 29 - Nov. 2	Spike bull or antlerless	EF	Elk Area 3068	9
Alkali A	((~~Oct. 20 - Nov. 4~~)) Oct. 29 - Nov. 2	Any elk	EF	GMU 371	((~~25~~)) 20
Mossyrock A	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	GMU 505	50
Willapa Hills A	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	GMU 506	35
Winston A	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	GMU 520	((~~130~~)) 100
Margaret B	Nov. ((~~3-12~~)) 19-30	Antlerless	WF	GMU 524	((~~50~~)) 60
((~~Margaret C~~	~~Nov. 24 - Dec. 2~~	~~Antlerless~~	~~WF~~	~~GMU 524~~	~~50~~))
Ryderwood A	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	GMU 530	35
Coweeman A	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	GMU 550	((~~225~~)) 160
Coweeman B	Jan. 1-15, ((~~2008~~)) 2009	Antlerless	WF	GMU 550	((~~50~~)) 35
Toutle B	Nov. ((~~3-12~~)) 19-30	Antlerless	WF	GMU 556	((~~70~~)) 150
((~~Toutle C~~	~~Nov. 24 - Dec. 2~~	~~Antlerless~~	~~WF~~	~~GMU 556~~	~~100~~))
Toledo A	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	Elk Area 5029	20
Green Mtn C	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	Elk Area 5051	10
Carlton	Sept. 22-30	Any bull	WF	Elk Area 5057	5
West Goat Rocks	Sept. 22-30	Any bull	WF	Elk Area 5058	5

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Mt. Adams	Sept. 22-30	Any bull	WF	Elk Area 5059	5
Wildwood A	Jan. 16-30, ((~~2008~~)) 2009	Antlerless	WF	Elk Area 5061	((~~15~~)) 20
Newaukum A	Nov. 1-10	Antlerless	WF	Elk Area 5050	5
Upper Smith Creek A	Oct. 27 - Nov. 2	Antlerless	WF	Elk Area 5064	6
Upper Smith Creek B	Oct. 27 - Nov. 2	Any elk	WF	Elk Area 5064	2
Mount Whittier A	Oct. 27 - Nov. 2	Antlerless	WF	Elk Area 5065	2
Mount Whittier B	Oct. 27 - Nov. 2	Any elk	WF	Elk Area 5065	1
Lewis River A	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	GMU 560	((~~375~~)) 250
Siouxon A	Nov. ((~~3-12~~)) 1-10	Antlerless	WF	GMU 572	((~~125~~)) 100
Raymond A	Nov. 5-10	3 pt. min. or antlerless	WF	Elk Area 6010	20
Raymond B	Dec. 16-31	Antlerless	WF	Elk Area 6010	30
Raymond C	Jan. 1-30, ((~~2008~~)) 2009	Antlerless	WF	Elk Area 6010	15
Raymond D	Feb. 1-28, ((~~2008~~)) 2009	Antlerless	WF	Elk Area 6010	15
Chehalis Valley A	Oct. 1-31	Antlerless	WF	Elk Area 6066	5
Chehalis Valley B	Nov. 5-10	Antlerless	WF	Elk Area 6066	5
North Minot A	Oct. 20-31	Antlerless	WF	Elk Area 6067	20
Deschutes	Jan. 15-23, ((~~2008~~)) 2009	Antlerless	WF	GMU 666	10
North River	Nov. 8-13	Antlerless	WF	GMU 658	10
Williams Creek	Nov. 8-13	Antlerless	WF	GMU 673	50
Tri Valley A	Dec. 1 - Jan. ((~~30~~)) 20, ((~~2008~~)) 2009	Antlerless	WF	Elk Area 6012	10
North Shore A	Nov. 4-8	Antlerless	WF	Elk Area 6068	5
Muzzleloader Bull Permit Hunts (Only muzzleloader elk tag holders may apply.)					
Note: Fire closures may limit access during early October seasons.					
Prescott C	Oct. 1-10	Any bull	EM	GMU 149	1
Blue Creek C	Oct. 1-10	Any bull	EM	GMU 154	((~~1~~)) 2
Dayton D	Oct. 1-10	Any bull	EM	GMU 162	((~~2~~)) 4
Tucannon B	Oct. 1-10	Any bull	EM	Elk Area 1014	1
Wenaha West B	Oct. 1-10	Any bull	EM	((~~GMU 169~~)) Elk Area 1008	3
Wenaha East B	Oct. 1-10	Any bull	EM	Elk Area 1009	3
Mountain View C	Oct. 1-10	Any bull	EM	GMU 172	((~~2~~)) 4
Peola C	Oct. 1-10	Any bull	EM	GMU 178	1
Couse D	Oct. 1-10	Any bull	EM	GMU 181	1
Mission B	Oct. 1-10	Any bull	EM	GMU 251	1
Colockum B	Oct. 1-10	Any bull	EM	GMUs 328, 329	((~~2~~)) 1
Teanaway ((~~C~~)) D	Dec. 9-18	Any elk	EM	GMU 335	((~~7~~)) 6
Peaches Ridge B	Oct. 1-10	Any bull	EM	GMUs 336, 346	((~~19~~)) 23
Observatory B	Oct. 1-10	Any bull	EM	GMUs 340, 342	((~~23~~)) 24
Goose Prairie B	Oct. 1-10	Any bull	EM	GMUs 352, 356	((~~14~~)) 15
Bethel C	Oct. 1-10	Any bull	EM	GMU 360	((~~12~~)) 15
Rimrock C	Oct. 1-10	Any bull	EM	GMU 364	((~~17~~)) 16
Cowiche C	Oct. 1-10	Any bull	EM	GMU 368	8
Klickitat Meadows C	Oct. 1-10	Any bull	EM	Elk Area 3068	1
Nooksack B	Sept. 29 - Oct. ((~~12~~)) 10 and Nov. ((~~12~~)) 11-30	Any bull	WM	GMU 418	3
Margaret D	Oct. ((~~6-12~~)) 4-10	Any bull	WM	GMU 524	8
Toutle D	Oct. ((~~6-12~~)) 4-10	Any bull	WM	GMU 556	((~~26~~)) 29
Olympic B	Oct. 4-10	((~~Any bull~~)) 3 pt. min.	WM	GMU 621, EXCEPT for Elk Area 6071	3
Skokomish B	Oct. 4-10	((~~Any bull~~)) 3 pt. min.	WM	GMU 636	2
White River B	Oct. 1-10	Any bull	WM	GMU 653	3
Muzzleloader Permit Hunts (Only muzzleloader elk tag holders may apply.)					
Aladdin B	Oct. ((~~6-12~~)) 4-10	Any elk	EM	GMU 111	10
Selkirk B	Oct. ((~~6-12~~)) 4-10	Any elk	EM	GMU 113	10
49 Degrees North B	Oct. ((~~6-12~~)) 4-10 & Dec. 16-31	((~~Any elk~~)) Antlerless	EM	GMU 117	20

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Blue Creek D	Dec. 9 - Jan. 30, ((~~2008~~)) 2009	Antlerless	EM	GMUs 149, 154	((~~60~~)) 40
Mountain View D	Oct. ((~~1-12~~)) 4-10	Antlerless	EM	Elk Area 1013	((~~20~~)) 10
((~~Lick Creek B~~	~~Oct. 1-10~~	~~Antlerless~~	~~EM~~	~~GMU 175~~	~~25~~))
Couse E	Dec. 1-31	Antlerless	EM	GMU 181	30
Couse F	Jan. 1-((~~30~~)) 20, ((~~2008~~)) 2009	Antlerless	EM	GMU 181	30
Malaga E	Oct. 1-21	Antlerless	EM	Elk Area 2032	50
Malaga F	Oct. 1-21	Any elk	EM	Elk Area 2032	((~~8~~)) 5
West Bar C	Oct. ((~~6-12~~)) 4-10	Antlerless	EM	GMU 330	5
Taneum B	Oct. ((~~6-12~~)) 4-10	Antlerless	EM	GMU 336	25
Manastash B	Oct. ((~~6-12~~)) 4-10	Antlerless	EM	GMU 340	25
Umtanum B	Oct. ((~~6-12~~)) 4-10	Antlerless	EM	GMU 342	((~~250~~)) 200
Nile B	Oct. ((~~6-12~~)) 4-10	Antlerless	EM	GMU 352	40
Bumping B	Oct. ((~~6-12~~)) 4-10	Antlerless	EM	GMU 356	90
Bethel D	Oct. ((~~6-12~~)) 4-10	Antlerless	EM	GMU 360	40
Cowiche D	Oct. ((~~6-12~~)) 4-10	Antlerless	EM	GMU 368	((~~225~~)) 250
Klickitat Meadows D	Oct. ((~~6-12~~)) 4-10	Spike bull or antlerless	EM	Elk Area 3068	4
Alkali B	Oct. 1-15	Any elk	EM	GMU 371	((~~15~~)) 10
Stella A	Nov. ((~~21~~)) 19 - Dec. 15	Antlerless	WM	GMU 504	((~~150~~)) 100
Stella B	Jan. 1-16, ((~~2008~~)) 2009	Antlerless	WM	GMU 504	100
Toledo B	Dec. 7-20	Antlerless	WM	Elk Area 5029	30
Mossyrock B	Jan. 1-16, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 5052	30
Randle A	Jan. 1-16, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 5053	15
Boistfort A	Jan. 1-16, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 5054	40
Willapa Hills B	Nov. ((~~21~~)) 19 - Dec. 15	Antlerless	WM	GMU 506	15
Green Mt. A	Jan. 1-16, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 5051	30
Wildwood B	Jan. 1-15, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 5061	((~~15~~)) 20
Winston B	((~~Nov. 21 - Dec. 15~~)) Oct. 4-10	Antlerless	WM	GMU 520	((~~60~~)) 45
Margaret E	Oct. ((~~6-12~~)) 4-10	Antlerless	WM	GMU 524	((~~40~~)) 35
Ryderwood B	Oct. ((~~6-12~~)) 4-10	Antlerless	WM	GMU 530	15
Coweeman C	Nov. ((~~21~~)) 19 - Dec. 15	Antlerless	WM	GMU 550	((~~60~~)) 45
Toutle E	Oct. ((~~6-12~~)) 4-10	Antlerless	WM	GMU 556	((~~75~~)) 50
Lewis River B	Oct. ((~~6-12~~)) 4-10	Antlerless	WM	GMU 560	((~~225~~)) 160
Siouxon B	Oct. ((~~6-12~~)) 4-10	Antlerless	WM	GMU 572	((~~75~~)) 50
Yale A	Oct. ((~~6-12~~)) 4-10	Antlerless	WM	GMU 554	((~~75~~)) 50
Yale B	Nov. ((~~21~~)) 19 - Dec. 15	3 pt. min. or antlerless	WM	GMU 554	75
Ethel A	Aug. 1-15	Antlerless	WM	Elk Area 5049	10
Ethel B	Aug. 16-31	Antlerless	WM	Elk Area 5049	10
Newaukum B	Jan. 1-31, 2009	Antlerless	WM	Elk Area 5050	10
Upper Smith Creek C	Oct. 18-26	Antlerless	WM	Elk Area 5064	6
Upper Smith Creek D	Oct. 18-26	Any elk	WM	Elk Area 5064	2
Mount Whittier C	Oct. 18-26	Antlerless	WM	Elk Area 5065	2
Mount Whittier D	Oct. 18-26	Any elk	WM	Elk Area 5065	1
Twin Satsop A	Jan. 5-15, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 6061	10
Mashel A	Jan. 1-15, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 6054	25
North River	Nov. 26 - Dec. 15	Antlerless	WM	GMU 658	20
North Minot B	Oct. 1-7	Antlerless	WM	Elk Area 6067	20
Raymond E	Oct. 1-31	Antlerless	WM	Elk Area 6010	30
Chehalis Valley C	Jan. 1-((~~30~~)) 20, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 6066	((~~15~~)) 5
((~~Capitol Peak A~~	~~Nov. 19 - Dec. 15~~	~~Antlerless~~	~~WM~~	~~GMU 663~~	~~15~~))
Tri Valley B	Dec. 16 - Jan. ((~~30~~)) 20, ((~~2008~~)) 2009	Antlerless	WM	Elk Area 6012	30
Archery Permit Hunts (Only archery elk tag holders may apply.) Note: Fire closures may limit access during September seasons.					
Prescott D	Sept. 8-21	Any bull	EA	GMU 149	((~~1~~)) 2
Blue Creek E	Sept. 8-21	Any bull	EA	GMU 154	((~~2~~)) 4

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Dayton E	Sept. 8-21	Any bull	EA	GMU 162	((~~7~~)) 9
Tucannon C	Sept. 8-21	Any bull	EA	Elk Area 1014	3
Wenaha West C	Sept. 8-21	Any bull	EA	((~~GMU 169~~)) Elk Area 1008	((~~4~~)) 3
Wehaha East C	Sept. 8-21	Any bull	EA	Elk Area 1009	3
Mountain View E	Sept. 8-21	Any bull	EA	GMU 172	((~~3~~)) 7
Peola D	Sept. 8-21	Any bull	EA	GMU 178	1
Couse G	Sept. 8-21	Any bull	EA	GMU 181	1
Colockum C	Sept. 8-21	Any bull	EA	GMUs 328, 329	((~~3~~)) 2
Teanaway E	Nov. 20 - Dec. 8	Any bull	EA	GMU 335	((~~34~~)) 18
Peaches Ridge C	Sept. 8-21	Any bull	EA	GMUs 336, 346	104
Observatory C	Sept. 8-21	Any elk	EA	GMUs 340, 342	((~~91~~)) 94
Goose Prairie C	Sept. 8-21	Any bull	EA	GMUs 352, 356	((~~138~~)) 127
Bethel E	Sept. 8-21	Any bull	EA	GMU 360	((~~43~~)) 32
Rimrock D	Sept. 8-21	Any bull	EA	GMU 364	((~~93~~)) 103
Cowiche E	Sept. 8-21	Any bull	EA	GMU 368	((~~18~~)) 13
Klickitat Meadows E	Oct. 11-22	Any bull	EA	Elk Area 3068	1
Klickitat Meadows F	Oct. 11-22	Spike bull or antlerless	EA	Elk Area 3068	9
Malaga G	Sept. 1-7	Antlerless	EA	Elk Area 2032	25
Peshastin C	Sept. 1-14	Any elk	EA	Elk Area 2033	15
Nooksack C	Sept. 1-28 and Dec. 1-31	Any bull	WA	GMU 418	3
Margaret F	Sept. 15-30 and Dec. 1-15	Any bull	WA	GMU 524	13
Margaret G	Sept. 15-30 and Dec. 1-15	Antlerless	WA	GMU 524	((~~50~~)) 35
Toutle F	Sept. 15-30 and Dec. 1-15	Any bull	WA	GMU 556	((~~66~~)) 71
Toutle G	Sept. 15-30 and Dec. 1-15	Antlerless	WA	GMU 556	((~~90~~)) 60
Ethel C	Jan 1-20, 2009	Antlerless	WA	Elk Area 5049	10
Newaukum C	Aug. 1-15	Antlerless	WA	Elk Area 5050	10
Newaukum D	Aug. 16-31	Antlerless	WA	Elk Area 5050	10
Upper Smith Creek E	Oct. 11-17	Antlerless	WA	Elk Area 5064	6
Upper Smith Creek F	Oct. 11-17	Any elk	WA	Elk Area 5064	2
Mount Whittier E	Oct. 11-17	Antlerless	WA	Elk Area 5065	2
Mount Whittier F	Oct. 11-17	Any elk	WA	Elk Area 5065	1
Lewis River C	Nov. ((~~21~~)) 19-30	3 pt. min. or antlerless	WA	GMU 560	50
Siouxon C	Nov. ((~~21~~)) 19-30	3 pt. min. or antlerless	WA	GMU 572	25
Olympic C	Sept. 8-21	3 pt. min.	WA	GMU 621, EXCEPT for Elk Area 6071	((~~7~~)) 6
Skokomish C	Sept. 8-21	3 pt. min.	WA	GMU 636	((~~6~~)) 5
White River C	Sept. 8-21	Any bull	WA	GMU 653	((~~11~~)) 15
((~~Advanced Hunter Education (AHE)~~)) Master Hunter Special Elk Permit Hunts: Only ((~~AHE~~)) master hunters may apply; antlerless only hunts will not affect accumulated points; and any weapon may be used.					
Peshastin D	Aug. 18-31	Any elk	Any elk tag	Elk Area 2033	5
Mossyrock C	Jan. 17-30, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 5052	20
Randle B	Jan. 17-30, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 5053	15
Pumice Plains A	Oct. 25 - Nov. 2	Antlerless	Any elk tag	Elk Area 5063	10
Pumice Plains B	Oct. 18-24	Any elk	Any elk tag	Elk Area 5063	4
Quinault Ridge	Oct. 1-10	3 pt. min. or antlerless	Any elk tag	GMU 638	5
Green Mt. B	Jan. 17-30, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 5051	20
Merwin A	Nov. 21 - Dec. 15	Antlerless	Any elk tag	Elk Area 5060	10
Merwin B	Jan. 17-30, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 5060	10
((~~Advanced Hunter Education (AHE)~~)) Master Hunter, Second Elk Tag Hunts: Only ((~~AHE~~)) master hunters may apply; these hunts will not affect accumulated points; a second tag may be purchased by successful applicants as needed; and any weapon may be used. The second elk license and tag type must be the same tag type as the first one.					
Peola ((~~B~~)) E	Oct. ((~~1-12~~)) 1-10	Antlerless	((~~Any elk tag~~)) EM	GMU 178	15
Malaga H	Aug. 1 - Mar. 31, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 2032	100[HM]
Malaga I	Aug. 1 - Feb. 28, ((~~2008~~)) 2009	Any elk	Any elk tag	Elk Area 2032	20[HM]

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Peshastin E	Aug. 1 - Mar. 31, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 2033	50[HM]
Peshastin F	Aug. 1 - Feb. 28, ((~~2008~~)) 2009	Any elk	Any elk tag	Elk Area 2033	20[HM]
Fairview	Feb. 1-((~~29~~)) 28, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 3911	20[HM]
Rattlesnake Hills	Aug. 1 - Feb. ((~~29~~)) 28, ((~~2008~~)) 2009	Antlerless or spike bull	Any elk tag	Designated areas in GMU 372	20[HM]
Toledo C	Dec. 21-31	((~~Antlerless and spike bull~~)) Any elk	Any elk tag	Elk Area 5029	20
Toledo D	Aug. 1-7	((~~Antlerless and spike bull~~)) Any elk	Any archery elk tag	Elk Area 5029	5
Toledo E	Aug. 8-14	((~~Antlerless and spike bull~~)) Any elk	Any archery elk tag	Elk Area 5029	5
Toledo F	Aug. 15-21	((~~Antlerless and spike bull~~)) Any elk	Any archery elk tag	Elk Area 5029	5
Toledo G	Aug. 22-28	((~~Antlerless and spike bull~~)) Any elk	Any archery elk tag	Elk Area 5029	5
Boistfort B	Aug. 1-7	((~~Antlerless and spike bull~~)) Any elk	Any archery elk tag	Elk Area 5054	5
Boistfort C	Aug. 8-14	((~~Antlerless and spike bull~~)) Any elk	Any archery elk tag	Elk Area 5054	5
Boistfort D	Aug. 15-21	((~~Antlerless and spike bull~~)) Any elk	Any archery elk tag	Elk Area 5054	5
Boistfort E	Aug. 22-28	((~~Antlerless and spike bull~~)) Any elk	Any archery elk tag	Elk Area 5054	5
JBH *	Nov. 12 - Feb. 28, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 5090	20[HM]
((~~Trout Lake A**~~	~~Nov. 21-30~~	~~Antlerless~~	~~Any elk tag~~	~~Elk Area 5062~~	~~5~~
~~Trout Lake B**~~	~~Dec. 1-14~~	~~Antlerless~~	~~Any elk tag~~	~~Elk Area 5062~~	~~5~~))
Trout Lake ((~~C~~)) A**	Dec. 15-31	Antlerless	Any elk tag	Elk Area 5062	((~~5~~)) 3
Trout Lake ((~~D~~)) B**	Jan. 1-14, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 5062	((~~5~~)) 3
Trout Lake ((~~E~~)) C**	Jan. 15-30, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 5062	((~~5~~)) 3
North River B	Dec. 16 - Feb. 28, ((~~2008~~)) 2009	Antlerless	Any elk tag	Designated areas in GMU 658	10[HM]
Chehalis Valley D	Aug. 1 - Feb. 28, ((~~2008~~)) 2009	Antlerless	Any elk tag	Designated areas in Elk Area 6066	10[HM]
Raymond F	Dec. 1 - Mar. 31, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 6010	10[HM]
Hanaford C	Aug. 1 - Mar. 31, ((~~2008~~)) 2009	Antlerless	Any elk tag	Designated areas in Elk Area 6069	5[HM]
Dungeness A	Sept. 1 - Feb. 28, ((~~2008~~)) 2009	3 pt. min.	Any elk tag	Elk Area 6071 north of Hwy 101 only	((~~12~~)) 8[HM]
Dungeness B	Oct. 1 - Dec. 31	Antlerless	Any elk tag	Elk Area 6071 north of Hwy 101 only	((~~8~~)) 6[HM]
Youth - Special Elk Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)					
((~~Mudflow A~~	~~Oct. 9-14~~	~~Antlerless~~	~~WF~~	~~Elk Area 5099~~	~~6~~))
Mudflow ((~~B~~)) A	Oct. ((~~23-28~~)) 20-26	Antlerless	((~~WF~~)) Any elk tag	Elk Area 5099	((~~6~~)) 4
((~~Mudflow C~~	~~Nov. 20-25~~	~~Antlerless~~	~~WF~~	~~Elk Area 5099~~	~~6~~))
Dungeness C	Sept. 1 - Feb. 28, ((~~2008~~)) 2009	Any elk	Any elk tag	Elk Area 6071 north of Hwy 101 only	4[HM]
Sol Duc Valley	Aug. 1 - Jan. 22, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 6072	((~~10~~)) 2
Clearwater Valley	Aug. 1 - Mar. 31, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 6073	1
Persons of Disability Only - Special Elk Permit Hunts					
Sol Duc Valley B	Aug. 1 - Jan. 22, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 6072	5
Observatory D	Oct. 22 - Nov. 4	Any elk	EF or EM	GMUs 340, 342	7
Little Naches C	Oct. 1-10	Any elk	EF, EM, EA	GMU 346	5
Little Naches D	Oct. 31 - Nov. 4	Antlerless	EF, EM, EA	GMU 346	8
Alkali C	Oct. 20 - Nov. 4	Any elk	EF	GMU 371	((~~4~~)) 5
Corral Canyon	Sept. 28 - Oct. 5	Any elk	Any elk tag	Elk Area 3721	2
Mudflow B	Sept. 15-21	Any elk	Any elk tag	Elk Area 5099	4
Mudflow ((~~F~~)) C	((~~Oct. 16-21~~)) Sept. 29 - Oct. 5	((~~Antlerless~~)) Any elk	Any elk tag	Elk Area 5099	((~~6~~)) 4

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Mudflow D	((~~Sept. 25-30~~)) Nov. 10-16	((~~Any elk~~)) Antlerless	Any elk tag	Elk Area 5099	((~~6~~)) 4
((~~Mudflow E~~	~~Oct. 2-7~~	~~Any elk~~	~~Any elk tag~~	~~Elk Area 5099~~	~~6~~
~~Mudflow G~~	~~Oct. 30 - Nov. 4~~	~~Antlerless~~	~~Any elk tag~~	~~Elk Area 5099~~	~~6~~))
Ethel D	Nov. 1-10	Antlerless	Any elk tag	Elk Area 5049	5
Centralia Mine A	Oct. ((~~27-28~~)) 25-26	Antlerless	Any elk tag	Elk Area 6011	2
Centralia Mine B	Nov. ((~~3-4~~)) 1-2	Antlerless	Any elk tag	Elk Area 6011	2
North Shore B	Oct. 1-31	Antlerless	Any elk tag	Elk Area 6068	5
North Shore C	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6068	5
Chehalis Valley E	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6066	((~~15~~)) 10
((~~Hanaford A~~	~~Jan. 1-15, 2008~~	~~Antlerless~~	~~Any elk tag~~	~~Elk Area 6069~~	~~5~~))
Hunters 65 or Older Only - Special Elk Permit Hunts					
Hanaford ((~~B~~))	Jan. 16-30, ((~~2008~~)) 2009	Antlerless	Any elk tag	Elk Area 6069	5
Mudflow ((~~H~~)) E	((~~Sept. 18-23~~)) Nov. 24-30	Antlerless	Any elk tag	Elk Area 5099	((~~6~~)) 4
Margaret H	Nov. 11-16	Antlerless	WF	GMU 524	10
((~~Mudflow I~~	~~Nov. 6-12~~	~~Antlerless~~	~~Any elk tag~~	~~Elk Area 5099~~	~~6~~
~~Mudflow J~~	~~Nov. 27 - Dec. 2~~	~~Antlerless~~	~~Any elk tag~~	~~Elk Area 5099~~	~~6~~))

*Muzzleloaders only; scopes allowed in JBH hunt.
**May only hunt on privately owned lands. Must use only archery or legal shotgun (10 or 12 gauge; slugs only).
[HM]This is a damage hunt administered by a WDFW designated hunt master. Successful applicants will be contacted on an as-needed basis to help with specific sites of elk damage on designated landowner's property. Not all successful applicants will be contacted in any given year depending on elk damage activity for that year.

Hunter Education Instructor Incentive Permits

- Special elk permits will be allocated through a random drawing to those hunter education instructors that qualify.
- Permit hunters must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons.
- Qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing.
- Instructors who are drawn, accept a permit, and are able to participate in the hunt, will not be eligible for these incentive permits for a period of ten years thereafter.
- Permittees may purchase a second license for use with the permit hunt only.

Area	Dates	Restrictions	GMUs	Permits
Region 3	All general season and permit seasons established for GMUs included with the permit	Any elk	GMUs 335-368	2
Region 5		Any elk	All 500 series GMUs except GMU 522	4
Region 6		Any elk	GMUs 654, 660, 672, 673, 681	1

WSR 08-06-094
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed March 5, 2008, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-095.

Title of Rule and Other Identifying Information: WAC 458-20-145 Local sales and use tax, this section explains the local sales and use tax collection responsibilities of persons making retail sales in Washington.

Hearing Location(s): Capital Plaza Building, 1025 Union Avenue S.E., 4th Floor Executive Conference Room, Olympia, on Thursday, April 10, 2008, at 10:00 a.m.; and at the Spokane Falls Community College, 3410 West Fort George Wright Drive, Student Union Building 17, Lounge AB, Spokane, phone (509) 434-5162, on Monday, April 14, 2008, at 10:00 a.m.

Copies of draft rules are available for viewing and printing on our web site at http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx.

Date of Intended Adoption: April 30, 2008.

Submit Written Comments to: Tim Jennrich, P.O. Box 47453, Olympia, WA 98504-7453, e-mail Timje@dor.wa.gov, fax (360) 586-0127, by April 14, 2008.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective July 1, 2008, RCW 82.32.730 and 82.14.490 require sellers collecting Washington's retail sales tax to implement new local retail sales tax sourcing rules. This rule clarifies the local sourcing rules applicable to the retail sale of tangible per-

sonal property, retail services, extended warranties, and leases of tangible personal property.

Reasons Supporting Proposal: Revisions are necessary to recognize legislation and promote accurate tax collection and reporting guidance, particularly with respect to the local sourcing of retail sales.

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

Statute Being Implemented: RCW 82.14.490 and 82.32.730.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Tim Jennrich, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6136; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The revised rule, as proposed, does not impose new performance requirements or administrative burdens on any small business not required by statute or the state and/or federal constitution.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule does not constitute a significant legislative rule.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending Order ET 83-15, filed 3/15/83)

WAC 458-20-145 Local sales and use tax. ((~~RCW 82.14.030 authorizes counties and cities to levy local sales and use taxes, such local taxes to be collected along with the state tax. By RCW 82.14.045 cities and counties, after voter approval, are authorized to levy an additional tax to finance public transportation, which tax is also to be collected along with the state tax. (See WAC 458-20-237.)~~

~~As used herein the term "local tax" shall include either or both the local taxes and transportation sales and/or use taxes. The rule and examples in this administrative rule apply equally to all locally imposed sales and use taxes.~~

~~The total tax is to be reported and paid to the state. The local tax portion will be rebated to local governments according to information which retailers show on tax returns. If a business is such that a local tax will be collected for more than one taxing jurisdiction, it is necessary to keep a record of retail sales taxable to each such county or city. Vendors are responsible for determining the appropriate tax rate for each locality in which sales are made and for collecting from their purchasers the correct amount of tax due upon each sale.~~

~~"Place of sale" for purposes of local sales tax:~~

~~**Rule I.** Retailers of goods and merchandise: The sale occurs at the retail outlet at which or from which delivery is made to the consumer.~~

~~**Rule II.** Retailers of labor and services (e.g., construction contractors, repairmen, painters, plumbers, laundries, earth movers, fumigators, house wreckers or movers, tow truck operators, hotels, motels, tourist courts, trailer camps, amusement and recreation businesses listed in WAC 458-20-183; abstract, title insurance, escrow, credit bureau, auto parking, and storage garage businesses): The retail sales occurs where the labor and services are primarily performed.~~

~~**Rule III.** Retailers leasing or renting tangible personal property: The sale occurs at the place of first use by the lessee or renter. For practical purposes the place of business of the lessor will be deemed the place of first use for ordinary, short term rentals. If the rental or lease calls for periodic rental payments, then the place of sale is the primary place of use by the lessee or renter for each period covered by each payment.~~

~~"Place of use" for purposes of the use tax:~~

~~**Rule IV.** Whenever the state use tax is due, the local use tax will also apply where the property is first used in a county or city levying the local tax.~~

~~The following illustrates the application of these rules in various situations:~~

~~**Rule I.**~~

~~(A) This rule applies to retail sales consisting solely of tangible personal property (i.e., goods or merchandise). If retail labor and services are also involved Rule II applies to the entire sale. Secondly, the total tax is determined by the place at which or from which delivery is made. For most retailers the location of his place of business governs the local tax application. He collects the tax if his place of business is in a jurisdiction levying the local tax, even though he may deliver the goods sold to his customer to a location in the state not levying the tax. On the other hand a merchant whose place of business is in a jurisdiction not levying the local tax collects only the state tax, irrespective of whether delivery is made into a jurisdiction levying the local tax.~~

~~To sum up this part of the rule: The origin of the goods determines the local tax and destination or fact of delivery elsewhere in the state are immaterial.~~

~~(B) Special applications of the rules for goods located outside the state:~~

~~(1) When the state business and occupation tax applies to a sale in which the goods are delivered into Washington from a point outside the state this means a local in-state facility, office, outlet, agent or other representative even though not formally characterized as a "salesman" of the seller participated in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, his agent or representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax shall be determined by the location of the customer.~~

~~(2) If the state business and occupation tax does not apply because there was no in-state activity in connection with the sale (e.g., an order was sent by a Washington consumer directly to a seller's out-of-state branch) the state tax due is use tax and the destination address of the consumer determines the applicable local use tax.~~

Rule I examples:

(1) A resident of Everett purchases a sofa from a furniture dealer in Seattle. The dealer delivers the sofa to the customer's home in Everett. The Seattle local sales tax applies, being the place from which the goods were delivered.

(2) A resident of Olympia purchases a refrigerator from a merchant in Tekoa. If Tekoa has not levied the local sales tax, the merchant will collect only the state sales tax. Olympia's use tax is not due even though the property will be used there. Reason: The law makes the local tax collectible at time of the taxable event for the state tax.

Rule II.

This rule applies to retail sales of labor or services and also applies to sales of tangible personal property when labor and services are rendered in conjunction therewith. The local tax is governed by the place where the labor and services are primarily performed.

(A) Retailers who primarily render their services at their place of business will collect the local sales tax if they are located in a jurisdiction which levies the tax. Examples of retailers normally falling in this class: Auto repair shops, hotels, motels, amusement or recreation businesses, title insurance, credit bureau, escrow businesses, auto parking, storage garages, laundries.

(B) Retailers primarily performing their services at the location of their customers will collect the local sales tax for the jurisdiction in which the customer is located. Examples of this class of retailers are: Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell, as carpet layers often do, fall under Rule II-place where work is done governs the local tax to be applied-if the installation would normally call for an extra charge) earthmovers, housewreckers.

Examples:

(1) A dealer sells a TV set, delivers it and puts it in working order in his customer's home. This falls under Rule I, not Rule II, because there is normally no extra charge for "installing" a TV set.

(2) A hardware store sells yard fencing at $5.00 per running foot including installation. This falls under Rule II because fence installation normally would involve an extra charge.

(3) A home furnishings dealer sells carpeting at $12.00 per yard and agrees to install it for $2.00 per yard additional. The entire transaction falls under Rule II and the $14.00 per yard will be subject to the local tax levied by the jurisdiction in which the customer resides. Rule I is limited to retail transactions consisting **solely** of sales of goods or merchandise.

(C) The primary place of performance for retailers whose services consist largely of moving or transporting is deemed to be the destination (place where the service is completed). Typical of this class are: Tow truck operators and house movers.

Examples:

(1) A towing service is called to pick up a stalled vehicle just outside the city of Reardan and deliver the vehicle to an automotive repair shop in Spokane. Spokane's local tax applies.

(2) A housemover is hired to move a home from inside the Olympia city limits to a location 4 miles out of town in Thurston County. The housemover will collect only the state tax if Thurston County, the destination, does not levy the local tax.

Rule III.

This covers rentals or leases and has two parts, and it is important to distinguish "periodic rentals" from other rentals to know which part of the rule applies.

Definition. A periodic rental (or lease) is one in which the lessee or renter has contracted to make regular rental payments at specified intervals. These are normally longer term rentals calling for a rental payment monthly on or before a certain date.

(A) The place of sale for the ordinary, nonperiodic rental is the place of first use (the place where the lessee normally takes possession). In the interest of uniformity and simplicity this will be presumed to be the place of business of the lessor.

(B) The place of sale for the periodic rental is the primary place of use during each period covered by each periodic payment.

(1) In the case of business lessees this will be presumed to be the place of business of the lessee. Where the lessee has several places of business, the place of primary use will be deemed to be the place to which assigned or regularly returned.

(2) In the case of rentals to private individuals the place of use will be presumed to be the residence of the lessee or renter.

Examples:

(1) Acme Rent-all Co., located in Walla Walla, rents small tools, garden equipment, scaffolding, and many other kinds of tangible personal property. It charges $2.00 per day for rental of a rototiller. This is not a periodic rental because the lessee merely makes a deposit and pays the full balance of the rent due upon returning the equipment. The lessor will collect the Walla Walla tax on all such rentals, irrespective of where the lessee lives or where the property will be used.

(2) An automobile dealer in Tacoma leases an automobile to a Seattle resident. The agreement calls for $50.00 per month rental, payable by the 10th of each month. This is a periodic rental, so the place of primary use by the lessee governs collection of the local tax. The Tacoma dealer will collect the Seattle local tax.

Rule IV.

This rule applies only to transactions which are not subject to sales tax under Rule I, and intends that the local use tax shall be payable at the time and place the state use tax is due.

Examples:

(1) A Spokane resident purchases an automobile from a private individual in Seattle. He transfers title at the King County auditor's office and makes payment of the state use tax. The King County auditor will collect Spokane's local use tax at the same time.

(2) A Sumner resident places an order with a catalog mail order outlet in Tacoma. The Tacoma local sales tax is due since the transaction falls under Rule I, not Rule IV.

~~(3) Same as example 2 except the Sumner resident sends a catalog mail order directly to the Portland warehouse rather than going through the Tacoma catalog store. The vendor will collect Sumner's local use tax along with the state use tax.~~

~~The above explanation is intended to cover only the most frequently encountered situations. For more intricate or complicated transactions, call the nearest district office of the department of revenue for assistance.~~)) (1) **Introduction.** Effective July 1, 2008, Washington implements new rules governing how local retail sales taxes are sourced within Washington. See RCW 82.32.730 and 82.14.490. These rules govern where the local retail sales tax attributable to the sale of tangible personal property, retail services, extended warranties, and the lease of tangible personal property is sourced.

"Source," "sourced," or "sourcing" refer to the location (as in a local taxing district, jurisdiction, or authority) where a sale or lease is deemed to occur and is subject to retail sales tax. The department assigns location codes to identify the specific taxing locations that receive the local taxes. These location codes are used on tax returns to accurately identify the correct taxing location and tax rate.

Sellers and their agents are responsible for determining the appropriate tax rate for all their retail sales taxable in Washington. Sellers and their agents are also responsible for collecting from their purchasers the correct amount of tax due upon each sale and remitting that tax to the department.

Throughout this section the department provides a number of examples that identify facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined separately after a review of all of the facts and circumstances.

This section is divided into four subsections. Subsection (1) contains this introduction, a description of department resources available to assist taxpayers in performing local sales tax sourcing, and certain key terms. Subsection (2) describes Washington's sourcing rules that become effective July 1, 2008. Subsection (3) provides information relating to the sourcing of telecommunication services. Finally, subsection (4) briefly explains Washington's use tax rule.

(a) **What resources does the department offer to help sellers determine their local retail sales tax sourcing?** The department offers a number of resources to assist taxpayers in sourcing retail sales. These resources include:

(i) **The "*Quarterly Local Sales & Use Tax Flyer*."** This publication is updated every quarter and is mailed to all taxpayers reporting on paper returns. It is also available online on the department's web site at www.dor.wa.gov under "get a form or publication." It provides a listing of all local taxing jurisdictions, location codes, and their corresponding tax rates.

(ii) **The "online sales and use tax rate look up application" (GIS).** This is an online application that provides current and past sales and use tax rates and location codes based on an address or a selected location on a map. It also allows users to download data that they can incorporate into their own systems to retrieve the proper tax rate for a specific address.

(iii) **Taxing jurisdiction maps.** The department has a selection of maps of various taxing jurisdictions that identify the boundaries of a specific taxing jurisdiction.

(b) **Of what key terms should I be aware when reading this section?**

(i) **"Receipt"** and **"receive"** mean taking possession of tangible personal property and making first use of services. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. See RCW 82.32.730 (8)(c).

(ii) **"Retail sale"** has the same meaning as provided in RCW 82.04.050 and includes the following three types of retail sales: Sales and leases of tangible personal property; sales of retail services; and sales of extended warranties.

(iii) **"Retail service"** means those services described in RCW 82.04.050 as retail sales. This definition includes retail sales of labor and services rendered with respect to tangible personal property.

The following is a nonexclusive list of retail services, many of which are addressed in detail in other rules adopted by the department:

• Constructing, remodeling, or painting buildings (e.g., see WAC 458-20-170);

• Land clearing and earth moving (e.g., see WAC 458-20-172);

• Landscape maintenance and horticultural services (e.g., see WAC 458-20-226);

• Repairing or cleaning equipment (e.g., see WAC 458-20-173);

• Lodging provided by hotels and motels (e.g., see WAC 458-20-166);

• Amusement and recreation services such as golf, bowling, swimming, and tennis (e.g., see WAC 458-20-183);

• Physical fitness services such as exercise classes, personal trainer services, and the use of exercise equipment (e.g., see WAC 458-20-183); and

• Abstract, title insurance, or escrow services (e.g., see WAC 458-20-156).

(iv) **"Tangible personal property"** means property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses and includes prewritten software. See RCW 82.08.010(7), 82.08.950, and 82.12.950 for more information.

(v) **"Extended warranty"** is an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. See RCW 82.04.050(7).

(vi) **"Motor vehicle"** generally means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. Motor vehicles are vehicles capable of being moved upon public ways. "Motor vehicle" includes a

neighborhood electric vehicle as defined in RCW 46.04.357. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. For more information see RCW 46.04.320 "Motor vehicle" and RCW 46.04.670 "Vehicle."

(vii) **"Primary property location"** is the property's physical address as provided by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith. The primary property location will not change merely by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple jurisdictions.

(viii) **"Transportation equipment"** refers to:

(A) Locomotives and railcars used to carry people or property in interstate commerce; and

(B) Trucks and truck tractors with gross vehicle weight ratings of 10,000 pounds or greater, trailers, and semi-trailers, or passenger buses registered through an international registration plan and operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation (or other federal authority) to engage in carrying people or property in interstate commerce (International Registration Plan is a reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions); and

(C) Aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation (or other federal or foreign authority) to carry people or property by air in interstate or foreign commerce; and

(D) Containers designed for use on and component parts attached or secured on the items described in (b)(viii)(A) through (C) of this subsection (1). RCW 82.32.730 (8)(d).

(2) **Local retail sales tax sourcing.** This subsection describes Washington's retail sales tax sourcing rules. Subsection (2)(a) of this section lists the general sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties. Subsection (2)(b) of this section provides special sourcing rules related to the sale of watercraft; mobile, modular, and manufactured homes; and motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment. Subsection (2)(c) of this section addresses the sourcing rules applicable to leases of tangible personal property.

(a) **Sales of tangible personal property, retail services, and extended warranties.** This subsection describes the sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties.

These rules apply in a descending order of priority. This means that the seller first should determine if (a)(i) of this subsection (Rule 1 below) applies. If it does apply, then the seller must source the sale under Rule 1. If Rule 1 does not apply, then the seller must source the sale to the location required under sourcing Rule 2 (below), and so forth until the applicable sourcing rule is determined.

If the seller ships or delivers tangible personal property to a customer who receives that property outside Washington, the sale is deemed to have taken place outside Washington and is not subject to Washington state or local retail sales tax.

The following rules apply when sourcing retail sales in Washington:

(i) **Rule 1: Seller's business location.** If a purchaser receives tangible personal property, a retail service, or an extended warranty at the seller's business location, the sale is sourced to that business location.

In the case of retail services, this sourcing rule will generally apply where a purchaser receives retail services at the seller's place of business, e.g., an auto repair shop, a hotel or motel, a health club providing physical fitness services, an auto parking service, a dry-cleaning service, and a storage garage. While these types of retail services are usually received at the seller's place of business, if services are received at a location other than the seller's place of business, then alternate sourcing rules will apply.

(A) **Examples: Rule 1 - Tangible Personal Property.**

(1) Bill, a Tacoma resident, travels to Renton and purchases a ring from a jeweler located in Renton. Bill receives the ring at the Renton location. The seller must source the sale to the Renton location.

(2) Mary, a Walla Walla resident, buys a prewritten software program from a store located in Cheney. Mary receives a compact disc containing the software at the Cheney location. The seller must source the sale to the Cheney location.

(3) Trains, Inc., an Auburn business, buys a locomotive that qualifies as transportation equipment. Trains, Inc. receives the locomotive in Fife at the seller's place of business. The seller must source the sale to the Fife location.

(B) **Examples: Rule 1 - Retail Services.**

(1) Barbara, a Longview resident, takes her car to a mechanic shop located in Centralia. The mechanic services the car at the Centralia location. Several days later Barbara picks up the car from the Centralia location. The services are received in Centralia. The mechanic must source the sale to the Centralia location.

(2) Rex, a Seattle resident, drops off a roll of film at a photo developer located in Bellevue. Rex picks up the developed film from the Bellevue location. The services are received in Bellevue. The developer must source the sale to the Bellevue location.

(3) Bob, a Pasco resident, takes shirts to a drycleaner located in Kennewick. The drycleaner cleans and presses the shirts. Bob then picks up the shirts in Kennewick the following week. The services are received in Kennewick. The seller must source the sale to the Kennewick location.

(C) **Example: Rule 1 - Extended Warranties.**

(1) Saffron, a Des Moines resident, buys a computer from a Burien computer outlet. When purchasing the computer Saffron also purchases and receives a five-year extended warranty for the computer at the Burien outlet. The seller must source the sale of the extended warranty and computer to the Burien location.

(ii) **Rule 2: Tangible personal property, retail services, or extended warranties received at a location other than the seller's place of business.** If the purchaser receives tangible personal property, retail services, or an extended warranty at a location other than the seller's place of business (and sourcing Rule 1 therefore does not apply), then the sale

must be sourced to the location where the purchaser, or the purchaser's donee (e.g., a gift), receives such property, retail service, or extended warranty. This location can be a location indicated in instructions, known to the seller, for delivery to the purchaser or donee.

Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell), earth movers, and house wreckers are the types of retail service providers that typically will source sales under this sourcing Rule 2 (presuming they provide their services at a location other than their place of business).

(A) **Examples: Rule 2 - Tangible Personal Property.**

(1) Wade, a Seattle resident, buys furniture from a store located in Everett. Wade has the furniture delivered to his Seattle residence. Wade receives the furniture at his location in Seattle. The seller must source the sale to Wade's Seattle residence.

(2) Joanne, a Port Angeles business owner, purchases a prewritten software program online from a store located in Sequim. Joanne receives the software at her home address in Port Angeles. The seller has information identifying the location where the software is electronically received by Joanne in Port Angeles. The seller must source the sale to Joanne's Port Angeles home location.

(3) Jean, a Tumwater resident, buys prewritten software to detect online security threats. The seller is a store located in Bothell. As part of the purchase price, Jean receives prewritten software updates. All software is electronically delivered. The seller does not know where the software is electronically delivered. However, the purchase order discloses a ship-to address where the software will be received in Tumwater. The seller must source the sale to Jean's ship-to address as this address represents a delivery location indicated in instructions for delivery to Jean. The seller must source the sale to the Tumwater location according to the ship-to address.

(4) Karl, a Spokane Valley resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Karl's home in Spokane Valley. Karl receives the mattress at his home location in Spokane Valley. The seller must source the sale to the Spokane Valley home location.

(5) George, an Olympia resident, orders a pizza from a restaurant located in Tumwater. The restaurant obtains George's Olympia address when taking the order. George receives the pizza at the Olympia address. The seller must source the sale to Olympia according to George's Olympia address.

(6) Gunther, a Sumner resident, places an order for towels with a catalog mail order outlet located in Tacoma. The seller delivers the towels to Gunther's home at a Sumner location from a warehouse in Fife. Gunther receives the towels at the Sumner location. The seller must source the sale to Gunther's Sumner home location.

(B) **Examples: Rule 2 - Retail Services.**

(1) Brett, a Tacoma resident, contracts with an Olympia painting firm to have his house repainted. The Olympia firm sends employees to Brett's home in Tacoma where they perform the painting. Brett receives the painting services at his home in Tacoma. The painting firm must source the painting services to Brett's Tacoma home location.

(2) Julie, an Aberdeen resident, hires a construction contractor to build a new business facility in Kelso. Julie receives the construction services at the Kelso location. The contractor must source the services to the Kelso construction location.

(3) Gabe, a Shoreline resident, sends a clock to a repair business located in Auburn. The business repairs the clock and then delivers the clock to Gabe's home in Shoreline. Gabe receives the services at the Shoreline location. The repair service must source the sale to Gabe's Shoreline home location.

(C) **Example: Rule 2 - Extended Warranties.**

(1) Tara, a Chelan resident, buys a computer over the internet. The retailer offers a five year extended warranty. Tara decides to purchase the extended warranty and sends the seller the appropriate paperwork. The seller then sends the extended warranty documents to Tara's home in Chelan. The sale of the extended warranty is sourced to the Chelan home location where Tara receives the warranty documents.

(D) **Additional Examples: Rule 2 - Delivery Outside Washington, Gifts, and Receipt by a Shipping Company.**

(1) Alan, a Spokane resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Alan's vacation home in Idaho. The mattress was delivered outside of Washington and is not subject to Washington state and local sales tax. The seller does not source the sale to Washington.

(2) Sandra, a Vancouver, Washington resident, buys a computer online from a merchant in Seattle. The computer is a gift for Tim, a student attending college in Pullman. The purchaser directs the seller to ship the computer to Tim's home address in Pullman. Tim receives the computer at the Pullman location. The merchant will source the sale based on the ship-to address in Pullman.

(3) Martha, a Wenatchee resident, travels to a gift shop in Leavenworth. Martha buys five (5) items for herself and five (5) gifts for friends. Martha takes possession of the five (5) items for herself at the gift shop. Martha then has the gift shop deliver the five (5) gifts to addresses located in Wenatchee. The seller will source the sale of the five (5) items purchased by Martha for herself to Leavenworth. The seller must source the five (5) gifts to Wenatchee according to the ship-to address where each donee receives its gift.

(4) Sheila, a Yakima resident, buys equipment from a Pasco retailer. Sheila arranges to have a shipping company pick up the equipment and deliver that equipment to Sheila in Yakima. In the purchase order Sheila notifies the seller that the equipment will be received at a ship-to address in Yakima. Tangible personal property is not considered received at the seller's place of business in cases where the purchaser arranges to have the goods picked up by a shipping company on its behalf. The seller must source this sale to Sheila's ship-to Yakima location where the equipment is received.

(iii) **Rule 3: Purchaser's address maintained in the seller's ordinary business records.** If neither sourcing Rule 1 nor Rule 2 apply, a retail sale is sourced to the purchaser's address as indicated in the seller's records maintained in the

ordinary course of the seller's business, provided use of this address does not constitute bad faith.

Example - Rule 3.

(1) Shannon buys prewritten software from a Bellevue seller by downloading the software from the seller's web site. Shannon's location is unknown at the time of sale. However, the seller maintains a Seabeck address for Shannon in its business records. Because Shannon does not receive the software at the seller's place of business and the location of receipt is unknown, sourcing Rules 1 and 2 do not apply. The seller must source the sale to the address maintained in its ordinary business records for Shannon (the Seabeck address).

(iv) **Rule 4: Purchaser's address obtained at the consummation of sale.** If any of sourcing Rules 1 through 3 do not apply, the sale is sourced to the purchaser's address obtained during the consummation of sale. If no other address is available, this address may be the address included on the purchaser's payment instrument (e.g., check, credit card, or money order), provided use of this address does not constitute bad faith.

Example - Rule 4.

(1) Eric buys prewritten software over the internet from a retail outlet located on Vashon Island. The seller transmits the prewritten software to an e-mail address designated by Eric. The e-mail address does not disclose Eric's location. Eric pays for the software by credit card. When entering the relevant credit card information, Eric discloses a residential address in Port Angeles to which the credit card is billed. Sourcing Rules 1 and 2 do not apply because Eric does not receive the software at the seller's business location and the seller does not know where the software is being received. Sourcing Rule 3 does not apply because the retail outlet does not have Eric's address on file in its ordinary business records. Therefore, the retail outlet must source the sale to the address related to the customer's credit card information given during the consummation of the sale. The retail outlet must source the sale to Eric's Port Angeles location.

(v) **Rule 5: Origin sourcing default rule.** If a seller is unable to source a sale under any of the sourcing Rules 1 through 4 above, or the seller has insufficient information to apply those rules, the default origin sourcing rule applies. Subsection (2)(b)(v)(A) through (C) of this section describes sourcing Rule 5 as it applies to the sale of tangible personal property, retail services, and extended warranties.

(A) **Origin sourcing: Tangible personal property.** If any of sourcing Rules 1 through 4 do not apply, the seller must source sales of tangible personal property to the address from which the property was shipped.

(B) **Origin sourcing: Electronically delivered prewritten software.** If any of the sourcing Rules 1 through 4 do not apply, the seller must source sales of electronically delivered prewritten computer software to the address from which the computer software was first made available for transmission by the seller. Locations that merely provide for the transfer of computer software, and are not the address from which the seller made the computer software first available for transmission, will not be used.

(C) **Origin sourcing: Retail services and extended warranties.** If any of sourcing Rules 1 through 4 do not apply, the seller must source retail services and extended warranties to the address from which it provides the service or warranty.

(D) **Examples: Rule 5 - Prewritten Software.**

(1) Rebecca purchases prewritten computer software electronically and requests that the software be delivered to a specified e-mail address. The seller operates from a retail store located in Tacoma. The seller does not know the location where the software will be received and further does not have information about Rebecca's location in its ordinary business records. Additionally, Rebecca does not supply the seller with address information during the consummation of the sale. Thus, none of sourcing Rules 1 through 4 apply. This sale must be sourced under the default sourcing rule. The seller first made the prewritten software available for transmission from a server housed at its Tacoma location. The seller will source the sale to that Tacoma location from which the prewritten software was first transmitted. This result will not change if the software is routed from the Tacoma server through a second server (either operated by the seller or some third party) located outside of the Tacoma location. Routing as used in this context refers to the transfer of prewritten software from one location to another location for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added.

(2) Assume the facts in Example (1) directly above, except that Rebecca's order is submitted to the Tacoma location and the transmission of the prewritten software originates from a Bellevue location. The seller first made available for transmission the prewritten software from a server housed at its Bellevue location. The seller will source the sale to the Bellevue location.

(b) **Special sourcing rule: Sales of watercraft; modular, mobile, and manufactured homes; and motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment.** If you are making a retail sale of watercraft; modular, mobile, or manufactured homes; or motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment (excluding leases and rentals), you must source the sale to the location at or from which delivery is made.

When the sale of goods is delivered into Washington from a point outside the state and a local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, the seller's agent or the seller's representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax must be determined by the location of the customer.

Example: Special Sourcing Rule.

(1) Ben, a Federal Way purchaser, buys a car from a dealer in Fife. The customer has the option of picking up the car on the lot in Fife or having it delivered to his residential address in Federal Way. Ben asks to have the car delivered to the Federal Way location. The dealer must source the sale of

the car to the dealer's location in Fife from which the car was delivered.

(c) **Leases of tangible personal property.** "Lease" and "rental" mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. For more information concerning "leases" and "rentals" see RCW 82.04.040. The terms "lease" and "rental" are used interchangeably throughout this subsection (2)(c). This subsection (2)(c) provides local retail sales tax sourcing guidance for lessors who lease tangible personal property.

(i) **How do I source lease payments attributable to the lease of transportation equipment?** If you are leasing transportation equipment, you must source the lease payments attributable to that transportation equipment under sourcing Rules 1 through 5 above. See subsection (1)(b)(viii) of this section for a description of transportation equipment.

(ii) **How should I source lease payments attributable to the lease of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment?** If you are leasing a motor vehicle, trailer, semi-trailer, or aircraft that does not qualify as transportation equipment, you must source the lease payments under this subsection (2)(c)(ii).

(A) **Leases that require recurring periodic payments.** If the lease requires recurring periodic payments, you must source each periodic payment to the primary property location of the leased property. See subsection (1)(b)(vii) of this section for a description of primary property location. The primary property location will not change by intermittent use of the leased property in different jurisdictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

(B) **Leases that do not require recurring periodic payments.** If the lease does not require recurring periodic payments, you must source the single lease payment under sourcing Rules 1 through 5 above.

(C) **Examples:**

(1) Rich, a Fall City customer, leases a car from a dealer in Duvall. Rich leases the car for a period of one year. The car does not qualify as transportation equipment. Rich provides the dealer with his residential address in Fall City where he keeps the car. Rich makes monthly periodic payments throughout the term of the lease. Rich indicates the primary property location for the car is his residence in Fall City. The Fall City location is recorded in the store's business records. The periodic lease payments will be sourced to the residential primary property location in Fall City. If Rich were to move to Seattle during the term of the lease and notify the dealer of a change in the car's primary property location, the dealer would source any lease payments subsequent to that change in primary property location to Seattle.

(2) Amanda, a Tacoma business owner, rents a trailer for a period of one week and no periodic payments are required under the lease. The trailer does not qualify as transportation equipment. Amanda receives the trailer at a business location in Tacoma. The seller will source the sale to the Tacoma business location.

(iii) **How do I source lease payments for all other tangible personal property?** If you lease tangible personal property not described in subsection (2)(c)(i) or (ii) of this section, you must source your lease payments under this subsection (2)(c)(iii).

(A) **Lease that requires recurring periodic payments.** If the lease requires recurring periodic payments, you must source the first periodic payment on that lease under sourcing Rules 1 through 5. You must then source all subsequent periodic payments to the primary property location for each period covered by such periodic payments. See subsection (1)(b)(vii) of this section for a description of primary property location. The primary property location will not change by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

(B) **Leases that do not require recurring periodic payments.** If the lease does not require recurring periodic payments, you must source the single payment under sourcing Rules 1 through 5.

(C) **Examples:**

(1) Mark, a Gig Harbor resident, leases furniture from a store in Bremerton. The furniture will be leased for twelve months. The store delivers the furniture to Mark's home address in Gig Harbor. Mark indicates the primary property location for the equipment is his home address in Gig Harbor. The Gig Harbor location is recorded in the store's business records. The customer makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Gig Harbor where Mark receives the furniture. The store must then source all subsequent periodic payments to Gig Harbor, which represents the primary property location recorded in the store's ordinary business records.

(2) Brad, a Pasco business owner, leases furniture from a store in Spokane. Brad picks up the furniture in Spokane and makes the initial periodic payment on the lease. The furniture is leased for a period of twelve months. Brad indicates the primary property location for the equipment is a business address in Pasco. The Pasco location is recorded in the store's business records. Brad then makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Spokane where Brad received the furniture. The store must source the subsequent periodic payments to the Pasco primary property location.

(3) Alison, a Seattle business owner, leases equipment from a store in Issaquah. Alison picks up the equipment in Issaquah and makes an initial periodic payment on the lease. The equipment is used in work primarily performed in Washington, but the equipment is also taken out intermittently on a number of service calls made in Oregon. Alison indicates the primary property location for the equipment is a business address in Seattle. The Seattle location is recorded in the store's business records. The equipment is leased for a period of one year. Alison makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Issaquah where the equipment is received. The store must source the subsequent periodic payments to Seattle, which represents the primary property location. Alison's intermittent use of the equipment in other jurisdictions does not change the primary property location of the equipment.

(4) Amelia, a Pasco business owner, leases equipment from a store located in Pasco. Amelia picks up the equipment in Pasco, making an initial periodic payment on the lease.

The lease is for a period of one year. During the first six months of the lease, Amelia indicates the primary property location for the equipment is a business address in Walla Walla. For the second six months of the lease, Amelia indicates the primary property location is a business address in Leavenworth. The store records the primary property locations in its business records. The store must source the initial periodic payment to Pasco where Amelia received the equipment. The store must source all other periodic lease payments covering the first six months of the lease to the primary property location recorded for Walla Walla. The store must source those periodic lease payments covering the last six months of the lease to the primary property location in Leavenworth.

(5) Brian, a North Bend business owner, rents a backhoe from Construction Rentals located in Lynnwood. The lease period is 45 days and the lease requires a single lease payment. Brian pays the entire lease amount at the time of pickup. The customer picks up the equipment in Lynnwood and takes it to a job site in DuPont. Construction Rentals must source the sale to the location in Lynnwood where Brian receives the backhoe.

(6) Lisa, an Olympia business owner, rents a pressure washer from Rental Co. located in Lacey. The rental period is one day and no periodic payments are required under the lease. Lisa picks up the equipment in Lacey and takes it to a job site in Yelm. Sales tax is sourced to the seller's location in Lacey. If Rental Co. delivered the pressure washer directly to Lisa at the job site in Yelm, the sale would have been sourced to the location of the job site in Yelm.

(3) **Telecommunications services.**

Where can I find information related to the sourcing and sale of telecommunication services? Sales of telecommunication services and ancillary services are defined as retail sales in RCW 82.04.050. Sellers must source these services under the sourcing provisions located in RCW 82.32.520. See RCW 82.04.065 for more information about telecommunication services and ancillary services.

(4) **Use tax. How is use tax sourced in Washington?** Where a seller does not have an obligation to collect Washington sales tax, the tangible personal property or service sold by that person is subject to use tax under chapter 82.12 RCW et seq. This use tax is sourced to the place of first use and is payable by the purchaser. The seller may be required to collect use tax pursuant to the requirements of RCW 82.12.040.

WSR 08-06-101
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING

[Filed March 5, 2008, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-22-020.

Title of Rule and Other Identifying Information: Proposed new chapter 170-06 WAC, DEL background check rules and related proposed amended and repealed sections of chapter 170-151 WAC, School-age child care center minimum licensing requirements, chapter 170-295 WAC, Minimum licensing requirements for child care centers, and chapter 170-296 WAC, Child care business regulations for family home child care.

Hearing Location(s): Department of Early Learning Headquarters, Room 230, 649 Woodland Square Loop (above Harborstone Credit Union), Lacey, WA 98503, on April 8, 2008, at 6:00 p.m.; and at the Department of Early Learning, Yakima Office, 1002 North 16th Avenue, Yakima, WA 98907, on April 12, 2008, at 4:30 p.m.

Date of Intended Adoption: Not earlier than April 15, 2008.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, e-mail licensing.comments@del.wa.gov, fax (360) 413-3482, by noon on April 14, 2008.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by April 4, 2008, (360) 725-4397.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of early learning (DEL) is proposing new, amended, and repealed rules establishing procedures for background checks conducted by DEL. DEL does a background check on every person authorized to provide care for or have unsupervised access to children in child care facilities licensed or certified by DEL.

Before July 3, 2006, background checks for child care were conducted under department of social and health services (DSHS) rules. When DEL was established as [a] separate agency under chapter 265, Laws of 2006 (chapter 43.215 RCW), DSHS rules became obsolete for the purpose on conducting background checks for child care licensed or certified by DEL. DEL has been providing background checks since July 3, 2006, under emergency rules, currently filed as WSR 08-04-060. The department intends to adopt the proposed background check rules as permanent to replace the emergency rules.

The proposed rules also implement chapter 387, Laws of 2007, that further defined DEL's responsibility to conduct background checks under RCW 43.43.832.

DEL authority to conduct background checks: The DEL is required by law to assess the character, suitability and competence of anyone applying for a child care license or to care for children in child care, and others who would have unsupervised access to children in child care. DEL is also required by law to adopt its background check requirements by rule (WAC). DEL's responsibilities are described in the following sections of chapters 43.215 and 43.43 RCW, quoted in part:

RCW 43.215.200

It shall be the [DEL] director's duty with regard to licensing:

…(2) In consultation and with the advice and assistance of parents or guardians, and persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements as for licensing applicable to each of the various categories of agencies to be licensed under this chapter;

(3) In consultation with law enforcement personnel, the director shall investigate the conviction record or pending charges of each agency and its staff seeking licensure or relicensure, and other persons having unsupervised access to children in care…

(DEL Note: "requirement" is defined in RCW 43.215.-010(9) as "any rule, regulation, or standard of care to be maintained by an agency.")

RCW 43.215.205

Applications for licensure shall require, at a minimum, the following information:

…(2) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children;

RCW 43.215.215

(1) In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the department may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(2) In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children, shall be fingerprinted.

…(c) The director shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children.

RCW 43.43.832

…(6) The director of the department of early learning shall adopt rules and investigate conviction records, pending charges, and other information including civil adjudication proceeding records, in the following circumstances: [DEL Note: See the definition of "civil adjudication proceeding" in RCW 43.43.830.]

(a) When licensing or certifying agencies with individuals in positions that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood education services, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(b) When authorizing individuals who will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services in licensed or certified agencies, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(c) When contracting with any business or organization for activities that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services;

(d) When establishing the eligibility criteria for individual providers to receive state paid subsidies to provide child day care or early learning services that will or may involve unsupervised access to children.

RCW 43.43.830

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.845….

(3) "Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; *patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandon-

ment; or any of these crimes as they may be renamed in the future.

DEL Public Input Process: These proposed rules were developed following:

- Forums held statewide in November and December 2006 seeking public input on the emergency background check rules (still in effect) and previous background check rules of the DSHS that were in effect for licensed and certified child care prior to the formation of DEL in 2006.
- Meetings in summer 2007 with child care providers, parent advocates, and the Services Employees International Union.
- Public review and comment on a preliminary draft of the background check rules in February 2008.

Further information about this proposal is available at the DEL public web site, http://www.del.wa.gov/policy/policyRules.shtml, or by contacting the DEL rules coordinator to obtain information about these proposed rules by postal mail.

The public will also have further opportunities to comment on this proposal by either submitting written comments to the e-mail, fax and postal addresses noted on in this proposal or by attending one of two public hearings, scheduled for April 8, 2008, in Lacey and April 12, 2008, in Yakima.

Comments on this proposal will be accepted until noon on Monday, April 14, 2008. Public comments, and the department's response to each issue raised in comments, will be summarized in a "concise explanatory statement" prepared under RCW 34.05.325. The concise explanatory statement will be sent to everyone who comments on this proposal and to anyone who requests it.

Related Changes to Child Care Licensing WAC Chapters: Accompanying amendments to the child care licensing chapters 170-151, 170-295, and 170-296 WAC make background check requirements and procedures more consistent for all child care licensed and certified by DEL, and make those rules consistent with proposed new chapter 170-06 WAC. A side-by-side comparison of the proposed chapter 170-06 WAC and changes to the child care licensing rules is available online at http://www.del.wa.gov/Policy/policyPubComment.shtml or by contacting the DEL rules coordinator at (360) 725-4397, or at e-mail andres.fernando @del.wa.gov.

Summary of Key Comments on the Preliminary Draft of Background Check Rules Received from February 11, 2008, through February 22, 2008: The department circulated a preliminary draft of chapter 170-06 WAC on February 11, 2008, for public review. The following represent some key issues raised in those comments. The actual comments on the preliminary draft rules are available on the DEL public web site http://www.del.wa.gov/Policy/Comments/Draft_Background_Check_rules_e-mail_comments_2-11-08_to_2-25-08_v2.pdf.

1. Rule-making process: Concerns were expressed that the timeframes for comment on the informal draft were too short and that public comments were not posted for viewing.

The department is committed to an open and transparent rule-making process. The public and key stakeholders have had other opportunities to participate in the development of these rules in 2006, 2007, and in February 2008, and they may still comment on this proposal before the final rules are adopted.

While DEL does not presently have the technological capacity to post public comments online immediately upon submission, we are exploring this possibility for future public comment periods. The department made all comments on the draft rules available on the DEL web site within one business day after the comment deadline.

Note: The law does not require actual posting of comments for public view during or after the rule-making process. RCW 34.05.325 requires DEL to summarize and respond to the comments in a "concise explanatory statement" prepared just before adopting the final rule. However, to ensure an open rule-making process, DEL will post comments on this proposal online weekly during the public comment period.

2. Negative actions and other nonconviction background information: Concerns were expressed that this is a new requirement, about whether DEL has the authority to make decisions based on information other than criminal convictions, what criteria is used for these decisions and that a person could be disqualified based on something a [as] minor as a traffic ticket.

In RCW 43.43.832(6), DEL is directed to investigate conviction records, pending charges, and other information including *civil adjudication proceeding records*, when licensing or certifying agencies and when authorizing individuals who will or may have unsupervised access to children who are in child day care. Civil adjudication proceedings may include a variety of judicial, administrative, or other agency findings. RCW 43.43.832(1) states that businesses and organizations providing services to children need adequate information to determine which employees or licensees to hire or engage.

Currently, the "DEL director's list of crimes and negative actions" (also known as the "secretary's list of crimes") is adopted by reference in the child care center and family home child care, chapters 170-295 and 170-296 WAC, and in the emergency background check, chapter 170-06 WAC, but the content of the "list" has not been in the WAC. All of the "negative actions" defined in WAC 170-06-0020(9) and referenced throughout chapter 170-06 WAC are the same [as] the negative actions in the DEL director's list of crimes and negative actions reference in the current child care licensing rules.

The current DEL director's list of crimes and negative actions is available online at http://www.del.wa.gov/pdf/ccel/del_directors_list_of_disqualifying_crimes.pdf. The director's list is essentially unchanged from the time DEL was formed in 2006. It also is essentially the same as the DSHS secretary's list of disqualifying crimes that was in effect for licensed and certified child care before DEL was formed.

In proposed chapter 170-06 WAC:

- The director's list is proposed in its entirety, with the exception that "theft-welfare" is added. Crimes on the director's list are described in WAC 170-06-0120 and reflect only crimes. The current director's list

online mixes crimes and noncrime negative actions and is much less clear.

- Negative actions are more clearly defined in WAC 170-06-0020(9).
- The department's actions that can or will be taken based on consideration of negative actions and other information about an applicant is more detailed in the proposal.
- Negative actions that always disqualify a person have been limited to those actions that relate to abuse or neglect of a child and those that relate to abuse, neglect or financial exploitation of a vulnerable adult.
- Other negative actions or information that are considered for disqualification must be *reasonably related to a persons' ability to care for or have unsupervised access [to] the children in child care.* To disqualify an applicant, DEL must demonstrate that the information or negative action is related.

3. Background check process: Concerns were expressed about the lack of established timelines in the rules for getting background check authorizations back from DEL, delays in the fingerprinting process. Some commenters were concerned that a person must have a DEL background check when they already have or had a background check from a school, military or other employer.

Besides DEL, there are three other agencies involved in the background check process: The department and social and health services, background check unit, Washington state patrol, and the FBI. Federal and state background check laws have been in near constant change recently, and so procedures have also been changing. DEL is reviewing its background check processing steps with the intent of proposing improvements in the approximately 30,000 background checks the department processes each year. Some of these improvements may require legislative funding or approval, and so may occur in future years. In the meantime, it may not be appropriate to state a particular deadline in rule for DEL to complete a background check or determination that an applicant is or is not qualified, if the alternative would be to allow applicants to provide unsupervised child care who may later be determined as unqualified under these rules. The duty to protect the health and safety of children in child care must be the department's first concern.

Regarding duplicate background checks of schools, military or other employers, state law requires that a background check done for one purpose or agency may not be used for another purpose. Background checks used for military jobs or even for employment in other licensed facilities – such as long-term care or hospitals – may not include and consider the same set of crimes and negative actions as required for child care licensed or certified by DEL.

4. Character, suitability, competence assessment: Concerns were expressed about DEL's legal authority to assess character, competence and suitability, what criteria will be used and that it is ambiguous. Also, DEL'[s] authority to require additional information from an applicant was questioned.

In RCW 43.215.205 and 42.215.215, DEL is directed to collect information on the character, suitability and competence of applicants for licensure and for other persons associated with an agency. RCW 43.43.832(6) defines who must be investigated for authorization to care for or have unsupervised access to children in child care.

Currently, DEL licensing staff conduct this assessment based on information disclosed on the background check form, Washington state patrol records, adjudicative proceeding records from other agencies (such as DSHS, department of health, department of corrections, and FBI records when required) and other information that comes to the attention of DEL during the license application or background check process.

In proposed chapter 170-06 WAC:

- The sources for information to conduct the assessment are unchanged from current requirements and are essentially unchanged from requirements in effect when DSHS licensed child care.
- WAC 170-06-0030 states the reason for background check evaluations.
- WAC 170-06-0050 states the steps that DEL must take to assess the character, suitability and competence of the background check applicant.
- The proposed rules are more specific regarding how negative actions and other types of actions are considered by the department.
- In WAC 170-06-0060, DEL will have to have "reason to believe that additional information is needed" before requesting an applicant to provide more information or evaluative reports.

Other Questions and Answers:

Who has appeal rights under these rules? Any individual who is disqualified by DEL has the right to appeal the disqualification. These rights are more clearly described in the proposed background check rules. The current school age child care and child care center rules do not state an applicant's hearing rights. The family home child care rules have only a brief sentence describing an applicant's hearing rights.

Can an applicant who has been disqualified by DEL have the opportunity to show that they do not pose a risk to children? Yes, if the applicant can demonstrate to DEL by clear and convincing evidence that they have the character, suitability and competence to care for or have unsupervised access to children in child care, DEL may consider authorizing them.

Reasons Supporting Proposal: DEL is required by law to adopt rules setting the minimum requirements for licensed and certified child care, and rules for conducting background checks on persons applying to be authorized to care for children in child care or to have unsupervised access to children in child care.

The proposed rules help DEL, parents, and child care providers protect the health and safety of children by requiring that all persons applying to be authorized to care for children in child care or to have unsupervised access to children in child care have completed a background check inquiry.

Statutory Authority for Adoption: RCW 43.215.200, 43.43.832(6).

Statute Being Implemented: Chapter 43.215 RCW, chapter 265, Laws of 2006; chapter 387, Laws of 2007.

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: Chapter 265, Laws of 2006 (codified as chapter 43.215 RCW) transferred the powers, duties, functions and rules pertaining to child care licensing from DSHS to the DEL. As a result, references to DSHS-related laws, rules and programs in the child care licensing, chapters 170-151, 170-295, 170-296 WAC, became obsolete. Several of these obsolete references are corrected in this proposal, along with other minor corrections and clarifications that do not change the intended effect of the rules.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Marge Johnson, Policy Analyst, DEL, P.O. Box 40970, Olympia, WA 98504-0970, (360) 725-4683; Implementation and Enforcement: Amie Lapp Payne, Deputy Director, DEL, P.O. Box 40970, Olympia, WA 98504-0970, (360) 725-4932.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The department has determined that new costs, if any, to small business required to comply with the proposed rules would [be] minor.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared. The DEL is not listed in RCW 34.05.328 (5)(a)(i) among the agencies to which the requirements of RCW 34.05.328 apply.

March 5, 2008

Jone M. Bosworth, JD

Director

Chapter 170-06 WAC

DEL BACKGROUND CHECK RULES

NEW SECTION

WAC 170-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of early learning (DEL or department). The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or in facilities that are certified by DEL. Background checks are conducted to find and evaluate any history of criminal convictions, pending charges, negative actions, or other information that raises concerns about an individual's character, suitability and competence to care for or have unsupervised access to children in child care.

(2) This chapter applies to all individuals who are applying for a new or renewal license or certification, applying for authorization to care for or have unsupervised access to children in child care and to persons who are licensed, certified by DEL or authorized to care for or have unsupervised access to children in child care.

(3) If any provision of this chapter conflicts with any provision in any chapter containing a substantive rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(4) These rules implement chapters 43.215 and 43.43 RCW, including DEL responsibilities in RCW 43.215.200, 43.215.205, 43.215.215, 43.43.830, and 43.43.832.

(5) Effective date: These rules are initially effective July 3, 2006, and apply prospectively.

NEW SECTION

WAC 170-06-0020 Definitions. The following definitions apply to this chapter:

(1) **"Agency"** has the same meaning as "agency" in RCW 43.215.020(2).

(2) **"Appellant"** means only those with the right of appeal under this chapter.

(3) **"Applicant"** means an individual who is seeking a DEL background check authorization as part of an application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children in child care.

(4) **"Authorized"** or **"authorization"** means approval by DEL to care for or have unsupervised access to children in child care or to work in or reside on the premises of a child care agency or certified facility.

(5) **"Certification"** or **"certified by DEL"** means an agency that is legally exempt from licensing that has been certified by DEL as meeting minimum licensing requirements.

(6) **"DEL"** or **"department"** means the department of early learning.

(7) **"Director's list"** means a list of crimes, the commission of which disqualifies an individual from being authorized by DEL to care for or have unsupervised access to children in child care, WAC 170-06-0120.

(8) **"Disqualified"** means DEL has determined that a person's background information prevents that person from being licensed or certified by DEL or from being authorized by DEL to care for or have unsupervised access to children in child care.

(9) **"Negative action"** means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability and competence to care for or have unsupervised access to children in child care. This may include but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation not subject to further review.

(c) Termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) Revocation, denial or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

(10) **"Unsupervised access"** means:

(a) An individual will or may have the opportunity to be alone with a child in child care at any time for any length of time; and

(b) Access that is not within constant visual and auditory range of the licensee, an employee authorized by DEL, nor a relative or guardian of the child in child care.

NEW SECTION

WAC 170-06-0030 Reason for background checks. The department does background checks to reduce the risk of harm to children from caregivers or others who have been convicted of certain crimes or who pose a risk to children. The department's rules and state law require the evaluation of background information to determine the character, suitability and competence of persons who will care for or have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0040 Background clearance requirements. (1) At the time of application for a license or certification or for authorization to care for or have unsupervised access to children in child care, the applicant shall submit to the department a completed background check form and fingerprint card, if required. A fingerprint card is required for a Federal Bureau of Investigation check if the applicant has resided in the state of Washington for less than three years. This requirement applies to:

(a) Each individual applicant for a license or certification;

(b) All staff of the licensed child care agency or certified facility, whether they provide child care or not, including but not limited to:

(i) Primary staff persons;

(ii) Assistants;

(iii) Volunteers;

(iv) Interns;

(v) Contracted providers;

(vi) Each person residing on the premises of a licensed facility who is sixteen years of age or older; and

(vii) All individuals who are sixteen years of age or older who will care for or have unsupervised access to children in child care.

(2) Each person identified in this section must complete a DEL background check form, disclosing:

(a) Whether he or she has been convicted of any crime;

(b) All arrests and the subsequent dispositions of such arrests; and

(c) Negative actions, to which he or she has been subject, as defined by WAC 170-06-0020(9).

(3) An agency, licensee, or certified facility shall require an applicant to submit to the licensee or facility a completed background check form:

(a) By the date of hire of new staff, assistants, volunteers, interns or contracted providers;

(b) By the date a person age sixteen or older moves onto the premises; or

(c) By the date a person who resides on the premises turns sixteen years old.

(4) The licensee or certified facility must submit the background check form to the department within seven days of the staff, assistant, volunteer, intern or contracted provider's first day of employment, date the person moves on the premises or turns sixteen years old, as applicable.

(5) An individual shall not care for or have unsupervised access to children in child care unless he or she has obtained a DEL authorization under this chapter.

(6) Agencies, licensees and facilities shall not permit any individual to care for or have unsupervised access to children in child care, unless the individual has been authorized by DEL to care for or have unsupervised access to children in child care.

(7) An individual who has been disqualified by DEL shall not be present on the premises of a licensed or certified facility.

NEW SECTION

WAC 170-06-0050 Department action following completion of background inquiry. After the department receives the background information it will conduct a character, suitability and competence assessment as follows:

(1) Compare the background information with the DEL director's list, WAC 170-06-0120, to determine whether the applicant must be disqualified under WAC 170-06-0070 (1) and (2). In doing this comparison, the department will use the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and shall include convictions or dispositions for crimes committed as either an adult or a juvenile. It shall also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(e) Convictions and pending charges from other states or jurisdictions will be treated the same as a crime or pending charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent or if the foreign statute is broader than the Washington definition of the particular crime, the defendant's conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.

(f) The crime will not be considered a conviction for the purposes of the department when it has been pardoned or a court of law acts to expunge, dismiss, or vacate the conviction record, or if an order of dismissal has been entered following a period of probation, suspension or deferral of sentence.

(2) Evaluate any negative action information to determine whether the applicant has any negative actions requiring disqualification under WAC 170-06-0070(3).

(3) If the applicant is not disqualified under WAC 170-06-0070 (1), (2) or (3), evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 170-06-0070 (4), (5) or (7).

(4) Notify the child care agency, licensee, or certified facility whether or not the department is able to authorize the applicant to care for or have unsupervised access to children in child care.

(5) The department will discuss the result of the criminal history and background check information with the licensee or management staff of a licensed or certified facility, when applicable.

NEW SECTION

WAC 170-06-0060 Additional information the department may consider. (1) If DEL has reason to believe that additional information is needed to determine the character, suitability and competence of the applicant to care for or have unsupervised access to children in child care, additional information will be requested. Upon request, the applicant must provide to the department any additional reports or information requested. This additional information may include, but is not limited to:

(a) Sexual deviancy evaluations;

(b) Substance abuse evaluations;

(c) Psychiatric evaluations; and

(d) Medical evaluations.

(2) Any evaluation requested under this section must be conducted by a DEL-approved evaluator and will be at the expense of the person being evaluated.

(3) The applicant must give the department permission to speak with the evaluator in subsection (1)(a) through (d) of this section prior to evaluation, to establish the need for and scope of the evaluation, and after the evaluation to discuss the results.

NEW SECTION

WAC 170-06-0070 Disqualification. (1) An applicant who has a background containing any of the permanent convictions on the director's list, WAC 170-06-0120, shall be permanently disqualified from providing licensed child care, caring for children or having unsupervised access to children in child care.

(2) An applicant who has a background containing any of the nonpermanent convictions on the director's list, WAC 170-06-0120, shall be disqualified from providing licensed child care, caring for children or having unsupervised access to children in child care for five years after the conviction date.

(3) An applicant shall be disqualified when their background contains a negative action that relates to:

(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC.

(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.

(4) An applicant may be disqualified for other negative action(s), as defined in WAC 170-06-0020(9) which reasonably relate to the applicant's character, suitability and competence to care for or have unsupervised access to children in child care.

(5) An applicant may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(6) An applicant who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.

(7) The department may also disqualify an applicant if the applicant has other nonconviction background information that renders the applicant unsuitable to care for or have unsupervised access to children in child care. Among the factors the department may consider are:

(a) The applicant attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.

(b) The applicant used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present or presented a risk of harm to any child in child care.

(c) The applicant attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, an applicant attempted, committed, permitted, or assisted in an illegal act if he or she knew or should have known that the illegal act occurred or would occur.

(d) The applicant lacks sufficient physical or mental health to meet the needs of children in child care.

(e) The applicant had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.

(8) If an applicant who has been disqualified can demonstrate by clear and convincing evidence that he or she has the character, suitability and competence to care for or have unsupervised access to children in child care, the department may consider authorizing the applicant to care for or have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0080 Notification of disqualification. (1) The department will notify the applicant in writing if the applicant is disqualified by the background check.

(2) If the department sends a notice of disqualification, the applicant will not be authorized to care for or have unsupervised access to children in child care.

(3) Any decision by the department disqualifying an applicant under this chapter is effective immediately upon receipt of notice by the applicant.

NEW SECTION

WAC 170-06-0090 Administrative hearing to contest disqualification. (1) An applicant may request an administrative hearing to contest the department's disqualification decision.

(2) The employer or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.

(3) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings, pursuant to chapter 34.05 RCW, and chapter 170-03 WAC.

NEW SECTION

WAC 170-06-0100 Request for administrative hearing. (1) Any person who has a right to contest the disqualification under this chapter must request a hearing within twenty-eight days of receipt of the decision.

(2) A request for a hearing must meet the requirements of chapter 170-03 WAC.

(3) Any decision by the department disqualifying a person under this chapter shall remain in effect pending the outcome of the administrative hearing or review under chapter 170-03 WAC, notwithstanding any provision of chapter 170-03 WAC to the contrary.

NEW SECTION

WAC 170-06-0110 Limitations on challenges to disqualifications. (1) If the disqualification is based on a criminal conviction, the appellant cannot contest the conviction in the administrative hearing.

(2) If the disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the appellant cannot contest the finding if:

(a) The appellant was notified of the finding by the department of social and health services (DSHS) and failed to request a hearing to contest the finding; or

(b) The appellant was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the disqualification is based on a court order finding the applicant's child to be dependent as defined in chapter 13.34 RCW, the applicant cannot contest the finding of dependency in the administrative hearing.

(4) If the disqualification is based upon a negative action as defined in WAC 170-06-0020(9) the appellant cannot contest the underlying negative action in the administrative hearing if the appellant was previously afforded the right of review or hearing right and a final decision or finding has been issued.

NEW SECTION

WAC 170-06-0120 Director's list. (1) An applicant's conviction for any crimes listed in column (a) in the table below shall permanently disqualify the applicant from authorization to care for or have unsupervised access to children in child care.

(2) An applicant's conviction for any crime listed in column (b) in the table below shall disqualify the applicant from authorization to care for or have unsupervised access to children in child care for a period of five years from the date of conviction.

(a) Crimes that permanently disqualify an applicant	**(b) Crimes that disqualify an applicant for five years from date of conviction**
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
Carnal knowledge	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking

(a) Crimes that permanently disqualify an applicant	(b) Crimes that disqualify an applicant for five years from date of conviction
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
Patronizing a juvenile prostitute	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil antiharassment protection order	
Violation of protection/contact/ restraining order	
Voyeurism	

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-070 How do I apply or reapply for a license? (1) You must comply with the department's application procedures and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

(i) Expiration of your current license;

(ii) Opening date of your center;

(iii) Relocation of your center; or

(iv) Change of the licensee.

(b) A completed ((~~criminal history and~~)) background ((~~inquiry~~)) check form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) The annual licensing fee. The fee is forty-eight dollars per year for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children.

(2) In addition to the required application materials specified under subsection (1) of this section, you must submit to the department:

(a) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Copies of diplomas or education transcripts of the director and site coordinator; and

(c) Three professional references each for you, the director, and the site coordinator.

(3) You, as the applicant for a license under this chapter must be twenty-one years of age or older.

(4) ((~~The department may, at any time, require additional information from you, any staff person, any volunteer, members of the household of any of these individuals, and other persons having access to the children in care. The additional information includes, but is not limited to:~~

~~(a) Sexual deviancy evaluations;~~

~~(b) Substance and alcohol abuse evaluations;~~

~~(c) Psychiatric evaluations;~~

~~(d) Psychological evaluations; and~~

~~(e) Medical evaluations.~~

~~(5) The department may perform investigations of you, staff persons, volunteers, members of the households of these individuals, and other persons having access to the child in care as the department deems necessary, including accessing criminal histories and law enforcement files.~~

~~(6)~~)) You must conform to rules and regulations approved or adopted by the:

(a) State department of health and relating to the health care of children at school-age child care centers;

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter ((~~212-56A~~)) 212-12 WAC.

(((~~7~~))) (5) The department must not issue a license to you until the ((~~department of health and the~~)) state fire marshal's office ((~~have~~)) has certified or inspected and approved the center.

(((~~8~~))) (6) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement

to receive an additional fire safety inspection by the state fire marshal's office.

((~~(9)~~)) (7) You must submit a completed plan of deficiency correction, when required, to the department of health and the department licensor before the department will issue you a license.

((~~(10)~~)) (8) You, your director and site coordinator must attend department-provided orientation training.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-090 When can my license application be denied and when can my license be suspended or revoked? (1) We must deny your license application, or suspend or revoke your license if you do not meet the requirements outlined this chapter.

(2) If more than one person applies for a license or is licensed under this chapter to provide child care at the same facility, we will consider qualifications separately and together. We may deny your license application, or suspend or revoke your license if one person fails to meet the minimum licensing requirements.

(3) We must deny, suspend, or revoke your license if you:

(a) Have been found to have abused, neglected, or sexually exploited a child as defined in chapters 26.44 RCW and 388-15 WAC ((~~388-15-130~~));

(b) Have a disqualifying criminal history ((~~as listed in~~)) under chapter ((~~388-06~~)) 170-06 WAC;

(c) Have had a license denied, suspended, or revoked for the care of adults or children in this state or any other state. The exception: If you can demonstrate by clear and convincing evidence that you have taken enough correction action or rehabilitation to justify the public trust and to operate the center according to the rules of this chapter, we may issue you a license;

(d) Commit or allow an illegal act on the licensed premises;

(e) Allow a child in your care to be abused, neglected, exploited, or treated with cruelty or indifference;

(f) Use illegal drugs, or use alcohol excessively;

(g) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office to inspect the premises; or

(h) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office access to records related to the center's operation or to interview staff or a child in care.

(4) We may deny, suspend, or revoke your license if you:

(a) Try to get a license by deceitful means, such as making false statements or leaving out important information on your application;

(b) Do not provide enough staff in relation to the numbers, ages, or characteristics of children in care;

(c) Allow a person who is not qualified by training, experience or temperament to care for or be in contact with a child in care;

(d) Fail to provide adequate supervision to a child in care;

(e) Are not able to exercise fiscal responsibility and accountability while operating the center;

(f) Knowingly allow an employee or volunteer on the premises who has made false statements on an application for employment or volunteer service;

(g) Refuse to supply additional information reasonably requested by the department; or

(h) Fail to comply with the minimum licensing requirements set forth in this chapter or any provision of chapter ((~~74.15~~)) 43.215 RCW.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-180 What staff patterns and qualifications does the department require? (1) General qualifications. You, your staff, volunteers, and other persons associated with the operation of the center who have access to the child in care must:

(a) Be of good character;

(b) Demonstrate the understanding, ability, personality, emotional stability, and physical health suited to meet the cultural, emotional, mental, physical, and social needs of the children in care; ((~~and~~))

(c) Not have committed or been convicted of child abuse or any crime involving harm to another person; and

(d) Be authorized by DEL to care for or have unsupervised access to children in child care or to work or reside on the premises of a child care agency or certified facility as defined in chapter 170-06 WAC.

(2) The department may, at any time, require additional information from you, any staff person, any volunteer, members of the household of any of these individuals, and other persons having access to children in care. The additional information includes, but is not limited to:

(a) Sexual deviancy evaluations;

(b) Substance and alcohol abuse evaluations;

(c) Psychiatric evaluations;

(d) Psychological evaluations; and

(e) Medical evaluations.

(3) Any evaluation requested under subsection (2)(a) through (e) of this section will be at the expense of the person being evaluated.

(4) The person being evaluated must give the department permission to speak with the evaluator(s) in subsection (2)(a) through (e) of this section prior to and after the evaluation.

(5) Program director. You must serve as or employ a director responsible for the overall management of the center's facility and operation. The director must:

(a) Be twenty-one years of age or older;

(b) Serve as administrator of the center, ensuring compliance with licensing requirements;

(c) Have knowledge of development of school-age children as evidenced by professional references, education, experience, and on-the-job performance;

(d) Have the management and supervisory skills necessary for the proper administration of the center, including:

(i) Record maintenance;

(ii) Financial management; and

(iii) Maintenance of positive relationships with staff, children, parents, and the community.

(e) Employ, provide, or arrange for fulfillment of clerical, accounting, maintenance, transportation, and food service responsibilities so the child care staff is free to concentrate on program implementation and maintaining the required staff-to-child ratio;

(f) Have completed thirty or more college quarter credits or combination of one-third clock hours and two-thirds college credits, in early childhood education/child development, elementary education, social work, other child-related field, including, but not limited to, art, music, dance, recreation, physical education, education, home economics, psychology, social services, child development associate (CDA), or nutrition;

(g) Have two or more years of successful experience working with school-age children as evidenced by professional references and on-the-job performance;

(h) Have planning, coordination, and supervisory skills to implement a high quality, developmentally appropriate program; and

(i) Have completed one of the following prior to or within the first six months of licensure or employment except as provided in subsection (2)(i) of this section:

(i) Twenty clock hours or two college quarter credits of basic training. The Washington state training and registry system (STARS) must approve the training; or

(ii) Current CDA or equivalent credential or twelve or more college quarter credits in a child development associate sequence; or

(iii) Forty-five or more college quarter credits in early childhood education, child development, school-age care, elementary education, special education, or recreation; or

(iv) An associate of arts (AA) or associate of applied science (AAS) or higher college degree in early childhood education, child development, school-age care, elementary education, special education, or recreation.

((~~(3)~~)) (6) Site coordinator. You may employ a site coordinator responsible for being on site with children, program planning and program implementation. The program director must provide regular supervision of the site coordinator.

((~~(4)~~)) (7) The same person may serve as the site coordinator and program director when qualified for both positions. The site coordinator must:

(a) Be twenty-one years of age or older;

(b) Have completed thirty or more college quarter credits or combination of one-third clock hours and two-thirds college credits in early childhood education/child development, elementary education social work, other child-related field including, but not limited to, art, music, dance, relevant to school age children, recreation, physical education, education, music, art, psychology, social services, home economics, CDA, or nutrition;

(c) Serve as staff supervisor;

(d) Have demonstrated knowledge in:

(i) Behavior management skills specific to school-age children;

(ii) Program management skills; and

(iii) School-age child activity planning and coordinating skills.

(e) Have a minimum of two years experience working with school-age children, or possess equivalent experience.

(f) Have completed one of the following prior to or within the first six months of licensure or employment:

(i) Twenty clock hours or two college quarter credits of initial training. STARS must approve the training; or

(ii) Current CDA or twelve or more college quarter credits in child development, associate sequence;

(iii) Forty-five or more college quarter credits in early childhood education, child development, school-age care, elementary education, special education, or recreation; or

(iv) An associate of arts (AA) or associate of applied science (AAS) or higher college degree in early childhood education, child development, school-age care, elementary education, special education, or recreation.

((~~(5)~~)) (8) The program director or site coordinator must normally be on the premises while children are in care. If temporarily absent from the center, the director and site coordinator must leave a competent, designated staff person in charge.

((~~(6)~~)) (9) The director and site coordinator may also serve as child care staff when that role does not interfere with the director's or site coordinator's management and supervisory responsibilities.

((~~(7)~~)) (10) Center staffing. You may employ a lead school-age child care staff person to be in charge of a child or a group of children. Lead school-age child care staff must:

(a) Be eighteen years of age or older;

(b) Possess a high school education or equivalent;

(c) Have school-age child development knowledge and experience; and

(d) Have the ability to implement the activity program.

((~~(8)~~)) (11) You may use a child care assistant, volunteer, or trainee. The assistant, volunteer, or trainee must support staff. The school age child care assistant, volunteer, or trainee must:

(a) Be sixteen years of age or older; and

(b) Care for children only under direct supervision.

((~~(9)~~)) (12) You must ensure that you and your program director or site coordinator assigns no person under eighteen years of age sole responsibility for a group of children. You, your program director, or your site coordinator may assign the assistant, eighteen years of age or older, sole responsibility for a child or group of children for a brief period of time.

((~~(10)~~)) (13) You may count the assistant, volunteer, or trainee in the staff-to-child ratio when that person meets staff requirements.

((~~(11)~~)) (14) The licensee may utilize youth volunteers fourteen to fifteen years of age. The youth volunteers:

(a) Must not be counted as staff at any time.

(b) Must not count in the staff-child ratio;

(c) Must meet all requirements in WAC ((~~388-151-470(4) [170-151-470(4)]~~)) 170-151-470(4); and

(d) Must be under the direct supervision of a lead staff person.

((~~(12)~~)) (15) The lead staff person must not supervise more than one youth volunteer at one time.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-440 What are the department's limitations regarding persons on premises? (1) During ((~~center~~)) operating hours or while ((~~children are~~)) a child is in care, ((~~only~~)) individuals allowed to have unsupervised access to children in care are:

(a) You((~~, your~~));

(b) An employee((~~, and your~~)) or volunteer((~~, or an~~)) who has been authorized by DEL to care for or have unsupervised access to children in child care;

(c) A representative of a school district; and

(d) A representative of a governmental agency((~~, school district, or an approved adult related to the child in care may have unsupervised access to the children in care~~)) who has specific, verifiable authority supported by documentation for the access.

(2) ((~~You must allow the~~)) A parent ((~~of a~~)) can have unsupervised access only to his or her own child ((~~in care~~)). A parent may sign an authorization for an individual to have unsupervised access ((~~only~~)) to the parent's own child (for example a therapist).

(3) You must not allow anyone else to have unsupervised access to a child in child care.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-470 What personnel policies and records must I develop and maintain? (1) Each employee and volunteer having unsupervised or regular access to the child in care must complete and submit to you or your director by the date of hire:

(a) An application for employment on a department-prescribed form or its equivalent; and

(b) A ((~~criminal history and~~)) background ((~~inquiry~~)) check form:

(i) You must submit this form to the department for each employee and volunteer, within seven calendar days of the employee's first day of employment so that the department may complete a ((~~criminal and~~)) background ((~~history~~)) check; and

(ii) The department must discuss the inquiry information with you or your director, when applicable.

(c) A Federal Bureau of Investigation (FBI) check, for you or any employee, or volunteer, if you, the employee, or volunteer has lived in the state for less than three years.

(2) Each employee serving as a program director, site coordinator, or staff person required to complete training under WAC ((~~388-151-190~~)) 170-151-190(8) must complete and submit a Washington state training and registry system (STARS) profile form to you or your director by the date of hire. You must submit this form to STARS within seven calendar days of the employee's first day of employment, so that the department may track the employee's compliance with training requirements.

(3) You must have written personnel policies describing staff benefits, if any, duties, qualifications, grievance procedures, pay dates, and nondiscrimination policies.

(4) You must maintain on the premises a personnel record keeping system, including a file for you and each staff person and volunteer containing:

(a) An employment application including work and education history;

(b) Documentation of ((~~criminal history and~~)) background ((~~inquiry~~)) check form submission, or FBI fingerprint check, if applicable;

(c) A copy of the department notification of background clearance authorization;

(d) A record of Mantoux method tuberculin skin test results, X ray, or an exemption to the skin test or X ray;

((~~(d)~~)) (e) Documentation on HIV/AIDS education and training;

((~~(e)~~)) (f) A record of participation in staff development training;

((~~(f)~~)) (g) Documentation of orientation program completion;

((~~(g)~~)) (h) Documentation of a valid food handler permit, when applicable;

((~~(h)~~)) (i) Documentation of current first-aid and CPR training, when applicable; and

((~~(i)~~)) (j) Documentation of basic and annual training required under WAC ((~~388-151-180~~)) 170-151-180 (2)(i) and (4)(f), ((~~388-151-190~~)) 170-151-190(8) and ((~~388-151-200~~)) 170-151-200(7).

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska Native and a member of an Alaskan native regional corporation or Alaska Native Village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Anti-bias" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

"Capacity that you are licensed for" means the maximum number of children that you are authorized to have on the premises of the child care at any one time.

"Center" means the same as **"child care center."**

"Certification" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see **"Tribal certification"**).

"Child abuse or neglect" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"Child-accessible" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"Child care center" means the same as a **"child day care center"** or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"Clean" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"CACFP" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"Commercial kitchen equipment" means equipment designed for business purposes such as restaurants.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface).

"Cultural relevancy" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"Department," "we," "us," or **"our"** refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS)((~~, including but not limited to the division of child care and early learning (DCCEL) licensors and health specialists~~)).

"Developmentally appropriate practice":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

"I," "you," and **"your"** refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing you by law to operate a child care center and certifying that you meet the minimum requirements under licensure.

"Licensee" or **"you"** means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children you can be licensed for based on the amount of useable space (square footage) in your center. You may be licensed for less than the maximum potential capacity. You may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or **"moisture resistant"** means a surface incapable of being penetrated by water or liquids.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which you have control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"Satellite kitchen" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"School-age child" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"Staff" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"Supervised access" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a ((~~criminal history authorization~~)) background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

((~~**"Staff"** means a child care giver or group of child care givers employed by the licensee to supervise children served at the center.~~))

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

"Toddler" means a child twelve months through twenty-nine months of age.

"Terminal room cleaning" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a communicable disease before it is occupied by another person.

"Tribal certification" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"Unsupervised access" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full ((~~criminal history and~~)) background authorization clearance under chapter 170-06 WAC.

"Useable space" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center? (1) To apply or reapply for a license to operate a child care center you must:

(a) Be twenty-one years of age or older;

(b) The applicant, director and program supervisor must attend the orientation programs that we provide, arrange or approve;

(c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).

(2) The application package must include the following attachments:

(a) The annual licensing fee. The fee is based on your licensed capacity, and is forty-eight dollars for the first twelve children plus four dollars for each additional child;

(b) If the center is solely owned by you, a copy of your:

(i) Photo identification issued by a government entity; and

(ii) Social Security card that is valid for employment or verification of your employer identification number.

(c) If the center is owned by a corporation, verification of the corporation's employer identification number;

(d) An employment and education resume for:

(i) The person responsible for the active management of the center; and

(ii) The program supervisor.

(e) Diploma or education transcript copies of the program supervisor;

(f) Three professional references each, for yourself, the director, and the program supervisor;

(g) Articles of incorporation if you choose to be incorporated;

(h) List of staff (form is provided in the application);

(i) Written parent communication (child care handbook);

(j) Copy of transportation insurance policy (liability and medical);

(k) In-service training program (for facilities employing more than five persons);

(l) A floor plan of the facility drawn to scale;

(m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;

(n) A copy of your policies and procedures that you give to parents; and

(o) A copy of your occupancy permit.

(3) You must submit to the department((~~'s background check central unit~~)) a completed ((~~criminal history and~~)) background ((~~inquiry~~)) check form for ((~~yourself and for each staff person or volunteer who has regular or~~)) all persons required to be authorized by DEL to care for or have unsupervised access to the children in care under chapter 170-06 WAC; and

(4) You must submit your application and reapplication ninety or more calendar days before the date:

(a) You expect to open your new center;

(b) Your current license is scheduled to expire;

(c) You expect to relocate your center;

(d) You expect to change licensee; or

(e) You expect a change in your license category.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0070 What personal characteristics do my volunteers, all staff and I need to provide care to children? (1) You, your staff and volunteers must have the following personal characteristics in order to operate or work in a child care facility:

(a) The understanding, ability, physical health, emotional stability, good judgment and personality suited to meet the physical, intellectual, mental, emotional, and social needs of the children in care;

(b) Be ((~~qualified by our background inquiry check prior to having~~)) authorized by DEL to care for or have unsupervised access to children((~~. To "be qualified" means not having been convicted of, or have charges pending for, crimes posted on the DSHS secretary's list of permanently disqualifying convictions for ESA. You can find the complete list at http://www.dshs.wa.gov/esa/deeel/policy.shtml. This includes not having committed or been convicted of child abuse or any crime involving harm to another person~~)) in child care under chapter 170-06 WAC; and

(c) Be able to furnish the child in care with a healthy, safe, nurturing, respectful, supportive, and responsive environment.

(2) If we decide it is necessary, you must provide to us any additional reports or information regarding you, any assistants, volunteers, members of your household, or any other person having access to ((~~the child~~)) children in care if any of those individuals may be unable to meet the requirements ((~~in~~)) of chapter ((~~388-295~~)) 170-295 WAC. This could include:

(a) Sexual deviancy evaluations;

(b) Substance abuse evaluations;

(c) Psychiatric evaluations; ((~~and~~))

(d) Psychological evaluations; and

(e) Medical evaluations.

(3) Any evaluation requested under ((~~WAC 388-295-0070~~)) subsection (2)(a) through ((~~(d)~~)) (e) of this section will be at the expense of the person being evaluated.

(4) ((~~You must give us permission to speak with the evaluator in WAC 388-295-0070 (2)(a) through (d) prior to and after the evaluation.~~

~~(5) We investigate staff and volunteers, including accessing criminal histories and law enforcement files.~~

~~(6) We can also investigate members of your household and members of your staffs and volunteers households. This includes accessing criminal histories and law enforcement files.~~

~~(7) We can investigate any other person who has access to a child in care, including accessing criminal history and law enforcement files.~~)) The person being evaluated must give us permission to speak with the evaluator(s) in subsection (2)(a) through (e) of this section prior to and after the evaluation.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0100 When can my license application be denied and when can my license be suspended or revoked? (1) If you do not meet the requirements in chapter ((~~388-295~~)) 170-295 WAC we deny your license application or suspend or revoke your license.

(2) If more than one person applies for a license or is licensed under this chapter to provide child care at the same facility:

(a) We consider qualifications separately and together.

(b) We deny the license application, or suspend or revoke the license if one person fails to meet the minimum licensing requirements.

(3) We must deny, suspend, or revoke your license if you:

(a) Have been found to have abused, neglected, sexually exploited, abandoned a child or allowed such persons on the premises as defined in chapter 26.44 RCW;

(b) Have been convicted of, or have charges pending for, crimes ((~~posted~~)) on the ((~~DSHS secretary's list of permanently disqualifying convictions for ESA. You can find the complete list at http://www.dshs.wa.gov/esa/deeel/policy.shtml~~)) DEL director's list under WAC 170-06-0120;

(c) Have had a license denied, suspended, or revoked for the care of adults or children in this state or any other state. However, if you demonstrate by clear and convincing evidence that you have taken enough corrective action and rehabilitation to justify the public trust to operate the center according to the rules of this chapter, we consider issuing you a license;

(d) Commit or allow an illegal act to be committed on the licensed premises;

(e) Allow children in your care to be abused, neglected, exploited, or treated with cruelty or indifference;

(f) Use illegal drugs;

(g) Use alcohol to the extent that it interferes with your ability to provide care for the children as required by this chapter;

(h) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office with official identification to:

(i) Inspect the premises;

(ii) Access your records related to the centers operation; or

(iii) Interview staff or children in care.

(i) Refuse to provide us a copy of your:

(i) Photo identification issued by a government entity; and

(ii) Social Security card that is valid for employment or verification of your employer identification number.

(4) We may deny, suspend, or revoke your license if you:

(a) Try to get or keep a license by making false statements or leaving out important information on your application;

(b) Do not provide enough staff in relation to the numbers, ages, or characteristics of children in care;

(c) Allow a person who is not qualified by training, experience or temperament to care for or be in contact with children in care;

(d) Fail to provide adequate supervision to children in care;

(e) Do not exercise fiscal responsibility and accountability while operating the center;

(f) Knowingly allow an employee or volunteer on the premises that has made false statements on an application for employment or volunteer service;

(g) Refuse to supply additional information requested by us;

(h) Fail to pay fees when due;

(i) Fail to comply with the minimum licensing requirements set forth in this chapter or any provision of chapter ((~~74.15~~)) 43.215 RCW; or

(j) Provide care on the premises for children of an age different from the ages for which the center is licensed.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-6060 Who is allowed to have unsupervised access to children in care? (1) During operating hours or while ((~~the~~)) a child is in care, ((~~the only persons~~)) individuals allowed to have ((~~regular or~~)) unsupervised access to the child in care are:

(a) ((~~The child's parent;~~

~~(b)~~)) You;

(((~~(c)~~))) (b) An employee or volunteer who has ((~~received a Washington state patrol background check clearance~~)) been authorized by DEL to care for or have unsupervised access to children in child care; and

(((~~(d)~~))) (c) A representative of a governmental agency who has specific, verifiable authority supported by documentation for the access.

(2) ((~~You must not allow anyone else unsupervised access to a child in care.~~)) A parent can ((~~only~~)) have unsupervised access only to his or her own child ((~~unless the parent~~)). A parent may sign((~~s~~)) an authorization for an individual to have unsupervised access to ((~~their~~)) his or her own child((~~.~~)) (for example a therapist((~~.~~))).

(3) You must not allow anyone else to have unsupervised access to a child in child care.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7050 What personnel records and policies must I have? (1) Each employee and volunteer who has unsupervised access to a child in care must complete the following forms on or before their date of hire:

(a) An application for employment on a form prescribed by us, or on a comparable form approved by the department; and

(b) A ((~~criminal history and~~)) background ((~~inquiry~~)) check form.

(2) You must submit the ((~~criminal history and~~)) background ((~~inquiry~~)) check form to us within seven calendar days of the employee's first day of work. The form authorizes a criminal history background inquiry for that person.

(3) Until the ((~~criminal~~)) background ((~~inquiry~~)) check results are returned and show the employee to not be disqualified, you must not leave the employee unsupervised with the children.

(4) We discuss the information on the ((~~criminal history~~)) background ((~~inquiry~~)) check form with you, the director, or other person responsible for the operation of the center, such as a human resources professional, if applicable.

(5) If you employ five or more people you must have written personnel policies. These policies must describe staff benefits, if any, and duties and qualifications of staff.

(6) You must maintain a system of record keeping for personnel. In addition to the other requirements in this chapter, you must keep the following information on file on the premises for yourself, each staff person and volunteer:

(a) An employment application, including work and education history;

(b) Documentation that a ((~~criminal history and~~)) background ((~~inquiry~~)) check form was submitted;

(c) A copy of the department notification of background clearance authorization.

(d) Written documentation of trainings and meetings such as but not limited to:

(i) Orientation;

(ii) On-going trainings;

(iii) Bloodborne pathogen training (including HIV/AIDS);

(iv) CPR/first aid;

(v) Food handler's cards (if applicable);

(vi) STARS;

(vii) Staff meetings; and

(viii) Child abuse and neglect.

(((~~(d)~~))) (e) Documentation of the results of Tuberculosis (TB) testing by the Mantoux skin test prior to starting work.

(7) You must keep the following information on file for the owner of the facility:

(a) If the center is solely owned by you:

(i) A photocopy of your Social Security card that is valid for employment or verification of your employer identification number (EIN); and

(ii) A photocopy of your photo identification issued by a government entity.

(b) If the center is owned by a corporation, verification of the corporation's EIN.

(8) Training documentation must include a certificate, card, or form with a copy placed in each individual employees file that contains the:

(a) Topic presented;

(b) Number of clock hours;

(c) Date and names of persons attending; and

(d) Signature and organization of the person conducting the training.

AMENDATORY SECTION (Amending WSR 07-24-028, filed 11/28/07, effective 12/29/07)

WAC 170-296-0020 What definitions do I need to know to understand this chapter? For the purpose of this chapter:

"Accessible to children" means areas of the facility and materials that children can easily get to on their own.

"Age appropriate" means the developing stages of growth typical of children within a given age group.

"American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member of or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut or other Alaska Native and a member of an Alaskan native regional Corporation or Alaska Native Village;

(2) Determined or eligible to be found to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood;

(3) Considered to be Indian by a federally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Antibias" is an approach that recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, sexual orientation, gender, class, religion, creed, disability, or age.

"Assistant" means a person fourteen years or older (whether a volunteer or an employee) who assists a licensed home provider in the operation of the family home child care and is not solely responsible for the supervision of children.

"Capacity" means the highest number of children you can care for at any time, as written on your license.

((~~**"Character, competence, and suitability assessment"** means a determination of whether an applicant should be allowed access to vulnerable people if that applicant has a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult and child protective services (CPS) adverse referral history.~~))

"Child" means a person who has not yet reached the age of twelve years.

"Child care" means the developmentally appropriate care, protection and supervision of children that is designed to promote positive growth and educational experiences for children outside of their home for periods of less than twenty-four hours a day.

"Child abuse and neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child by any person indicating that the child's health, welfare, and safety is harmed.

"Communicable disease" means an illness that can be spread from one person to another, in the child care setting, by either direct or indirect contact.

"Conditions of the license" means what you must do to keep a license.

"Confidentiality" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Corporal punishment" means the infliction of pain by any means for the purpose of punishment, correction, discipline, instruction or any other reason.

"Cultural relevancy" means an environment in which the learning experiences, play materials and activities are meaningful, inclusive and respectful for the participating children, their families and the community at large.

"Department," "we," "us," or **"our"** refers to and means the state department of early learning (DEL), and its predecessor agency the department of social and health services (DSHS)((~~, including but not limited to the division of child care and early learning (DCCEL)~~)).

"Department of health" means the state department of health.

"Developmentally appropriate" means activities and interactions that recognize and address how children learn and what they can do at each stage of development - socially, emotionally, cognitively, and physically.

"Discipline" means a process of guiding children to develop internal, positive social behaviors through methods that include consistent use of the following: Modeling appropriate behavior, positive reinforcement, active listening, limit setting, redirecting and modifying the environment.

((~~**"Division"** or **"DCCEL"** means the division of child care and early learning within the department of social and health services (DSHS).~~))

"Facility licensing compliance agreement" means a written notice of rule violations and the intention to initiate enforcement, including a corrective action plan.

"Family home" means a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Family home child care" means a facility licensed to provide direct care, supervision and early learning opportunities for twelve or fewer children, in the home of the licensee where the licensee resides and is the primary provider.

"Family home child care provider" means a person who provides direct care, supervision, behavior management, and early learning opportunities for twelve or fewer children in their family home living quarters for periods of less than twenty-four hours.

"I," "you," and **"your"** refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means areas kept or items stored in a manner that makes it impossible for children to reach, enter, or use potentially hazardous items or areas. Examples of how this can be accomplished are through the use of locks, gates, or other means that are effective to prevent access by the children in your care.

"Infant" means a child birth through eleven months of age.

"License" means an official document that certifies you have been granted permission by the department to operate a family home child care in compliance with the rules.

"Licensed space," means the indoor and outdoor space approved by the department as useable space where children in care may be present, or space that is otherwise accessible to children.

"Licensee" means the person or persons named on the license as having been issued the license and who are responsible for maintaining compliance with the regulations.

"Licensor" means the person with authority to grant licenses.

"Parent" means a child's parent or legal guardian.

"Premises" means the buildings where the home is located and the adjoining grounds (at the same address) over which the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Primary staff person" means a person who has been ((~~approved~~)) authorized by ((~~the department~~)) DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC, age eighteen years or older, who has responsibilities for the operation of the program and the direct supervision, behavior management and care of children.

"Provider" means the same as licensee.

"Repeatedly" means a violation of a licensing regulation that is written on a facility licensing compliance agreement that occurs more than once during a twelve-month time frame.

"Reportable communicable disease" means an illness that can be spread from one person to another by either direct or indirect contact, and is of the type that is required by law to be reported to the department of health. Examples include Hepatitis, measles, smallpox, and tuberculosis.

"Revocation" means the formal act of closing your child care business and taking your license from you due to your failure to follow the rules.

"Sanitize" means a surface must be clean and the number of germs reduced to a level where disease transmissions by that surface are unlikely.

"Staff" means a child care giver or group of child care givers employed by the licensee to assist with or supervise children served at the family home child care who have been authorized by DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC.

"STARS" (Washington state training and registry system) means the entity approved by the department to determine the classes, courses, and workshops that licensees and staff may take to satisfy training requirements.

"Summary suspension" means the formal act of immediately stopping your license for a certain time because the health, safety or well being of a child is at risk.

"Supervision of children," means the knowledge of and responsibility for the activity and whereabouts of each child in care and assuring immediate intervention of staff to safeguard a child from harm.

"Terms of the license" means the address, number and ages of children, and the beginning and ending dates listed on the license issued by the department.

"Toddler" means a child twelve months through twenty-nine months of age.

((~~**"Unsupervised access"** means not in the absence of the licensed child care provider or primary staff person. (Anyone sixteen years or older who lives at the same address as the provider must pass a complete criminal history background check.)~~))

"Useable space" means the space actually available for children to engage in developmentally appropriate activities, that has been inspected and approved by the department for providing child care.

"Weapons" means an instrument or device of any kind that is designed to be used to inflict harm on another person. For example, BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, shotguns, knives.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0180 Am I required to have a criminal history background check? ((~~(1)~~)) At the time you apply for a license you must submit a completed background check form and finger print card if required to the ((~~background check central unit (BCCU)~~)) department for each person ((~~who will have unsupervised access to children in your care~~)) required to have a background check under chapter 170-06 WAC. ((~~This includes:~~

~~(a) You;~~

~~(b) Members of your household sixteen years and older;~~

~~(c) Staff;~~

~~(d) Volunteers; and~~

~~(e) Other persons living at the same address as you.~~

~~(2) When you plan to have new staff or volunteers, you must require each person to complete and submit to you by the date of hire a criminal history and background check form:~~

~~(a) You must submit this form to the BCCU for the employee and volunteer, within seven calendar days of the employee's or volunteer's first day of work, permitting a criminal and background history check.~~

~~(b) The employee and volunteer must not have unsupervised access to the children in care until they have been cleared by a full background check.~~

~~(c) We must discuss the result of the criminal history and background check information with you, when applicable.~~))

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0200 Will my license be denied or revoked if I have been disqualified from providing licensed child care? Your license will be denied or revoked if you are disqualified from providing licensed child care under chapter 170-06 WAC.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0210 What are my responsibilities if I am notified that a family member, staff person, volunteer, or anyone else ((~~living~~)) residing at the same address as me has been disqualified? If we inform you that a family member, staff person, volunteer, or anyone else ((~~living~~)) residing at the same address as you has been disqualified, you must ensure that the disqualified person does not have access to children in the licensed facility.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0215 Will my license be denied, suspended, or revoked if a family member, or someone else ((~~living~~)) residing at the same address as me has been disqualified from having unsupervised access to children? Your license will be denied or revoked if your family member or any other person who is ((~~living~~)) residing at the same

address as you has been disqualified from ((~~have~~)) having unsupervised access to children.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0220 Must I keep the results of the background checks on family members, staff and volunteers? You must keep a copy of the department notification of background clearance authorization, for a period of three years, for all persons required to have a background ((~~check results for you, your family, staff, volunteers and any other persons required to have a background check~~)) authorization under chapter 170-06 WAC.

AMENDATORY SECTION (Amending WSR 07-24-028, filed 11/28/07, effective 12/29/07)

WAC 170-296-0450 When will my license be denied, suspended or revoked? (1) When you demonstrate that you cannot provide the required care for children in a way that promotes their safety, health and well-being we must deny, suspend or revoke your license.

(2) We must deny, suspend or revoke your license if you:

(a) Have been disqualified by your background check (((~~see DSHS secretary's list of disqualifying convictions for ESA at http://www1.dshs.wa.gov/esa/dcecel/pdf/Crime_and_Backg_Chex.pdf);~~

~~(b) Have been found to have committed or have allowed others to commit child abuse, child neglect or exploitation, or you or others you supervise treat, permit or assist in treating children in your care with cruelty, or indifference~~)) under chapter 170-06 WAC;

(((~~c~~))) (b) Fail to report instances of alleged child abuse, child neglect and exploitation to the DSHS children's administration intake or law enforcement when an allegation of abuse, neglect or exploitation is reported to you;

(((~~d~~))) (c) Or anyone residing at the same address as you had a license denied or revoked by an agency that provided care to children or vulnerable adults;

(((~~e~~))) (d) Try to get or keep a license by deceitful means, such as making false statements or leaving out important information on the application;

(((~~f~~))) (e) Commit, permit or assist in an illegal act at the address of your child care business;

(((~~g~~))) (f) Use illegal drugs, or excessively use alcohol or abuse prescription drugs;

(((~~h~~))) (g) Knowingly allow employees or volunteers with false statements on their applications to work at your facility;

(((~~i~~))) (h) Repeatedly lack the required number of qualified staff to care for the number and types of children under your care;

(((~~j~~))) (i) Repeatedly fail to provide the required level of supervision for a child in care;

(((~~k~~))) (j) Repeatedly care for more children than your license allows;

(((~~l~~))) (k) Refuse to allow our authorized staff and inspectors requested information or access to your licensed space, child and program files, or staff and children in care during times when licensed activities are conducted; or

(((~~m~~))) (l) Are unable to manage the property, fiscal responsibilities, or staff in your facility.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0550 What change of circumstance must I report to my licensor? (1) Before making any change to your licensed space you must report to your licensor any changes you plan to make. Examples of changes include but are not limited to:

(a) Planned use of space not previously approved by us; and

(b) Plans for remodeling the home.

(2) You must also report any of the following changes to your licensor within twenty-four hours:

(a) The number and qualifications of you, your staff and volunteers that may affect the ability to carry out the specified activities and routines of the family home child care or meet the requirements of ((~~the WAC~~)) this chapter, such as a change in a person's criminal history;

(b) A marriage, separation or divorce;

(c) Persons moving in or out of the household;

(d) Your phone number;

(e) Occurrence of a fire, structural change, or damage to the premises from any cause; and

(f) The serious illness or incapacity of you and any other member of your household.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-1410 What are the required staffing qualifications for child care? (1) You, a primary staff person, assistant, volunteer, and other person associated with the operation of the business who has access to the child in care must:

(a) Meet the qualifications in WAC ((~~388-296-0140~~)) 170-296-0140;

(b) ((~~Not have committed or been convicted of child abuse or any crime involving physical harm to another person~~)) Be authorized by DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC; and

(c) Not have been disqualified from working in a licensed child care setting or have had a license revoked.

(2) If we have reason to believe that you, any staff, volunteers, assistants, or members of your household may be unable to meet the requirements in chapter 170-296 WAC, we may require any of the following evaluations:

(a) Substance and alcohol abuse evaluations and documentation of treatment;

(b) Psychiatric and psychological evaluations;

(c) Psycho-sexual evaluations; and

(d) Medical evaluations.

(3) Any evaluation requested under subsection (2)(a) through (d) of this section will be at the expense of the person being evaluated.

(4) The person being evaluated must give us permission to speak with the evaluator(s) in subsection (2)(a) through (d) of this section prior to and after the evaluation.

(5) The licensee must:

(a) Be eighteen years of age or older;

(b) Be the primary child care provider;

(c) Ensure compliance with minimum licensing requirements under this chapter; and

(d) Have completed one of the following prior to or within the first six months of obtaining an initial license:

(i) Twenty clock hours or two college quarter credits of basic training approved by the Washington state training and registry system (STARS);

(ii) Current child development associate (CDA) or equivalent credential or twelve or more college quarter credits in early childhood education or child development; or

(iii) Associate of arts or AAS or higher college degree in early childhood education, child development, school age care, elementary education or special education.

(((~~(3)~~))) (6) Child care staff must be:

(a) Fourteen years of age or older if an assistant; or

(b) Eighteen years of age or older if a primary worker and assigned sole responsibility for the child in care.

(((~~(4)~~))) (7) You and your staff must meet the following qualifications:

Position	Qualifications	Background ((~~Check~~)) Authorization	TB Test	STARS Training	First Aid and CPR	HIV/AIDS and bloodborne pathogens training
Licensee	Eighteen years of age	X	X	X	X	X
Primary child care staff	Eighteen years of age	X	X	X Basic 20 hour training to be completed within the first six months of employment	X	X
Child care assistant/volunteer	Fourteen years of age; (directly supervised by the licensee or a primary staff)	X	X	Recommended	If counted in staff to child ratio	X

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-1450 What personnel records must I have? You, the primary staff, assistant, and volunteer must have on file at the home:

(1) An application, including work and education history (resume);

(2) Documentation of ((~~criminal history and~~)) background ((~~inquiry~~)) check form submission;

(3) A copy of the department notification of background clearance authorization;

(4) A record of the tuberculin skin test results, X ray, or an exemption to the skin test or X ray;

(((~~(4)~~))) (5) Documentation of HIV/AIDS training and bloodborne pathogen information;

(((~~(5)~~))) (6) Documentation of current CPR and first-aid training, when applicable; and

(((~~(6)~~))) (7) Documentation of basic and annual STARS training when applicable.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-296-0150	What personal information may I be required to provide to be licensed?
WAC 170-296-0190	What happens after we receive the background information?
WAC 170-296-0195	When will I be disqualified from providing licensed child care?
WAC 170-296-0205	When will my family members, staff, volunteer, and other people who live at the same address [as] me be disqualified from having access to children in a family home child care?

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

WSR 08-06-107
PROPOSED RULES
LIQUOR CONTROL BOARD
[Filed March 5, 2008, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-087.

Title of Rule and Other Identifying Information: This series of rules covers official documents to prove age when purchasing tobacco products and the requirements and restrictions for sampling of tobacco products: WAC 314-10-050 Sales to persons under 18 years of age, 314-10-090 Tobacco sampling—Licenses, and 314-10-100 Sampler's license—Distribution of tobacco products.

Hearing Location(s): Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA, on April 9, 2008, at 10:00 a.m.

Date of Intended Adoption: April 16, 2008.

Submit Written Comments to: Pam Madson, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 704-4921, by April 14, 2008.

Assistance for Persons with Disabilities: Contact Pam Madson by April 14, 2008, TTY (800) 855-2880 or (360) 664-1648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 70.155.050 bans the use of sampling as a marketing tool for both cigarettes and other tobacco products. As a result of a challenge to this law by R. J. Reynolds Tobacco Company, the ban as to cigarettes is preempted by federal law. This means cigarettes sampling is allowed. That leaves a state ban on sampling for other tobacco products. Washington state liquor control board (WSLCB) rules must be updated as a result of legislative action and the resulting lawsuit settlement.

RCW 70.155.090 authorizes the use of enrollment cards issued by the governing authority of a federally recognized Indian tribe located in Washington as identification for the purchase of alcohol or tobacco. The enrollment card must incorporate security features comparable to those implemented by the department of licensing for Washington drivers' licenses. The tribe must give the WSLCB at least ninety days' notice of intent to use the tribal enrollment card for the purpose of purchasing alcohol or tobacco. The WSLCB will notify licensees of the new tribal enrollment card. WSLCB recently changed its rules to reflect this law change for alcohol. This is the corresponding rule for tobacco.

Reasons Supporting Proposal: The proposed rule changes will update rules that conflict with state and federal law and will eliminate an unnecessary rule.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 70.155.050 and 70.155.090.

Rule is necessary because of federal law, Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334.

Name of Proponent: WSLCB, public.

Name of Agency Personnel Responsible for Drafting: Pam Madson, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1648; Implementation: Tim Thompson, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1722; and Enforcement: Pat Parmer, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared. This proposal does not change the requirements for the regulated portion of the industry.

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

March 5, 2008
Lorraine Lee
Chairman

AMENDATORY SECTION (Amending WSR 96-19-018, filed 9/6/96, effective 10/7/96)

WAC 314-10-090 ((~~Tobacco sampling—Licenses.~~)) What tobacco products may be used for sampling promotions? (1) No person may engage in providing ((~~tobacco~~)) samples of tobacco products other than cigarettes within Washington state.

(2) No person may engage in providing samples of cigarettes without a valid sampler's license. A firm contracting with a tobacco manufacturer to distribute samples of a manufacturer's product is deemed to be the person engaged in the business of sampling. The liquor control board will issue any sampler's licenses.

((~~(2)~~)) (3) The annual fee for a manufacturer's cigarette samplers license within the state is $500 and is designated a Class T1 license. The fee for independent businesses that provide samples of ((~~tobacco products~~)) cigarettes is $50 and is designated a Class T2 license. All sampler's licenses expire on the 30th day of June each year and must be renewed annually.

In adopting the language of ((~~WAC 314-10-090(3)~~)) subsection (4) of this section, the board affirms that sampling does have a direct impact upon the availability of product to minors. Many sampling activities, because of the large volume of product offered, promote secondary distribution to bystanders, especially minors. Addiction to nicotine can occur quickly after the use of a relatively small amount of product. It is the board's intention to limit this amount thereby reducing the opportunity and potential for product to be redistributed to minors.

((~~(3)~~)) (4) A sample is the smallest portion representative of the product that is available for retail sales and distribution. T1 and T2 license holders may distribute samples of ((~~tobacco products~~)) cigarettes pursuant to chapter 70.155 RCW and chapter 314-10 WAC as follows:

(a) Cigarettes: No more than one sample package may be furnished per eligible customer per day. Such sample shall not contain more than twenty cigarettes per sample package.

(b) ((~~Cigars: No more than one sample of any single brand and type and no more than two samples may be furnished per eligible customer per day. Such sample shall not contain more than one cigar per sample package.~~

~~(c) Smokeless tobacco products: No more than one sample can, package or pouch may be furnished per eligible customer per day. Such sample can, package or pouch shall not exceed the size of the smallest unit available for sale at retail.~~

~~(d) All other tobacco products: No more than one sample unit may be furnished per eligible customer per day. Such sample unit shall not exceed the size of the smallest unit available for sale at retail.~~

~~(e)~~)) T1 and T2 licensees that have sample packages available that contain ((~~less tobacco product~~)) fewer cigarettes than allowed by this section are encouraged to provide such alternative sizes.

AMENDATORY SECTION (Amending WSR 93-23-016, filed 11/5/93, effective 12/6/93)

WAC 314-10-100 ((~~Samplers license—Distribution of tobacco products.~~)) How may cigarette sampling activity be conducted? (1) The cigarette sampler's license entitles the licensee, and employees or agents of the licensee, to distribute samples at any lawful location in the state during the term of the license. The person engaged in sampling shall carry the Class T1 or T2 license or a copy of the license at all times and produce same at the request of an enforcement officer as defined in RCW 7.80.040.

(2) No person may distribute or offer to distribute samples in a public place. This prohibition does not apply to:

(a) An area to which persons under 18 years of age are denied admission,

(b) A store or concession to which a cigarette retailers license has been issued, or

(c) At or adjacent to a production, repair or outdoor construction site or facility.

(3) Notwithstanding subsection (2) ((~~above~~)) of this section, no person may distribute or offer to distribute samples within or on a public street, sidewalk, or park that is within 500 feet of a playground, school, or other facility where that facility is being used primarily by persons under 18 years of age for recreational, educational or other purposes.

(4) Class T1 and T2 licensees shall provide the board, upon request, the locations, dates and times sampling activities will take place.

(5) All T1 and T2 licensees must provide to the liquor control board, in a format prescribed by the board, a listing of the location, date, hours and quantities of ((~~tobacco products~~)) cigarettes distributed in the state for the previous six months.

(a) A report for the period covering January 1st through June 30th of each year is due by no later than July 31st of each year.

(b) A report for the period covering July 1st through December 31st is due by no later than January 30th of the immediately following year.

(c) The board may take administrative action against any ((~~tobacco~~)) cigarette sampler who fails to submit the required reports.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-10-050	Sales to persons under 18 years of age.