WSR 08-12-109
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed June 4, 2008, 11:00 a.m., effective July 5, 2008]

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

Purpose: The sections below describe the information utilized by the department of labor and industries (L&I) to determine the necessity for a rule.

A. Legal Requirements: The Washington state constitution mandates that "[t]he legislature shall pass laws for the protection of persons working in mines, factories, and other employments dangerous to life or deleterious to health."[1] In enacting chapter 49.17 RCW, Washington Industrial Safety and Health Act (WISHA), the Washington legislature found "that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the Industrial Insurance Act. Therefore, in the public interest for welfare of the people of the state of Washington and in order to assure, insofar as may be reasonably possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature… in keeping with the mandates of Article II, section 35 of the state constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state…"[2]

WISHA mandates that the director of L&I shall "[p]rovide for the promulgation of health and safety standards and the control of conditions in all work places concerning… harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity."[3]

In *Rios v. Department of Labor and Industries*, the Washington supreme court concluded that L&I must consider rule making for recognized work place hazards.[4]

B. Evaluation of Current Rules: On July 18, 2005, a farm worker collapsed while cutting weeds with a machete in hop fields near Yakima. He died, and the coroner ruled that the cause of death was heat stroke. L&I investigated the death and later cited and fined the company for an inadequate safety program, not providing drinking water, and lack of training for workers. The safety program should have included a plan to prevent heat stress by providing rest breaks, shade, worker hydration and administrative controls such as a work-rest regimen.

The citation was issued December 23, 2005, and the subsequent appeal was affirmed with a negotiated penalty of $3,000. L&I did not seek criminal sanctions since the violations cited were not considered willful (a prerequisite for a referral to a county prosecuting attorney).

Immediately following this workplace death, L&I heard from farm worker advocates that they were very concerned about this fatality and that they wanted an emergency rule issued similar to California's emergency heat-stress rule. L&I responded by issuing a hazard alert to the agriculture industry, and then proceeded with a study[5] to determine what was needed to protect workers for the 2006 summer season.

L&I reviewed the workers' compensation injury and illness claims from 1995 through 2005 and found that one other person had died from heat stress in Washington (a lawn-service employee working in the Yakima area). The study also found approximately four hundred fifty workers' compensation claims for heat-related illness during the same time period. These fatalities may have been prevented with rules that are more protective of workers.

Based on this information, L&I evaluated its existing rules to determine if they adequately addressed heat-related illness. These rules are available in Appendix 1: Pertinent rules for heat-related illness. After this evaluation, L&I believed that these fatalities and illnesses may have been prevented by adopting a consolidated set of rules specifically addressing heat-related illness issues.

C. Petition for Rule Making: On January 27, 2007, the department received the following petition - "Petition for Rule Making: Permanent Rules Protecting Outdoor Employees From Heat Illness."

The petitioner, Erasto Garcia, and his attorneys, Candelaria Murillo and Daniel G. Ford of Columbia Legal Services, petitioned the department to adopt permanent rules protecting outdoor workers from heat illness.

They argued permanent rules on heat illness are necessitated by: "(i) The severity of the health effects associated with occupational heat illness, including three documented heat-related illness deaths in Washington state in the last three summer seasons; (ii) the threat of exposure inherent in working outdoors during the hotter months in Washington; and (iii) the significant risk of heat illness among farm workers and other outdoor workers."[6] As set forth more fully below, an estimated six million workers in [the] United States are exposed to occupational heat stress.

In addition, the petitioner argued that heat illness prevention is feasible, has been determined to be effective in reducing outdoor workers' exposure to heat illness, and has been mandated in California. The petitioner further argued WISHA requires L&I to adopt feasible and necessary rules to protect the health and lives of Washington workers.

The petitioner provided a suggested draft rule for L&I's consideration. L&I responded by clarifying that a CR-101 (preproposal statement of inquiry) had been filed communicating L&I's intention to initiate a permanent rule making.

D. Health Effects Associated with Heat-Related Illness: Heat-related illness is a hazard recognized by the Occupational Safety and Health Administration (OSHA), National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control (CDC), as well as industry associations and employee representatives. The numbers of employees potentially exposed to heat-related illness hazards include many industries and regional areas of the state**.** L&I also considered the severity of the hazard. Heat-related illness can cause serious injuries including death. The extract below explains the health effects of heat-related illness: Minor heat illnesses include heat cramps and heat exhaustion. Major heat injuries include EHI, exertional rhabdomyolysis, and heat stroke. The diagnostic categories of heat exhaustion, EHI, and heat stroke have overlapping features and should be thought of as different regions on a

continuum rather than discrete disorders, each with its own distinct pathogenesis.

Figure 4-1 depicts the spectrum of heat casualties in terms of severity and categories of physiological dysfunction (hyperthermia, dehydration, nephropathy, cell lysis, encephalopathy). Whatever category is diagnosed, all are related to elevation of body core temperature and the metabolic and circulatory processes (including change in fluid and electrolyte balance) that are brought about by heat strain from exercise, environment and the body's thermoregulatory response.

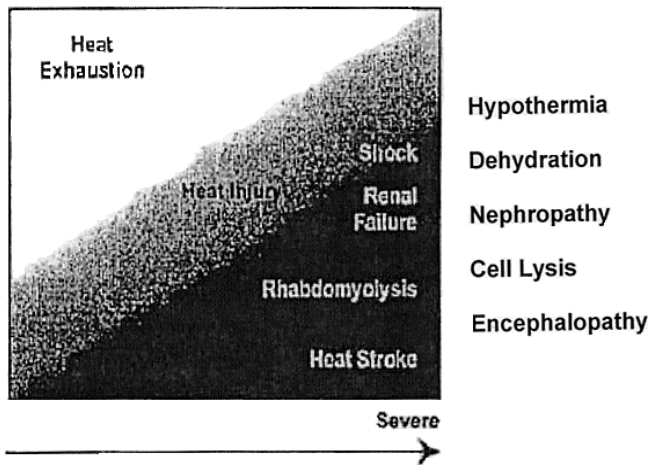

Figure 4-1. Spectrum of heat casualties, encompassing the continuum of mild (heat exhaustion) to sever (heat stroke) with association categories of physiologic dysfunction.[7]

E. Fatality Summaries: During the review of occupational heat-related illness claims in Washington state, L&I discovered four fatalities that occurred as a result of heat-related illness. A summary of these fatalities is presented below.

Yakima, Washington - May 1997: A thirty-five year old male, previously employed indoors, died of heat stroke during his first day of employment outdoors mowing lawns on May 12, 1997. The patient's internal temperature was 111°F. The high temperature for that day was 88°F. The employee had been mowing lawns and in the afternoon he was feeling tired and he was told to go to the company truck to rest. When another employee checked on him, he was talking to himself and would not respond to his coworker. His brother was called over and he could not get a response so 911 was called. He died shortly after arriving at the hospital after going into full cardiopulmonary arrest. The official cause of death was listed as hyperthermia. His brother stated that the employee did not drink fluids readily since the water that he had brought had become hot.

Vancouver, Washington - July 2004: A thirty-nine year old male roofer was working on a roof in the sun doing tar work when he collapsed on July 12, 2004. The day's temperature was about 90°[F] at the time of the incident. The employee was minimally responsive when medics arrived and had a rectal temperature of 108°[F] when measured at the hospital. The employee had an underlying alcoholism problem and went through alcohol withdrawal while in the hospital. The diagnoses were heat stroke with dehydration, shock liver, and alcoholism. He was released from the hospital on July 16, 2004, but had ongoing problems with feeling weak and bloated, dizziness, short-term memory lapses and multiple medical problems related to his liver disease and associated problems. He entered an alcohol treatment program and was diagnosed with severe preexisting liver disease that was exacerbated by the industrial injury. The employee was placed on a liver transplant list. On May 18, 2006, the employee passed away from liver disease complications.

Moxee, Washington - July 2005: A sixty-four year old male, cutting in a hop field where he had reportedly worked for forty years, was found unconscious. It is unknown how long he was down before he was discovered. Approximately eight to ten minutes later the EMTs arrived and found no vital signs. The EMTs revived a heart rhythm while he was being transported to the hospital where he died several hours later. The death was recorded as heat stroke. The high temperature that day was 99°F. He arrived five - ten minutes late for work that day, uncharacteristic for him, due to not feeling well. He had brought two gallons of water with him that day but had drank all of it by lunchtime. The workers normally brought their own water to work. The foreman had not brought water for the employees that morning. The employees would work down rows individually and would check in with each other at the end of a row. The employees were allowed to take breaks whenever they needed one. The employees were paid by how many rows they completed versus being paid by time. Each row was approximately three hundred fifty feet long (a little longer than a football field). The decedent had completed one row already that day. He was found approximately 1/3 down a row between 11:15 and 11:30 a.m. The employees had taken a break right before he was found. The employer did not provide heat stress training. The employer did place a reminder sticker to increase fluid intake in hot weather on the paychecks.

Carson, Washington - June 2006: A twenty-seven year old male was working with a utility contractor laying an underground water line along a public road on June 26, 2006. The employee was working in the trench with the pipe placement plus jumping out to retrieve tools and materials. Between 2:30 and 3:00, the individual became disoriented and was told to rest in the shade. Soon after, he lost consciousness. He never regained consciousness and died on July 1, 2006. His date of hire was June 16, 2006. The temperature ranged from 82°F to 105°F that day and the employee's temperature was 107°[F] when taken by EMS upon arrival.

F. Hospitalization Summaries: During L&I's review of heat-related illness claims in Washington state, many cases of hospitalization were discovered. The summaries below provide an overview of two cases that were brought to L&I's attention during the rule-making process.

Seattle, Washington - June 2000: A forty-seven year old male firefighter suffered heat-related illness and lost consciousness on a ladder while conducting a training exercise. The patient was holding a weighted dummy. A fellow firefighter tried to hold him up on the ladder but was unsuccessful. The patient fell approximately thirty-five feet to the

ground below. Although the patient did not pass away from his injuries, he was determined to have a permanent partial disability as a result of the incident and was unable to return to work in his current position.

Southwestern Washington - August 1999: A twenty-three year old male suffered heat stroke during his first day of employment as a choker setter for a logging operation on August 23, 1999. His body temperature at the time he was admitted to the hospital was 106.7°F. Reports suggested that he had been prevented by his supervisor from drinking water. Severe dehydration, reduced ability of the body to cool itself due to heavy protective clothing, and a high metabolic (work) heat load combined to overwhelm this individual's thermoregulatory responses. Although the patient survived, he continued to suffer from liver dysfunction and other chronic health issues resulting from the incident. The high temperature on the date/place of occurrence could not be determined.

G. Injury and Illness Claim Review: L&I reviewed accepted claims resulting from heat-related illness. Although L&I believes heat-related illness claims are underreported due to the symptoms, the frequency of claims is just one of several factors L&I considered when evaluating the need to initiate rule making to address this hazard. Claims data also shows that heat-related illness has directly contributed to other serious injuries (such as falls from ladders).

The safety and health assessment and research project (SHARP) conducted a study on heat-related illness claims in Washington state. Information on the report is available online at http://www.lni.wa.gov/Safety/Research/files/HeatRelatedIllness.pdf. The full report (publication number 59-1-2006) is available at no cost by contacting SHARP at 1-800-66-SHARP or by e-mail at SHARP@lni.wa.gov.

This report has been published as follows: Bonauto D, Anderson R, Rauser E, Burke B. (2007). "Occupational Heat Illness in Washington State, 1995-2005," *American Journal of Industrial Medicine*. A summary of the article is provided below.

An analysis of HRI cases utilizing workers' compensation data has not been previously reported. Authors used both ICD-9 and ANSI-Z16.2 codes with subsequent medical record review to identify accepted Washington State Fund workers' compensation HRI during the eleven-year study period. NAICS industries with the highest workers' compensation HRI average annual claims incidence rate were Fire Protection 80.8/100,000 FTE, Roofing Construction 59.0/100,000 FTE, and Highway Bridge and Street Construction 44.8/100,000 FTE. HRI claims were associated with high outdoor ambient temperatures.

Exertional heat stroke occurs sporadically in individuals with high metabolic output rates and is most prevalent during hot and humid weather. Exertional HRI results from high metabolic demands often in combination with hot environmental conditions.

HRI claims were identified by a two-step process. First, workers' compensation claims were identified using data systems definitions (selected ICD-9 codes and ANSI-Z16.2 codes). Identified claims underwent physician review to determine if the claim was filed for a [an] HRI. This study was restricted to state fund claims because ICD-9 codes are not available for self-insured claims.

Of the nine hundred forty-six claims identified using the HRI ICD-9 codes or ANSI-Z16.2 type code 151, four hundred ninety-two were HRI claims after medical review of the electronic claim text fields and medical records. Subtracting out employers with a physical location outside of Washington, identified four hundred eighty HRI claims occurred during the study period.

Of the four hundred eighty HRI claims, four hundred forty-two (92.1%) were classified as "noncompensable" (medical only) and thirty-eight (7.9%) were considered "compensable" (greater than three lost work days).

The average age of an HRI claimant was thirty-five years old and the median age was thirty-four years. The proportion of HRI claimant under twenty-five years old was significantly more than the proportion of all state fund claimants under twenty-five years old. The average age of the worker with an HRI compensation claim was forty-one years which is comparable to the average age for all state fund compensable claimants at thirty-nine years old.

The cumulative cost for the eleven-year period for all HRI claims was $895,196 and ranged from $0 to $216,449. Thirty-four claims received time-loss compensation ranging from one to six hundred fifty-nine days.

HRI claim incidence rates by industry sector were highest in construction at 12.1 per 100,000 FTE, Public Administration at 12.0 per 100,000 FTE, Forestry, Fishing, and Hunting at 5.2 per 100,000 FTE. The distribution of HRI claims differs from that of all state fund accepted claims with an excess proportion of claims occurring mostly in construction and public administration.

Of the four hundred eighty claims, three hundred seventy-seven (78.5%) occurred as a result of outdoor work. In construction, 16/159 (10.1%) claims were compensable (lost work days greater than three days), while in Agriculture, Forestry and Fishing, 7/33 (21.2%) claims were compensable. None of the eighty-five claims in the public administration sector were compensable.

NAICS Industries with the highest annual claim incidence rates include Fire Protection at 80.8 per 100,000 FTE, Roofing Construction 59.0 per 100,000 FTE and Highway, Street and Bridge Construction at 44.8 per 100,000 FTE. In Roofing Construction, 18.5% (5/27) of the claims were compensable.

HRI claim rates for the third quarter, the reporting period matching the greatest level of exposure to elevated environmental temperatures, far exceed the annual HRI claim incidence rate. The highest third quarter rates by NAICS industry were for Roofing Construction at 161.2 per 100,000 FTE and for Fire Protection at 158.8 per 100,000 FTE.

Compensable claims were most common in roofers and miscellaneous agricultural workers were five of twenty-three (21.7%) and four of twenty (20%) were compensable, respectively.

The average number of HRI claims per year was forty-four and the annual number of claims ranged from twenty-eight to seventy-three. From May through September, four hundred fifty-six (95.0%) HRI claims occurred. However, 82.7% of the HRI claims occurred during the three months of June, July, and August.

Eighty-eight days during the study period had multiple HRI claims, a cluster, and represent two hundred sixty claims or 54.2% of all claims. Eighty-three of the eighty-eight days with a cluster of HRI claims were in June through August. The number of HRI claims in a cluster ranged from two to fifteen claims. Fifty-five of the one hundred three (53.4%) indoor claims and two hundred five of the three hundred seventy-seven (54.4%) outdoor claims were part of a cluster.

There were four hundred fifteen individual employer accounts with an accepted HRI claim during the study period. The number of claims per employer ranged from one to eight. Forty employer accounts had more than one HRI claim during the study period. Only two employer accounts had multiple HRI claims in a single day.

Hour of injury was determined for three hundred ninety-nine of the four hundred eighty claims. Of the three hundred ninety-nine claims, three hundred fifty-eight (89.7%) occurred between 10 a.m. and 6 p.m. and 80.4% were from heat exposure outdoors. Approximately 24% of all state fund workers' compensation claims occur in eastern Washington but the area accounted for two hundred twenty (45.6%) of the HRI claims.

The daily max temperature interquartile range for all HRI claims was 77°F - 94°F (i.e. 25% of the HRI claims occurred below 77°F, 25% occurred with temperatures above 94°F and the remaining 50%, the interquartile range, were between those two temperatures). The average maximum temperature for the three hundred eight days in which an HRI claim occurred was 80.8°F.

The geographic distribution of claims, eastern Washington compared to western Washington, on days with multiple HRI claims compared to days with a single HRI claim did not significantly differ. However, there was a statistically significant difference between the average max temperature for days in which a single claim occurred (Tmax average 80.4°F) and the average Tmax for days with multiple HRI claims (Tmax avg. 88.5°F). When reviewing the daily Tmax for the three days preceding the HRI claim, two hundred of the four hundred eighty HRI claims (41.7%) were noted to have a 10° increase in the Tmax.

There were one hundred six (22.1%) HRI claims here medication use or a medical condition may have played a contributing role to the development of the HRI. Twenty workers reported a history of a previous HRI or treated dehydration but no HRI claimant had filed multiple HRI claims during the study period.

Of the four hundred eighty HRI claims, three hundred eight had information on the duration of employment. Of the three hundred eight, forty-three (14%) claimants reported employment of one week or less. For all state fund claims, the proportion of claimants reporting employment of one week or less before their day of injury was 3.3%.

Industries with the highest claim rates reflect those with increased outdoor work exposure. Claims occurring in an indoor environment also were common during the summer months, suggesting a relationship with outside temperatures.

The most apparent risk factor for increased Washington incidence of HRI is higher outdoor temperatures experienced from May through September. It was found that 95% of total HRI claims occurred during these months. Similar results are apparent for other occupational and military studies. July is the month associated with the highest incidence rates for all three studies.

Data suggests a dose-response effect of environmental ambient temperature on HRI claims incidence. The hottest parts of the day, 10 a.m. to 6 p.m., coincided with the greatest number of HRI claims. Other data suggest that high exertion levels, alone or in conjunction with high ambient temperatures, increase the risk for HRI. Lack of acclimatization is a well known risk factor for HRI. This data indicates HRI claims occurring within one week of employment occurred more than four times as frequently as workers suffering injuries from all causes within that time period.

Cases associated with a cluster of claims were more likely associated with variation in temperature during the days preceding the injury. Thus poor acclimatization may play a larger role in occupational HRI cases than can be measured using the data available.

Awareness of the medical conditions, medications or personal risk factors that place an individual at risk for HRI should be a required component of a training program.

The limitations to this descriptive study include the likely underreporting of HRI to the workers' compensation system and the under-recognition of HRI by workers, employers and the medical community. There is a possibility of misclassification of HRI workers' compensation claims to other diagnosis if the injury was poorly described on the workers' compensation claim form.

The current study and work of others indicate that increased summertime outdoor temperatures are associated with higher exertional HRI incidence rates. Consequently, education, planning, and resources aimed at prevention should be in place prior to significant seasonal exposure.

Intervention studies suggest the value of anticipating high temperatures, assessing environmental conditions, and implementing preventative changes that reduce metabolic heat loading when necessary. Current military HRI prevention practices include considerations such as heat illness recognition and prevention training; WGBT-based environmental assessment, guidelines for work/rest cycles, and guidelines for water intake.

Optimally, employers should have a comprehensive heat stress prevention program that identifies heat stress hazards, assess the hazards in terms of severity and probability, implements the appropriate controls, and continuously evaluates the effectiveness of these controls. Thus, components of an employers' written comprehensive heat illness prevention program will include engineering controls, appropriate work practices for environmental conditions, employee training, personal protective equipment, and preventive medical practices.

The most apparent association for exertional HRI is exposure to increased ambient temperatures during summer months. Personal risk factors including co-morbid medical conditions, medications, illicit drug and alcohol use and limited acclimatization were present in some cases. Incorporation of prevention programs into the workplace may increase recognition and promote the prevention of HRI.

H. Chronological Summary of Outdoor Heat Exposure Rule-making Project:

July 2005	Sixty-five year old male dies cutting weeds in a hop field near Yakima on July 18, 2005. Temperature was in the 90s.
	Representative Phyllis Kenney and Mexican Consulate work with L&I Director Gary Weeks on responsive action to death.
December 2005	Department distributes first draft HRI rule for stakeholder comment.
January 2006	Department meets with stakeholders to discuss draft rule language.
February 2006	Department discusses the HRI draft with the WISHA advisory committee.
March 2006	Department distributes an updated HRI draft and works with stakeholders on language.
June 2006	Department adopts an emergency rule on June 1, 2006. The emergency rule changes language in an existing rule in WAC 296-62-09013 to apply the requirement to the outdoor environment. The rule is in effect for one hundred twenty days.
May 2006	Forty-one year old male dies after experiencing heat stroke in July 2004. His death was determined to be a result of the heat stroke event.
July 2006	Twenty-seven year old male dies after experiencing HRI on June 26, 2006, laying pipe in/near Vancouver, Washington. Temperature was approximately 100ºF.
September 2006	The 2006 emergency rule expires on September 28, 2006.
November 2006	Department meets with stakeholders to discuss 2006 emergency rule.
December 2006	The department files a CR-101 (preproposal) on December 19, 2006.
January 2007	Department receives a petition for rule making from Columbia Legal Services.
February 2007	Department meets with stakeholders to discuss draft HRI rule.
April 2007	Department distributes draft emergency rule to stakeholders on April 16, 2007. Training materials and the training course schedule was also distributed.
June 2007	Emergency rule is adopted on June 5, 2007, with enforcement delayed until June 18, 2007, and July 1, 2007. The rule is in effect for one hundred twenty days.
August 2007	Department begins to solicit comments of the emergency rule language.
September 2007	Department holds stakeholder meetings on the draft language around the state.
October 2007	The 2007 emergency rule expires on October 3, 2007.
November 2007	Department meets with a business-labor committee to discuss draft rule language.
March 2008	Department files a proposed HRI rule on March 19, 2008, and begins accepted written comment on the proposed language.
April 2008	Department holds a public hearing in Tumwater, Washington on April 28.
	Department holds a public hearing in Bellingham, Washington on April 29.
	Department holds a public hearing in Yakima, Washington on April 30.
	Department holds a public hearing in Richland, Washington on April 30.
May 2008	Department holds a public hearing in Spokane, Washington on May 1.
	Department holds a public hearing in Seattle, Washington on May 2.
	Department extends comment period from May 2, 2008, to May 9, 2008.
June 2008	Department adopts a permanent outdoor heat exposure rule.

[1] Wash. Const. Art. 2 § 35.

[2] RCW 49.17.010.

[3] RCW 49.17.050(4).

[4] *Rios v. Department of Labor & Industries,* 145 Wn.2d 483, 500, 39 P.3d 961 (2002).

[5] Bonauto D, Anderson R, Rauser E, Burke B. (2007). "Occupational Heat Illness in Washington State, 1995-2005," *American Journal of Industrial Medicine.* A summary of the article is provided below.

[6] Petition for Rule Making: Permanent Rules Protecting Outdoor Employees from Heat Illness, p. 1, ¶ 1.2.

[7] Department of the Army and Air Force (2003). "Technical Bulletin: Heat Stress Control and Heat Casualty Management." Washington, DC: Headquarters, Department of the Army and Air Force.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 08-07-098 on March 19, 2008.

Changes Other than Editing from Proposed to Adopted Version: **Rule Requirement of the Proposed Rule Compared to the Adopted Rule:** The table below provides a summary of the changes made from the proposed version of the rule to the adopted version.

	Proposed Rule	Recommendations for Adoption
Scope	• Applied to employers with outdoor employees and exempts employees working outdoors for fifteen minutes or less in an hour over the entire workshift (incidental exposure). • Provided temperature triggers for when the requirements for drinking water and responding to signs and symptoms apply.	• Updates the language to limit application of all of the rule requirements when the temperature action levels are met or exceeded. • Adds language limiting the application of the rule from May 1 through September 30 annually. • Removes half of the temperature action levels to streamline application. • Adds language to clearly exempt employees with incidental exposure from the rule requirements. • Clarifies language as a result of comments received.
Definitions	• Provided definitions of "environmental risk factors," "heat-related illness," "heat-related illness hazard," "incidental exposure," "outdoor environment," and "personal factors…"	• Removes definitions of "heat-related illness hazard," "incidental exposure," and "personal risk factors…" • Adds definitions of "double-layer woven clothing," and "vapor barrier clothing." • Updates the definition of "drinking water" to clearly allow the use of electrolyte beverages. • Clarifies language as a result of comments received.
Employer and employee responsibility	• Required a specific written program to address HRI if employees work outdoors. • Provided specific elements that the program must address.	• Changes language to allow employers to address HRI in their accident prevention program (currently required). • Removes requirements for specific elements of the written program. • Clarifies language as a result of comments received.
Drinking water	Required employers to provide one quart of water per hour per employee when the temperature triggers are met or exceeded.	Clarifies language as a result of comments received.
Responding to signs and symptoms…	• Applied to employers with employees working in the outdoor environment for more than fifteen minutes in an hour. • Required employees showing signs or demonstrating symptoms of HRI to be relieved from duty when temperature triggers are met or exceeded.	• Applies to employers with employees working in the outdoor environment for more than fifteen minutes in an hour and temperatures meet or exceed the temperature action levels in Table 1. • Removes language providing examples which caused confusion.
Information and training	• Applied to employers with employees working in the outdoor environment for more than fifteen minutes in an hour. • Required annual training on HRI if employees work outdoors. • Provided training topics for employees and supervisors.	• Applies to employers with employees working in the outdoor environment for more than fifteen minutes in an hour and temperatures meet or exceed the temperature action levels in Table 1. • Streamlines the training topics by removing topics that are covered by other rules or will have less impact on HRI prevention. • Clarifies rule language as a result of comments received.

A final cost-benefit analysis is available by contacting Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, fax (360) 902-5619, e-mail Scij235@lni.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 7, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 7, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 0, Repealed 0.

Date Adopted: June 4, 2008.

Judy Schurke
Director

NEW SECTION

WAC 296-62-095 Outdoor heat exposure.

NEW SECTION

WAC 296-62-09510 Scope and purpose. (1) WAC 296-62-095 through 296-62-09560 applies to all employers with employees performing work in an outdoor environment.

(2) The requirements of WAC 296-62-095 through 296-62-09560 apply to outdoor work environments from May 1 through September 30, annually, only when employees are exposed to outdoor heat at or above an applicable temperature listed in Table 1.

Table 1

To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Outdoor Temperature Action Levels

All other clothing	89°
Double-layer woven clothes including coveralls, jackets and sweatshirts	77°
Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°

Note: There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(3) WAC 296-62-095 through 296-62-09560 does not apply to incidental exposure which exists when an employee is not required to perform a work activity outdoors for more than fifteen minutes in any sixty-minute period. This exception may be applied every hour during the work shift.

(4) WAC 296-62-095 through 296-62-09560 supplement all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer shall comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for fire fighters and chapter 296-307 WAC, Safety standards for agriculture.

NEW SECTION

WAC 296-62-09520 Definitions. (1) **Acclimatization** means the body's temporary adaptation to work in heat that occurs as a person is exposed to it over time.

(2) **Double-layer woven clothing** means clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.

(3) **Drinking water** means potable water that is suitable to drink. Drinking water packaged as a consumer product and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain caffeine are acceptable.

(4) **Engineering controls** means the use of devices to reduce exposure and aid cooling (i.e., air conditioning).

(5) **Environmental factors for heat-related illness** means working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-62-095.

(6) **Heat-related illness** means a medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(7) **Outdoor environment** means an environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.

(8) **Vapor barrier clothing** means clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of nonbreathing clothing.

NEW SECTION

WAC 296-62-09530 Employer and employee responsibility. (1) Employers of employees exposed at or above temperatures listed in WAC 296-62-09510(2) Table 1 must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP); and

(b) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration.

NEW SECTION

WAC 296-62-09540 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC 296-62-09510(2) Table 1:

(a) Employers must ensure that a sufficient quantity of drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

NEW SECTION

WAC 296-62-09550 Responding to signs and symptoms of heat-related illness. (1) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

NEW SECTION

WAC 296-62-09560 Information and training. All training must be provided to employees and supervisors, in a language the employee or supervisor understands, prior to outdoor work which exceeds a temperature listed in WAC 296-62-09510(2) Table 1, and at least annually thereafter.

(1) Employee training. Training on the following topics must be provided to all employees who may be exposed to outdoor heat at or above the temperatures listed in WAC 296-62-09510(2) Table 1:

(a) The environmental factors that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, caffeine use, nicotine use, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) The importance of acclimatization;

(f) The different types of heat-related illness, the common signs and symptoms of heat-related illness; and

(g) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures.

(2) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC 296-62-09510(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-62-095 through 296-62-09560;

(c) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and

(d) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

WSR 08-13-014
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed June 6, 2008, 3:02 p.m., effective July 7, 2008]

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

Purpose: This rule-making order updates the address listed for the Washington State Crop Improvement Association and updates the phone number for the department of agriculture's seed program.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-010.

Statutory Authority for Adoption: RCW 15.49.005.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-07-086 on March 19, 2008.

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

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

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

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

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

Date Adopted: June 6, 2008.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-010 Agencies that certify seed in Washington state. (1) Seed certification in Washington state is conducted under the authority of chapter 15.49 RCW. The department conducts seed certification in cooperation with the WSCIA, Washington State University and AOSCA.

(2) The WSCIA is designated to assist the department in the certification of certain agricultural seeds. A memorandum of understanding between the department and the WSCIA designates WSCIA to act as the director's duly authorized

agent for the purpose of certifying seed of buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees. The address and phone number for the WSCIA office is ((~~414 S. 46th Avenue, Yakima, WA 98908, (509) 966-2234~~)) 1610 N.E. Eastgate Blvd. Suite 610, Pullman, WA 99163, 509-335-8250.

(3) The department's seed program certifies seed other than buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees. The address and phone number for the department seed program office is 21 N. 1st Avenue, Yakima, WA 98902, (((~~509) 225-2630~~)) 509-249-6950.

WSR 08-13-015

PERMANENT RULES

CONVENTION AND TRADE CENTER

[Filed June 6, 2008, 3:50 p.m., effective July 7, 2008]

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

Purpose: These rules update the Washington state convention and trade center's (WSCTC) SEPA rules, clarify when WSCTC will serve as the lead agency, specify certain emergency actions as categorically exempt and adopt the city of Seattle's flexible thresholds for categorical exemptions.

Citation of Existing Rules Affected by this Order: Repealing WAC 140-09-058, 140-09-080, 140-09-090, 140-09-100, 140-09-120 and 140-09-200; and amending WAC 140-09-010, 140-09-020, 140-09-040, 140-09-050, 140-09-065, 140-09-110, 140-09-128, 140-09-130, 140-09-140, 140-09-150, 140-09-155, 140-09-175, 140-09-180, 140-09-185, and 140-09-230.

Statutory Authority for Adoption: RCW 43.21C.120.

Adopted under notice filed as WSR 08-07-068 on March 17, 2008.

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

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

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

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

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

Date Adopted: May 20, 2008.

John Christison

President and General Manager

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-010 Authority. These rules are promulgated pursuant to the State Environmental Policy Act (SEPA), RCW 43.21C.120, and ((~~is~~)) are intended to administratively implement that statute, as further authorized by WAC 197-11-904. This chapter contains this corporation's SEPA procedures and policies. The SEPA rules, chapter 197-11 WAC, must be used in conjunction with this chapter.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-020 Purpose of this part and adoption by reference. This part contains the basic requirements that apply to the SEPA process. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC	
197-11-040	Definitions.
197-11-050	Lead agency.
197-11-055	Timing of the SEPA process.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-250	SEPA/Model Toxics Control Act integration
197-11-253	SEPA lead agency for MTCA actions.
197-11-256	Preliminary evaluation.
197-11-259	Determination of nonsignificance for MTCA remedial action.
197-11-262	Determination of significance and EIS for MTCA remedial actions.
197-11-265	Early scoping for MTCA remedial actions.
197-11-268	MTCA interim actions.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-040 Designation of responsible official. (1) For those proposals for which the corporation is the lead agency, the responsible official shall be the ((~~administrator~~)) president of the Washington state convention and trade center.

(2) For all proposals for which the corporation is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in WAC 140-09-020.

(((~~(3) The corporation shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.17 RCW.~~)))

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-050 Lead agency determination and responsibilities. (1) The corporation receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940.

(2) ((~~When the corporation is the lead agency for a proposal, it shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.~~)) The corporation shall serve as the lead agency for all proposals by the corporation. When the total proposal will involve both private and corporation construction activity, it shall be characterized as either a private or a corporation project for the purposes of lead agency designation, depending upon whether the primary sponsor or initiator of the project is the corporation or a private party. Any project in which corporation and private interests are too intertwined to make this characterization shall be considered a corporation project.

(3) When the corporation is not the lead agency for a proposal, the corporation shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The corporation shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the corporation may conduct supplemental environmental review under WAC 197-11-600.

(4) If the corporation receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the corporation must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the corporation may be initiated by the ((~~administrator~~)) president of the Washington state convention and trade center.

(5) The corporation is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided that the responsible official approves the agreement.

(6) The corporation, making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (That is: Which agencies require nonexempt licenses?).

(7) When the corporation is the lead agency for a MTCA remedial action, the department of ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the corporation shall decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-065 Purpose of this part and adoption by reference. This part contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference((~~, as supplemented in this part~~)):

WAC	
197-11-300	Purpose of this part.
197-11-305	Categorical exemptions.
197-11-310	Threshold determination required.
197-11-315	Environmental checklist.
197-11-330	Threshold determination process.
197-11-335	Additional information.
197-11-340	Determination of nonsignificance (DNS).
197-11-350	Mitigated DNS.
197-11-360	Determination of significance (DS)/initiation of scoping.
197-11-390	Effect of threshold determination.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-110 Purpose of this part and adoption by reference. This part contains the rules for preparing environmental impact statements. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference((~~, as supplemented by this part~~)):

WAC	
197-11-400	Purpose of EIS.
197-11-402	General requirements.
197-11-405	EIS types.
197-11-406	EIS timing.
197-11-408	Scoping.
197-11-410	Expanded scoping. (Optional)
197-11-420	EIS preparation.
197-11-425	Style and size.
197-11-430	Format.
197-11-435	Cover letter or memo.
197-11-440	EIS contents.
197-11-442	Contents of EIS on nonproject proposals.
197-11-443	EIS contents when prior nonproject EIS.
197-11-444	Elements of the environment.
197-11-448	Relationship of EIS to other considerations.
197-11-450	Cost-benefit analysis.
197-11-455	Issuance of DEIS.
197-11-460	Issuance of FEIS.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-128 Adoption by reference. This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference((~~, as supplemented in this part~~)):

WAC

197-11-500	Purpose of this part.
197-11-502	Inviting comment.
((~~197-11-504~~	~~Availability and cost of environmental documents.~~))
197-11-508	SEPA register.
197-11-510	Public notice.
197-11-535	Public hearings and meetings.
197-11-545	Effect of no comment.
197-11-550	Specificity of comments.
197-11-560	FEIS response to comments.
197-11-570	Consulted agency costs to assist lead agency.

NEW SECTION

WAC 140-09-129 Availability and cost of environmental documents. (1) SEPA documents required by the SEPA rules shall be retained by the corporation and made available in accordance with chapter 42.56 RCW.

(2) The corporation shall make copies of any environmental document available in accordance with chapter 42.56 RCW, charging only those costs allowed plus mailing costs. However, no charge shall be levied for circulation of documents to other agencies as required by these rules.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-130 Public notice. (1) Whenever the ((~~corporation issues a DNS~~)) SEPA rules require notice to be given under WAC ((~~197-11-340(2) or a DS under WAC 197-11-360(3)~~)) 197-11-510 the corporation shall give public notice as follows:

(((~~(a) If public notice is required for a nonexempt license under a statute other than SEPA, the notice shall state whether a DS or DNS has been issued and when comments are due.~~

~~(b) If no public notice is required for the nonexempt license under a statute other than SEPA, the corporation shall give notice of the DNS or DS by at least one of the following:~~

~~(i) Posting the property, for site-specific proposals;~~

~~(ii) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;~~

~~(iii) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;~~

~~(iv) Notifying the news media;~~

~~(v) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or~~

~~(vi) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas).~~

~~(c) Whenever the corporation issues a DS under WAC 197-11-360(3), the corporation shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.~~

~~(2) Whenever the corporation issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license; and at least one of the following:~~))

(a) Posting the property, for site-specific proposals; and

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located((~~,~~)) (e.g., The Seattle Times or the Seattle Post-Intelligencer).

(((~~(c) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;~~

~~(d) Notifying the news media;~~

~~(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or~~

~~(f) Publishing notices in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposals or subject areas).~~

~~(3)~~)) (2) Whenever possible, the corporation shall integrate the public notice required under this section with existing notice procedures for the corporation's nonexempt licenses required for the proposal.

(((~~(4)~~))) (3) The corporation may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

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 85-03-004, filed 1/3/85)

WAC 140-09-140 Designation of official to perform consulted agency responsibilities for the corporation. (((~~(1) The administrator of the Washington state convention and trade center shall be responsible for preparation of written comments for the corporation in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.~~

~~(2) The responsible official shall be responsible for the corporation's compliance with WAC 197-11-550 whenever the corporation is a consulted agency and is authorized, but not required, to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the corporation.~~)) The president of the corporation, or his or her designee, shall be responsible for coordinating, receiving, and reviewing comments and requests for information from agencies regarding threshold determinations, scoping, EIS's, and supplemental EIS's.

AMENDATORY SECTION (Amending WSR 85-03-004 (Order 3, Resolution No. 103), filed 1/3/85)

WAC 140-09-150 Purpose of this part and adoption by reference. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the corporation's own environmental compliance. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC	
197-11-600	When to use existing environmental documents.
197-11-610	Use of NEPA documents.
197-11-620	Supplemental environmental impact statement—Procedures.
197-11-625	Addenda—Procedures.
197-11-630	Adoption—Procedures.
197-11-635	Incorporation by reference—Procedures.
197-11-640	Combining documents.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-155 Purpose of this part and adoption by reference. This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC	
197-11-650	Purpose of this part.
197-11-655	Implementation.
197-11-660	Substantive authority and mitigation.
197-11-680	Appeals.

NEW SECTION

WAC 140-09-170 No administrative appeal. There is no administrative appeal of any corporation determination relating to SEPA. Any appeal must be a judicial appeal under WAC 197-11-680(4).

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-175 Purpose of this part and adoption by reference. This part contains uniform usage and definitions of terms under SEPA. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference, as supplemented by WAC ((~~140-09-040~~)) 140-09-030:

WAC	
197-11-700	Definitions.
197-11-702	Act.
197-11-704	Action.
197-11-706	Addendum.
197-11-708	Adoption.
197-11-710	Affected tribe.
197-11-712	Affecting.
197-11-714	Agency.
197-11-716	Applicant.
197-11-718	Built environment.
197-11-720	Categorical exemption.
197-11-721	Closed record appeal.
197-11-722	Consolidated appeal.
197-11-724	Consulted agency.
197-11-726	Cost-benefit analysis.
197-11-728	County/city.
197-11-730	Decision maker.
197-11-732	Department.
197-11-734	Determination of nonsignificance (DNS).
197-11-736	Determination of significance (DS).
197-11-738	EIS.
197-11-740	Environment.
197-11-742	Environmental checklist.
197-11-744	Environmental document.
197-11-746	Environmental review.
((~~197-11-748~~	~~Environmentally sensitive area.~~))
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Lands covered by water.
197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Nonproject.
197-11-775	Open record hearing.
197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible official.
197-11-790	SEPA.

WAC

197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-180 Adoption by reference. The corporation adopts by reference the following rules for categorical exemptions((~~, as supplemented in this~~)) from chapter 197-11 of the Washington Administrative Code:

WAC

197-11-800 Categorical exemptions.
197-11-810 Exemptions and nonexemptions applicable to specific state agencies.
197-11-820 Department of licensing.
197-11-825 Department of labor and industries.
197-11-830 Department of natural resources.
197-11-835 Department of fisheries.
197-11-840 Department of game.
197-11-845 Department of social and health services.
197-11-850 Department of agriculture.
197-11-855 Department of ecology.
197-11-860 Department of transportation.
197-11-865 Utilities and transportation commission.
197-11-870 Department of commerce and economic development.
197-11-875 Other agencies.
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.

NEW SECTION

WAC 140-09-182 Corporation compliance with flexible thresholds. The corporation will use the flexible thresholds established by the City of Seattle.

NEW SECTION

WAC 140-09-183 Emergencies. Actions that must be undertaken immediately or within a time too short to allow full compliance with these rules, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this chapter. Such actions include, but are not limited to, the following:

(1) Emergency pollution control actions responding to accidental discharges, leaks or spills into the air, water, or land.

(2) Implementation of a change in waste disposal procedures caused by unanticipated changes in waste sources which are in compliance with federal and state regulations and standards.

(3) Cleanup or decontamination of the corporation's facilities or equipment accidentally exposed or contaminated, to permit maintenance, repair or relocation, when procedures followed are in accordance with federal or state guidelines, recommendations, or standards.

(4) Emergency actions implemented to reduce an imminent hazard to the public health or safety resulting from structural failure, accidental or intentional acts or omissions, equipment malfunction, human error or natural event.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-185 Purpose of this part and adoption by reference. This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, listing agencies with environmental expertise, selecting the lead agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference((~~, as supplemented by WAC 140-09-050 and 140-09-053 and this part~~)):

WAC

197-11-900 Purpose of this part.
197-11-902 Agency SEPA policies.
197-11-904 Agency SEPA procedures.
197-11-906 Content and consistency of agency procedures.
197-11-910 Designation of responsible official.
197-11-912 Procedures of consulted agencies.
197-11-914 SEPA fees and costs.
197-11-916 Application to ongoing actions.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
197-11-938 Lead agencies for specific proposals.
197-11-940 Transfer of lead agency status to a state agency.
197-11-942 Agreements on lead agency status.

WAC

197-11-944 Agreements on division of lead agency duties.

197-11-946 DOE resolution of lead agency disputes.

197-11-948 Assumption of lead agency status.

197-11-950 Severability.

197-11-955 Effective date.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-230 Adoption by reference. The corporation adopts the following forms and sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC

197-11-960 Environmental checklist.

197-11-965 Adoption notice.

197-11-970 Determination of nonsignificance (DNS).

197-11-980 Determination of significance and scoping notice (DS).

197-11-985 Notice of assumption of lead agency status.

197-11-990 Notice of action.

REPEALER

The following sections of chapter 140-09 of the Washington Administrative Code are repealed:

140-09-058	Additional timing considerations.
140-09-080	Use of exemptions.
140-09-090	Environmental checklist.
140-09-100	Mitigated DNS.
140-09-120	Preparation of EIS—Additional considerations.
140-09-200	Fees.

WSR 08-13-042
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION

[Filed June 12, 2008, 8:51 a.m., effective June 12, 2008]

Effective Date of Rule: June 12, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The effective date of June 12, 2008, reflects the effective date of the legislation that initiated the proposed rule revisions.

Purpose: The proposal amending WAC 468-38-071 describes the requirements for vehicles using the US 97 heavy haul industrial corridor established by the legislature.

The proposal amending WAC 468-38-071 increases the weight limit for farm implements that are eligible to request an annual farm implement permit as established by the legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 468-38-071 and 468-38-290.

Statutory Authority for Adoption: RCW 46.44.090 and 46.44.0915.

Adopted under notice filed as WSR 08-10-052 on May 2, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 11, 2008.

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-071 Maximums and other criteria for special permits—Divisible. (1) **Can a vehicle, or vehicle combination, acquire a permit to exceed the dimensions for legal vehicles in regular operation when moving items of a divisible nature?** Yes. There are some very specific configurations that can receive extra length or extra height when carrying a divisible load.

(2) **What configurations can be issued a permit, and how are they measured?** The configurations and measurement criteria are:

(a) An overlength permit may be issued to a truck-tractor to pull a single trailer or semi-trailer, with a trailer length not to exceed fifty-six feet. The measurement for the single trailing unit will be from the front of the trailer (including draw bar when used), or load, to the rear of the trailer, or load, whichever provides the greater distance up to fifty-six feet. Rear overhang may not exceed fifteen feet.

(b) An overlength permit may be issued to a truck-tractor to pull a set of double trailers, composed of a semi-trailer and full trailer or second semi-trailer, with a combined trailer length not to exceed sixty-eight feet. The measurement for double trailers will be from the front of the first trailer, or load, to the end of the second trailer or load, whichever provides the greatest distance up to sixty-eight feet. Note: If the truck-tractor is carrying an allowable small freight compartment (dromedary box), the total combined length of the combination, combined trailer length notwithstanding, is limited to seventy-five feet.

(c) An overlength permit may be issued to a log truck pulling a pole-trailer, trailer combination, carrying two distinct and separate loads, as if it was a truck-tractor pulling a

set of double trailers. Measurement for the log truck, pole-trailer, trailer combination will be from the front of the first bunk on the truck to the rear of the second trailer, or load, whichever provides the greatest distance up to sixty-eight feet.

(d) An overheight permit may be issued to a vehicle or vehicle combination, hauling empty apple bins, not to exceed fifteen feet high. Measurement is taken from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(e) An overheight permit may be issued to a vehicle or vehicle combination owned by a rancher and used to haul his own hay from his own fields to feed his own livestock, not to exceed fifteen feet high, measured from a level roadbed. This permit may be used in conjunction with either of the overlength permits in (a) or (b) of this subsection. The permit may also provide an exemption from a front pilot/escort vehicle as required by WAC 468-38-100 (1)(h). The exemption does not limit the liability assumed by the permit applicant.

(3) **Are there any measurement exclusive devices related to these permits?** Measurements should not include nonload-carrying devices designed for the safe and/or efficient operation of the vehicle, or vehicle combination components, for example: An external refrigeration unit, a resilient bumper, an aerodynamic shell, etc. Safety and efficiency appurtenances, such as, but not limited to, tarp rails and splash suppression devices, may not extend more than three inches beyond the width of a vehicle. The examples are not all inclusive.

(4) **Are overweight permits available for divisible loads?** Yes. There are specific criteria authorizing overweight permits to divisible loads.

(a) The secretary of transportation, or designee, may issue permits to department vehicles used for the emergent preservation of public safety and/or the infrastructure (i.e., snow removal, sanding highways during emergency winter conditions, emergent debris removal or retainment, etc.). The permits will also be valid for the vehicles in transit to or from the emergent worksite. The special permits may allow:

(((~~(a)~~))) (i) Weight on axles in excess of what is allowed in RCW 46.44.041;

(((~~(b)~~))) (ii) Movement during hours of the day, or days of the week, that may be restricted in WAC 468-38-175;

(((~~(c)~~))) (iii) Exemption from the sign requirements of WAC 468-38-155(7) if weather conditions render such signs ineffectual; and

(((~~(d)~~))) (iv) Movement at night, that may be restricted by WAC 468-38-175(3), by vehicles with lights that meet the standards for emergency maintenance vehicles established by the commission on equipment.

(b) Additional weight allowances are authorized through special permit for a segment of US-97 from the Canadian border to milepost 331.22 designated as a heavy haul industrial corridor. The permits will authorize vehicles to haul divisible loads weighing up to the Canadian inter-provincial weight limits and must comply with the following requirements:

(i) Vehicles applying for the Canadian weight special permit must be licensed to their maximum legal weight limit in Washington state.

(ii) Displaying the US-97 heavy haul industrial corridor permit does not waive registration fees, fuel taxes, operating authority requirements, future legislative or regulatory changes. Except as provided in the provisions for the heavy weight industrial corridor on US-97, all Washington state and federal laws must be complied with.

(iii) Routes of travel are strictly limited: Both directions of US-97 from the Canadian border at milepost 336.48 to milepost 331.22.

(iv) A Washington state axle spacing report is required for Canadian weight verification.

(v) The following descriptions indicate the maximum weight limits that will be permitted:

(A) Primary steering axle - 600 lbs. (272 kg) per inch (25.4 mm) of width of tire* with a maximum limit of 12,100 lbs.

(B) Other axles - 500 lbs. (227 kg) per inch of width of tire*.

(C) Single axles - 20,000 lbs. (9,100 kg) maximum.

(D) Tandem axles - 37,500 lbs. (17,000 kg) maximum.

*Width of tire is determined by tire side-wall nomenclature.

(E) Tridem axles.

Axle Spread	Pounds	Kilograms
94" (2.4m) to < 118" (3.0m)	46,300	21,000
118" (3.0m) to < 141" (3.6m)	50,700	23,000
141" (3.6m) to < 146" (3.7m)	52,900	24,000

Note: When computing allowable weights, the most conservative figure (whether weight per width of tire, axle weights, or gross weights) will govern.

(F) Maximum gross weight - pounds (kilograms).

Number of Axles	2	3	4	5	6	7	8
Truck	36,000 (16,350)	53,000 (24,250)					
Truck and Full Trailer			74,000 (33,500)	91,000 (41,250)	106,500 (48,250)	118,000 (53,500)	
Truck and Pup		56,200 (25,450)	74,000 (33,550)	91,000 (41,250)	99,800 (45,250)		

Number of Axles	2	3	4	5	6	7	8
Tractor and Semi		52,300 (23,700)	69,700 (31,600)	87,100 (39,500)	95,900 - 102,500*		
A-Train**				92,500 (41,900)	109,800 (49,800)	118,000 (53,500)	118,000 (53,500)
B-Train**				90,000 (40,700)	107,200 (48,600)	124,600 (56,500)	137,800 (62,500)
C-Train**				92,500 (41,900)	109,800 (49,800)	120,500 (54,600)	130,000 (58,500)

*Semi tridem axle spacing and weight limits:
94" to < 118" (2.4m to < 3.0m) spread - 95,900 lbs. (43,500 kg).
118" to < 141" (3.0m to < 3.6m) spread - 100,310 lbs. (45,500 kg).
141" to < 146" (3.6m to < 3.7m) spread - 102,500 lbs. (46,500 kg).
**Double trailer vehicles definition for this section:
A-Train: Double trailers coupled by a single drawbar.
B-Train: Two semi-trailers coupled by a fifth wheel mounted to rear of first trailer.
C-Train: Double trailers coupled by double drawbars with self-steering dolly axle(s).

AMENDATORY SECTION (Amending WSR 06-07-025, filed 3/7/06, effective 4/7/06)

WAC 468-38-290 Farm implements. (1) **For purposes of issuing special permits and certain permit exemptions, what is considered a farm implement?** A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator apparatus (complete with auxiliary equipment). For purposes of this section, the implement must be nondivisible, weigh less than ((~~forty-five~~)) sixty-five thousand pounds, and comply with the requirements of RCW 46.44.091. The implement must be less than twenty feet in width and not exceed fourteen feet high. If the implement is self-propelled, it must not exceed forty feet in length, or seventy feet overall length if being towed. The implement must move on pneumatic tires, or solid rubber tracks having protuberances that will not damage public highways. Implements exceeding any of these criteria must meet all appropriate requirements for special permits as referenced in other sections throughout this chapter.

(2) **What dimensional criteria must be met before a special permit is required to move extra-legal farm implements?** Self-propelled farm implements, including a farm tractor pulling no more than two implements, that exceeds sixteen feet in width, but less than twenty feet wide, are required to get a special permit for movement of farm implements on state highways. Note: A tow vehicle capable of carrying a load (i.e., a truck of any kind) may not tow more than one trailing implement.

(3) **Will the ability to acquire a special permit to move oversize farm implements be affected if the implement(s) is carried on another vehicle?** The ability to use a special permit for farm implements as defined in subsection (1) of this section will not be affected unless one of the following circumstances occurs:

(a) The authorized users of the permit outlined in subsection (5) of this section use a commercial for-hire service to move the implement(s); or

(b) The loaded farm implement creates a combined height that exceeds fourteen feet; or

(c) The loaded farm implement causes the hauling vehicle to exceed legal weight limits. The farm implement may weigh up to forty-five thousand pounds; however, the combined gross weight of implement and hauling unit may extend to the limits established in RCW 46.44.041 Maximum gross weights—Wheelbase and axle factors.

If any of the circumstances occur, the provisions of this subsection will not apply to the movement of the farm implement. The movement will be required to comply with the appropriate requirements for special permits as referenced in chapter 46.44 RCW and in other sections throughout this chapter.

(4) **How does the application process for a special permit for farm implements differ from the process outlined in WAC 468-38-050?** Due to the size of the implement and the potential for use in multiple jurisdictions, the written application must be submitted to the department's Olympia office for approval. Permits can be requested for a three-month period up to one year. Once approved, the special permit may be generated from the Olympia office by facsimile or a letter of authorization will be sent allowing the applicant to acquire a permit at the nearest permit sales location. If the movement of the farm implement(s) is confined to a single department maintenance area, the applicant may make direct written application to that maintenance area office in lieu of the Olympia office.

(5) **Who is authorized to acquire this specific special permit?** The acquisition and use of a special permit to move farm implements is restricted to a farmer, or anyone engaged in the business of selling, repairing and/or maintaining farm implements.

(6) **Does the permit restrict the movement to a specific area?** The special permit to move farm implements is generally restricted to six contiguous counties or less. With proper justification the area can be expanded. The farm implement may only travel on highway structures that are designed to support the weight of the farm implement.

(7) **Are notifications of movement required?** Movements of vehicles in excess of sixteen feet wide must be communicated to all department maintenance areas affected at least eight hours in advance. Movements of implements that exceed the legal weight limit established in RCW 46.44.041 must contact all of the maintenance department areas affected at least eight hours in advance for weight restriction information. The communication is for the purpose of ensuring there will not be any planned activity or weight restrictions that

would restrict the move. Locations of maintenance area offices and phone listings are provided with each letter authorizing the purchase of the special permit.

(8) **What safety precautions must be taken when moving extra-legal farm implements?** The movement of extra-legal farm implements must comply with the following safety requirements:

(a) **Oversize load signs:** If the farm implement exceeds ten feet wide, it must display an "OVERSIZE LOAD" sign(s) visible to both oncoming traffic and overtaking traffic. Signs must comply with the requirements of WAC 468-38-155(7). If the implement is both preceded and followed by pilot/escort vehicles, a sign is not required on the implement itself.

(b) **Curfew/commuter hours:** Movement of a farm implement in excess of ten feet wide must comply with any published curfew or commuter hour restrictions.

(c) **Red flags:** If the farm implement is moving during daylight hours, and exceeds ten feet wide, the vehicle configuration must display clean, bright red flags. The flags must measure at least twelve inches square and be able to wave freely. The flags are to be positioned at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If a transported implement overhangs the rear of transporting vehicle or vehicle combination by more than four feet, one flag is required at the extreme rear. If the width of the rear overhang/protrusion exceeds two feet, there must be two flags positioned at the rear to indicate the maximum width of the overhang/protrusion.

(d) **Warning lights and slow moving emblem:** Lamps and other lighting must be in compliance with RCW 46.37.160. In addition to the lighting requirements, RCW 46.37.160 also requires the use of a "slow moving emblem" for moves traveling at twenty-five miles per hour or less.

(e) **Convoys:** Convoys, the simultaneous movement of two or more individually transported implements, are authorized when the following criteria are met:

(i) A minimum of five hundred feet is maintained between vehicles to allow the traveling public to pass safely;

(ii) If five or more vehicles are lined up behind any one of the implements, the operator must pull off the road at the nearest point wide enough to allow the vehicles to pass safely; and

(iii) The convoy is preceded and followed with properly equipped pilot/escort vehicles.

(9) **Are there any unique requirements or exemptions regarding the use of pilot/escort vehicles with farm implements?** Pilot/escort vehicles must comply with the requirements of WAC 468-38-100, except for the following specific exemptions related only to special permits for moving farm implements:

(a) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-100(4) regarding operator certification, WAC 468-38-100 (8)(a) and (b) regarding escort vehicle physical description, WAC 468-38-100 (10)(f) regarding use of height measuring device, and WAC 468-38-100(11) regarding passengers, when moving a farm implement off the interstate and on the following interstate segments:

(i) I-90 between Exit 109 (Ellensburg) and Exit 270 (Four Lakes);

(ii) I-82 between Junction with I-90 (Ellensburg) and Exit 31 (Yakima);

(iii) I-82 between Exit 37 (Union Gap) and Washington/Oregon border;

(iv) I-182 between Junction with I-82 (West Richland) and Junction with SR-395; and

(v) I-5 between Exit 208 (Arlington) and Exit 250 (south of Bellingham).

(b) On two lane highways, one pilot/escort vehicle must precede and one must follow the implement(s) when the width exceeds twelve feet six inches. Implements up to twelve feet six inches wide are exempt from using pilot/escort vehicles.

(c) A flag person(s) may be used in lieu of a pilot/escort(s) for moves under five hundred yards. This allowance must be stated on any permit that may be required for the move.

(d) Posting a route may also be used in lieu of a pilot/escort vehicle(s) when the route is less than two miles. Signs must state, "OVERSIZE VEHICLE MOVING AHEAD" on a square at least three feet on each side (in diamond configuration), with black lettering on orange background. The signs must be placed at points before the oversize implement enters or leaves the highway, and at access points along the way. Signs must be removed immediately after the move has been completed.

WSR 08-13-049
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 12, 2008, 11:44 a.m., effective July 13, 2008]

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

Purpose: The superintendent may excuse more than two scheduled school days per incident or three scheduled school days per year where the school is located in a county which was subject to a state of emergency declaration by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the event giving rise to the emergency declaration prevented operation of the school.

Citation of Existing Rules Affected by this Order: Amending WAC 392-129-150.

Statutory Authority for Adoption: RCW 28A.41.170(2).

Adopted under notice filed as WSR 08-09-003 on April 3, 2008.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

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

Date Adopted: June 12, 2008.

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending Order 22, filed 12/20/89, effective 1/20/90)

WAC 392-129-150 School emergency closure—Implementation of superintendent of public instruction's determination of eligibility. If the superintendent of public instruction determines that the school district has provided a conclusive demonstration that one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons prevented the school district from operating the school, the school district shall receive its full annual allocation of state moneys. However, the superintendent of public instruction may only excuse the school district for up to two scheduled school days per incident and not for more than three scheduled school days per school year. Provided, the superintendent may excuse more than two scheduled school days per incident or three scheduled school days per year where the school is located in a county which was subject to a state of emergency declaration by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the event giving rise to the emergency declaration prevented operation of the school.

If the district did not conclusively demonstrate that it was prevented from operating the school(s), its allocation of state moneys shall be reduced by:

(1) Dividing the number of days lost by one hundred eighty;

(2) Multiplying the result obtained in subsection (1) of this section by the annual average full-time equivalent enrollment in the school; and

(3) Dividing the result obtained in subsection (2) of this section by the annual average full-time equivalent enrollment in the school district.

WSR 08-13-066
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 13, 2008, 5:19 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SSB 5503 requires athletic trainers to be licensed, effective July 1, 2008. RCW 43.70.250 requires each profession to be self supporting and requires the secretary to set fees in rule at a sufficient level to defray the cost of the profession. In order for the athletic trainers to be licensed, fees need to be collected to implement and administer the profession. RCW 34.05.380 (3)(a) allows rules to be effective in less than thirty-one days of the filing date if such action is required by the statute.

Purpose: The rule details fee amounts for athletic trainers for applications, renewals, late renewals, inactive status, expired reactivations, expired inactive status, duplicate licenses, and verifications. The fees are authorized by the Health Professions and Facility Fees Addendum DOH 2008 in the conference operating budget as referenced in ESHB 2687. RCW 43.70.250 requires these fees to be established in rule.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 08-09-076 on April 16, 2008.

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

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

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

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

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

Date Adopted: June 12, 2008.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-916-990 Athletic trainer fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	$175.00
License renewal	200.00
Late renewal penalty	100.00
Inactive license renewal	40.00
Expired license reactivation	100.00
Expired inactive license reactivation	40.00
Duplicate license	15.00
Verification	25.00

WSR 08-13-067
PERMANENT RULES
DEPARTMENT OF HEALTH
[Filed June 13, 2008, 5:19 p.m., effective July 14, 2008]

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

Purpose: This rule will increase fees for shellfish licensees by the fiscal growth factor of 5.53%. Shellfish license fees were last increased in 2001 by the fiscal growth factor for that year. This rule will also equitably assess the costs associated with commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment for PSP testing will follow the annual redistribution formula which is based on the number of tests done in the previous year.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 08-09-081 on April 16, 2008.

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

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

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

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

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

Date Adopted: June 13, 2008.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 07-17-159, filed 8/21/07, effective 9/21/07)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	$((~~250~~)) 263
Shellstock Shipper	
0 - 49 Acres	$((~~282~~)) 297
50 or greater Acres	$((~~452~~)) 476
Scallop Shellstock Shipper	$((~~282~~)) 297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	$((~~514~~)) 542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	$((~~622~~)) 656
Plants with floor space > 5000 sq. ft.	$((~~1,147~~)) 1,210

(2) The fee for each export certificate is $10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	$173
Harvester	3 or more	$259
Shellstock Shipper 0 - 49 acres	≤ 2	$195
Shellstock Shipper 0 - 49 acres	3 or more	$292
Shellstock Shipper 50 or greater acres	N/A	$468
Shucker-Packer (plants < 2000 ft²)	≤ 2	$354
Shucker-Packer (plants < 2000 ft²)	3 or more	$533
Shucker-Packer (plants 2000 - 5000 ft²)	≤ 2	$429
Shucker-Packer (plants 2000 - 5000 ft²)	3 or more	$644
Shucker-Packer (plants > 5000 ft²)	N/A	$1,189

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

(i) At the time of first licensure; or

(ii) January 1 of each year for companies licensed as harvesters; or

(iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	$((~~13,201~~)) 12,094
Jamestown S'Klallam Tribe	$((~~3,030~~)) 4,682
Lower Elwah Klallam Tribe	$((~~7,358~~)) 2,991

Harvester	Fee
	$((~~216~~))
Lummi Nation	390
	$((~~3,463~~))
Nisqually Indian Tribe	3,121
	$((~~4,978~~))
Port Gamble S'Klallam Tribe	3,121
	$((~~5,194~~))
Puyallup Tribe of Indians	8,453
	$((~~0~~))
Skokomish Indian Tribe	260
	$((~~6,276~~))
Squaxin Island Tribe	4,151
	$((~~10,604~~))
Suquamish Tribe	13,665
	$((~~1,299~~))
Swinomish Tribe	390
	$((~~1,299~~))
Tulalip Tribe	4,552
	$((~~1,082~~))
Discovery Bay Shellfish	130

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 08-13-068
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 13, 2008, 5:19 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESSB 5292 requires physical therapist assistants to be licensed, effective July 1, 2008. RCW 43.70.250 requires each profession to be self supporting and requires the secretary to set fees in rule at a sufficient level to defray the cost of the profession. In order for the physical therapist assistants to be licensed, fees need to be collected to implement and administer the profession. RCW 34.05.380 (3)(a) allows rules to be effective in less than thirty-one days of the filing date if such action is required by the statute.

Purpose: The rule details fee amounts for physical therapist assistants' applications, renewals, late renewals, inactive status, expired reactivations and inactive reactivations, duplicate licenses, and verifications. The rule is needed to implement ESSB 5292. RCW 43.70.250 requires these fees to be established in rule. The fees are authorized by the Health Professions and Facility Fees Addendum DOH 2008 in the conference operating budget as referenced in ESHB 2687.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 08-09-097 on April 21, 2008.

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

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

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

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

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

Date Adopted: June 12, 2008.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-915-99005 Physical therapist assistant fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for physical therapist assistant:

Title of Fee	Fee
Application	$100.00
License renewal	125.00
Late renewal penalty	62.50
Inactive license renewal	50.00
Expired inactive license reissuance	75.00
Expired license reissuance	75.00
Duplicate license	15.00
Certification	25.00

WSR 08-13-069
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 13, 2008, 5:20 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SHB 1099 requires dental assistants to be registered, effective July 1, 2008. RCW 43.70.250 requires each profession to be self supporting and requires the secretary to set fees in rule at a sufficient level to defray the cost of the profession. In order for the dental assistants to be registered, fees need to be collected to implement and administer the profession. RCW 34.05.380 (3)(a) allows rules to be effective in less than thirty-one days of the filing date if such action is required by the statute.

Purpose: The purpose of the adopted rule is to establish credentialing fees for registered dental assistants and licensed expanded function dental auxiliaries. Fees are authorized by the Health Professions and Facility Fees Addendum DOH 2008 in the conference operating budget as referenced in ESHB 2687.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 08-09-094 on April 18, 2008.

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

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

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

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

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

Date Adopted: June 12, 2008.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-817-99005 Dental assistant and expanded function dental auxiliary fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for dental assistant and expanded function dental auxiliary:

Title of Fee - Dental Professionals	Fee
Registered dental assistant application	$40.00
Registered dental assistant renewal	20.00
Registered dental assistant late	20.00
Registered dental assistant expired reactivation	20.00
Licensed expanded function dental auxiliary application	175.00
Licensed expanded function dental auxiliary renewal	160.00
Licensed expanded function dental auxiliary late	80.00
Licensed expanded function dental auxiliary expired reactivation	50.00
Duplicate	15.00
Verification	25.00

WSR 08-13-072
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed June 16, 2008, 9:43 a.m., effective July 17, 2008]

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

Purpose:

- DSHS is updating the 2008 federal maximum resource standard that increases January 1, 2008. This includes the formula and a link to the long-term care standards.
- DSHS is updating the 2008 federal maximum maintenance standard that increases January 1, 2008. This includes the formula and a link to the long-term care standards.
- Because both standards increase annually, the links to the updated standards will show the updated amounts starting in January 2009 and each year thereafter.
- DSHS is updating the personal needs allowance for clients in a medical institution that increases July 1, 2008, as directed by the Washington state 2008 supplemental operating budget (ESHB 2687).

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1350 and 388-513-1380.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Adopted under notice filed as WSR 08-05-027 on February 12, 2008, and WSR 08-09-104 on April 21, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 10, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-19-128, filed 9/19/07, effective 10/20/07)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

(7) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A v~~((s))~~ehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (2), (5) and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.

(ii) As long as the incurred medical expenses:

(A) Are not subject to third-party payment or reimbursement;

(B) Have not been used to satisfy a previous spend down liability;

(C) Have not previously been used to reduce excess resources;

(D) Have not been used to reduce client responsibility toward cost of care;

(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(F) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or boarding home is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to nonexcluded income, the combined total is less than the:

(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or

(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. ((~~The maximum allocation amount is ninety-nine thousand five hundred forty dollars effective January 1, 2006.~~)) Effective January 1, ((~~2007~~)) 2008, the maximum allocation is one hundred and ((~~one~~)) four thousand ((~~six~~)) four hundred ((~~and forty~~)) dollars. (((~~(~~))This standard increases annually on January 1st based on the consumer price index. (For the current standard starting January 2008 and each year thereafter, see long-term care standards at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of forty-five thousand one hundred four dollars effective July 1, 2007 (this standard increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2007 and each year thereafter, see long-term care standards at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsection (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

AMENDATORY SECTION (Amending WSR 07-19-126, filed 9/19/07, effective 10/20/07)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the Medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another noninstitutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of (4)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving general assistance.

(iv) Effective July 1, 2007((,)) through June 30, 2008 fifty-five dollars and forty-five cents for all other clients in a medical institution. Effective July 1, 2008 this PNA increases to fifty-seven dollars and twenty-eight cents.

(v) Current PNA and long-term care standards can be found at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC ((~~388-503-0510(1)~~)) 388-475-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) in the following order:

(a) Income garnished for child support or withheld according to a child support order in the month of garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, ((~~2007~~)) 2008, two thousand ((~~five~~)) six hundred ((~~forty-one~~)) ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, http://www.bls.gov/cpi/). Starting January 1, 2008 and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty/); and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) In an amount equal to one-third of one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty/).

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty/); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

WSR 08-13-073
PERMANENT RULES
STATE BOARD OF HEALTH
[Filed June 16, 2008, 11:41 a.m., effective July 17, 2008]

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

Purpose: The purpose of the rule is to update the definitions in WAC 246-650-010; revise WAC 246-650-020 and to add fifteen new disorders to the panel of required screening tests for all newborns; and to provide a timeline for implementation of the screening for the fifteen disorders in WAC 246-650-030.

Citation of Existing Rules Affected by this Order: Amending WAC 246-650-010, 246-650-020, and 246-650-030.

Statutory Authority for Adoption: Chapter 70.83 RCW.

Adopted under notice filed as WSR 08-08-086 on April 1, 2008.

Changes Other than Editing from Proposed to Adopted Version: Carnitine palmitoyl transferase deficiency type 1-A (CPT1) was removed from the definition of "fatty acid oxidation disorders" in WAC 246-650-010 and from the list of appropriate screening tests in WAC 246-650-020 (2)(a)(xii).

A final cost-benefit analysis is available by contacting Michael Glass, 1610 N.E. 150th Street, Shoreline, WA 98155, phone (206) 418-5470, fax (206) 418-5415, e-mail Mike.Glass@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: May 14, 2008.

Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 06-04-009, filed 1/20/06, effective 2/20/06)

WAC 246-650-010 Definitions. For the purposes of this chapter:

(1) "Amino acid disorders" means disorders of metabolism characterized by the body's inability to correctly process amino acids or the inability to detoxify the ammonia released during the breakdown of amino acids. The accumulation of amino acids or their by-products may cause severe complications including mental retardation, coma, seizures, and possibly death. For the purpose of this chapter amino acid disorders include: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria (HCY), maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR I).

(2) "Board" means the Washington state board of health.

((~~(2)~~)) (3) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

((~~(3)~~)) (4) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

((~~(4)~~)) (5) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

((~~(5)~~)) (6) "Cystic fibrosis" means a life-shortening disease caused by mutations in the gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR), a transmembrane protein involved in ion transport. Affected individuals suffer from chronic, progressive pulmonary disease and nutritional deficits. Early detection and enrollment in a comprehensive care system provides improved outcomes

and avoids the significant nutritional and growth deficits that are evident when diagnosed later.

(((~~(6)~~))) (7) "Department" means the Washington state department of health.

(((~~(7)~~))) (8) "Fatty acid oxidation disorders" means disorders of metabolism characterized by the inability to efficiently use fat to make energy. When the body needs extra energy, such as during prolonged fasting or acute illness, these disorders can lead to hypoglycemia and metabolic crises resulting in serious damage affecting the brain, liver, heart, eyes, muscle, and possibly death. For the purpose of this chapter fatty acid oxidation disorders include: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium-chain acyl-CoA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

(9) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose and galactose-1-PO_4 in the blood. If undetected and untreated, accumulated galactose-1-PO_4 may cause significant tissue and organ damage often leading to sepsis and death.

(((~~(8)~~))) (10) "Hemoglobinopathy" means a hereditary blood disorder caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

~~(((9) "Homocystinuria" means deficiency of enzymes necessary to break down or recycle the amino acid homocysteine resulting in a buildup of methionine and homocysteine. If undetected and untreated may cause thromboembolism, mental and physical disabilities.~~

~~(10) "Maple syrup urine disease" (MSUD) means deficiency of enzymes necessary to breakdown the branch chained amino acids leucine, isoleucine, and valine resulting in a buildup of these and metabolic intermediates in the blood. If undetected and untreated may result in mental and physical retardation or death.~~

~~(11) "Medium chain acyl-coA dehydrogenase deficiency" (MCADD) means deficiency of an enzyme (medium chain acyl-coA dehydrogenase) necessary to breakdown medium chain length fatty acids. If undetected and untreated, fasting, infection or stress may trigger acute hypoglycemia leading to physical and neurological damage or death.~~)) (11) "Organic acid disorders" means disorders of metabolism characterized by the accumulation of nonamino organic acids and toxic intermediates. This may lead to metabolic crisis with ketoacidosis, hyperammonemia and hypoglycemia resulting in severe neurological and physical damage and possibly death. For the purpose of this chapter organic acid disorders include: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), and propionic acidemia (PROP).

(12) "Newborn" means an infant born in a hospital in the state of Washington prior to discharge from the hospital of birth or transfer.

(13) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing patient information is "Health care information" as defined by the Uniform Healthcare Information Act, RCW 70.02.010(6).

(14) ((~~"Phenylketonuria" (PKU) means a deficiency of an enzyme necessary to convert the amino acid phenylalanine into tyrosine resulting in a buildup of phenylalanine in the blood. If undetected and untreated may cause severely impaired mental functioning.~~

~~(15)~~)) "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

AMENDATORY SECTION (Amending WSR 06-04-009, filed 1/20/06, effective 2/20/06)

WAC 246-650-020 Performance of screening tests. (1) Hospitals providing birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders,

(ii) Disorders of concern as listed in WAC 246-650-020(2),

(iii) The requirement for newborn screening, and

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020, and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn prior to discharge from the hospital or, if not yet discharged, no later than five days of age.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal to the Washington state public health laboratory no later than the day after collection or refusal signature.

(2) Upon receipt of specimens, the department shall:

(a) Perform appropriate screening tests for:

(i) Biotinidase deficiency((~~,~~));

(ii) Congenital hypothyroidism((~~,~~));

(iii) Congenital adrenal hyperplasia((~~,~~));

(iv) Galactosemia((~~,~~));

(v) Homocystinuria((~~,~~));

(vi) Hemoglobinopathies((~~,~~));

(vii) Maple syrup urine disease((,)) (MSDU);

(viii) Medium chain acyl-coA dehydrogenase deficiency((, and)) (MCADD);

(ix) Phenylketonuria (PKU);

(((ii))) (x) Cystic fibrosis;

(xi) The amino acid disorders: Argininosuccinic acidemia (ASA), citrullinemia (CIT), and tyrosinemia type I (TYR 1) according to the schedule in WAC 246-650-030;

(xii) The fatty acid oxidation disorders: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD) according to the schedule in WAC 246-650-030;

(xiii) The organic acid disorders: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), propionic acidemia (PROP) according to the schedule in WAC 246-650-030;

(b) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

(c) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

AMENDATORY SECTION (Amending WSR 06-04-009, filed 1/20/06, effective 2/20/06)

WAC 246-650-030 Implementation of screening to detect ((cystic fibrosis)) amino acid disorders, fatty acid oxidation disorders and organic acid disorders. The department shall implement screening to detect ((cystic fibrosis)) the amino acid disorders, fatty acid oxidation disorders, and organic acid disorders listed in WAC 246-650-020 (2)(a)(xi), (xii) and (xiii) as quickly as feasible and not later than ((June 2006)) September 2008.

WSR 08-13-074
PERMANENT RULES
UNIVERSITY OF WASHINGTON

[Filed June 16, 2008, 12:12 p.m., effective July 17, 2008]

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

Purpose: Establish a new chapter (chapter 478-350 WAC) that provides for a fair, open, and efficient development agreement method by which the University of Washington may, under limited circumstances, move expeditiously and efficiently to contract for capital projects in a way that protects the best interests of the university and assures the delivery of quality work and products at a reasonable price under the most advantageous terms.

Statutory Authority for Adoption: RCW 28B.20.130 and 28B.20.140.

Adopted under notice filed as WSR 08-09-059 on April 15, 2008.

Changes Other than Editing from Proposed to Adopted Version: The applicability of these rules were further limited by changes to the criteria in WAC 478-350-030(1). This subsection in the proposed rules read as follows: "The building or improvement involved has a total project cost in excess of twenty-five million dollars...." As adopted, this subsection now reads: "The buildings or improvements involved are part of the university's intercollegiate athletics facilities, include renovations to Husky Stadium, and have a total project cost in excess of one hundred million dollars...."

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 0, Repealed 0.

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

Date Adopted: June 12, 2008.

Rebecca Goodwin Deardorff
UW Director of
Rules Coordination

Chapter 478-350 WAC

ALTERNATIVE CONTRACTING PROCESS FOR THE UNIVERSITY OF WASHINGTON

NEW SECTION

WAC 478-350-010 Authority. The University of Washington adopts these rules pursuant to RCW 28B.20.140.

NEW SECTION

WAC 478-350-020 Purpose. The purpose of this chapter is to establish a fair, open, and efficient method by which the university may, under certain circumstances, contract for the erection and construction of university buildings or improvements thereto, in lieu of other statutorily authorized contracting methods. These rules are intended to protect the best interests of the university and assure the delivery of quality work and products at a reasonable price under the most advantageous terms.

NEW SECTION

WAC 478-350-030 Applicability. The contracting method set forth in this chapter may be used only when the president of the university finds that all of the following criteria are met:

(1) The buildings or improvements involved are part of the university's intercollegiate athletics facilities, include renovations to Husky Stadium, and have a total project cost in excess of one hundred million dollars;

(2) The design or construction of the building or improvement or its construction schedule may be directly impacted by large construction projects being planned or constructed by other agencies or private developers;

(3) Postponing the building or improvement or delaying it through the use of other contracting methods is likely to have a significant adverse effect on the operation, mission, or financial interests of the university; and

(4) The building or improvement may benefit from a contracting method that integrates services including but not limited to a developer, designer, construction manager and contractor being on the same team and working collaboratively.

A finding by the university president that a project meets all of the above criteria shall be subject to review by the University of Washington board of regents at their discretion.

NEW SECTION

WAC 478-350-040 Contracting method. Upon an approved finding that a project meets the criteria set forth above, the president or the president's designee may proceed to conduct a competitive process that is open, fair, and unbiased and results in one or more contracts with a qualified entity or team on the most advantageous terms. The process must include at least the following elements:

(1) RFQ/RFP. Contracts will be awarded through either a Request for Qualifications (RFQ) or a Request for Proposals (RFP) process or a combination thereof. The RFQ/RFP will include a clear description of what the university believes to be most important about the project as well as the weight of selection criteria.

(2) Public notice. The university shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the project will be constructed, a notice of its RFQ/RFP, and information regarding the availability and location of the RFQ/RFP documents.

(3) Selection criteria. Selection criteria shall include, but are not limited to, qualifications of the project team, technical excellence and competence, experience, capacity to accomplish the work, ability to deliver a quality project, past performance of the team or its constituent members, and price or fee, taking into consideration the estimated cost of construction as well as the long-term performance, operation and maintenance of the building or improvement.

(4) Negotiations. The university shall first attempt to negotiate a contract with the entity deemed to have submitted the best overall response. If such negotiations are not successful, the university may proceed to negotiate with the entity deemed to have submitted the next best response.

NEW SECTION

WAC 478-350-050 Prevailing wages, bonds and retainage. Any contract awarded pursuant to these rules shall require full compliance with applicable sections of chapters 39.08, 39.12, and 60.28 RCW. The selected entity shall also be encouraged to work closely with the university's business diversity program.

WSR 08-13-100

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 18, 2008, 11:54 a.m., effective July 19, 2008]

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

Purpose: Amendments were made to chapter 16-89 WAC to clarify when scrapie identification is required, update testing requirements, and correct references to federal documents. This chapter underwent scheduled internal review under the department's regulatory improvement process, and at that time, it was decided to improve the readability and clarity of the rule and to change the title to "sheep and goat diseases in Washington state" to broaden the scope of the chapter.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-89-005, 16-89-025, 16-89-040, 16-89-050, 16-89-060, 16-89-070, 16-89-080 and 16-89-110; and amending WAC 16-89-010, 16-89-015, 16-89-022, 16-89-030, 16-89-090, and 16-89-100.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Adopted under notice filed as WSR 08-09-051 on April 14, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 6, Repealed 8.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 5, Repealed 0.

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

Date Adopted: June 18, 2008.

Mary A. Martin Toohey
for Robert W. Gore
Acting Director

Chapter 16-89 WAC

SHEEP AND GOAT ((~~SCRAPIE~~)) DISEASES ((~~CONTROL~~)) IN WASHINGTON STATE

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

WAC 16-89-010 Definitions. ((~~For the purposes of~~)) In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

(((~~(1) "Director" means the director of agriculture of the state of Washington or his or her duly authorized representative.~~

~~(2) "Department" means the Washington state department of agriculture.~~

~~(3) "Blackface sheep" means any purebred Suffolk, Hampshire, Shropshire purebred sheep of unknown ancestry with a black face, except for hair sheep.~~

~~(4)~~)) "APHIS" means the United States Department of Agriculture, Animal and Plant Health Inspection Service.

"Department" means the Washington state department of agriculture.

"Director" means the director of agriculture or the director's authorized representative.

"Flock" means a number of animals of sheep or goat species ((~~which~~)) that are kept, fed and herded together ((~~having~~)), and have single or multiple ownership. The term "flock" ((~~shall be~~)) is interchangeable with the term "herd" and ((~~shall apply~~)) applies to purebred and commercial sheep and goats.

(((~~(5) "Washington flock identification number" means a unique flock identification number assigned to the owner or owners of each flock of blackface breeding sheep in the state of Washington.~~

~~(6)~~)) "High risk animal" means any female genetically susceptible exposed animal. The female offspring of a scrapie-positive female animal or any female genetically less susceptible exposed animal that the designated scrapie epidemiologist (with the concurrence of the USDA area veterinarian in charge, state veterinarian, regional scrapie epidemiologist, and National Scrapie Program coordinator) determines to be a potential risk based on the epidemiology of the flock, including genetics of the positive sheep, the prevalence of scrapie in the flock, any history of recurrent infection, or other characteristics.

"Official ((~~individual~~)) identification" means ((~~the unique identification of individual animals with an alphanumeric number applied as a tamper proof tag, tattoo, electronic device, or other tag approved by USDA or the director. The Washington flock identification number can serve as the official individual identification number if it contains a unique individual animal number in addition to the flock number~~)) an identification mark or device approved by APHIS for use in the scrapie eradication program. Examples include, but are not limited to, electronic devices, official ear tags, and legible official registry tattoos.

(((~~(7)~~))) "Scrapie" means a transmissible spongiform encephalopathy that is a fatal, nonfebrile, transmissible, insidious, degenerative disease affecting the central nervous system of sheep and goats.

(((~~(8)~~))) "Scrapie exposed animal" means any animal((~~, which~~)) that has been in the same flock at the same time within the previous sixty months as a scrapie positive animal, excluding limited contacts, as identified in the *Scrapie Eradication Uniform Methods and Rules*, effective June 1, 2005.

((~~Limited contacts are contacts between animals that occur off the premises of the flock and do not occur during or up to sixty days after parturition for any of the animals involved. Limited contacts do not include commingling or transportation to other flocks for the purposes of breeding. Examples of limited contacts include incidental contact in the show/sales ring. (See Appendix III of USDA's Voluntary Scrapie Flock Certification Program.)~~

~~(9) "Scrapie high risk animal" means an animal determined by epidemiologic investigation to be a high risk for developing clinical scrapie because the animal was the progeny of a scrapie-positive dam, was born in the same contemporary lambing group as a scrapie-positive animal or was born in the same contemporary lambing group as progeny of a scrapie-positive dam. Based upon evidence from the latest research information available and upon recommendation of the state scrapie certification board, animals that fit the criteria for high risk animals may be exempted by the director as high risk animals if they are determined by genetic testing to be QR or RR at the 171 codon or are determined by other recognized testing procedures to pose no risk.~~

~~(10) "Scrapie infected flock" means any flock in which a scrapie-positive animal has been identified by a state or federal animal health official.~~

~~(11) "Scrapie positive animal" means an animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, USDA, laboratories accredited by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) or another laboratory authorized by state or federal officials to conduct scrapie tests through histological examinations of central nervous system or by other diagnostic procedures approved for scrapie diagnosis by USDA. Animals diagnosed by experimental tests for abnormal prion will not be considered infected animals for the purposes of this rule.~~

~~(12) "Scrapie source flock" means a flock in which an animal was born and subsequently diagnosed as scrapie-positive at less than fifty-four months of age.~~

~~(13)~~)) "Scrapie Flock Certification Program" means a national voluntary program for classification of flocks relative to scrapie.

"USDA" means the United States Department of Agriculture.

SCRAPIE

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

WAC 16-89-015 Scrapie program standards. ((~~Scrapie Eradication, State-Federal-Industry, Uniform Methods and Rules dated October, 2001,~~)) (1) In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the *Scrapie Eradication Uniform Methods and Rules*, effective June 1, 2005, and Control of Scrapie ((~~in Sheep and Goats~~)), Title 9, Code of Federal Regulations, Part((~~s~~)) 54 and Scrapie in Sheep and Goats, Part 79 as revised ((~~August 21, 2001, are adopted by reference as the basic standards for the scrapie control and eradication program in Washington state~~)) Janu-

ary 1, 2006. Copies of these documents are on file at the Washington Department of Agriculture, Animal Services Division ((~~of Food Safety/Animal Health~~)), 1111 Washington Street, Olympia, Washington 98504 and are available ((~~on request~~)) for public inspection.

(2) The *Scrapie Eradication Uniform Methods and Rules* may be found on the internet at:

http://www.aphis.usda.gov/animal_health/animal_diseases/scrapie/downloads/umr_scrapie.pdf.

(3) Title 9 CFR, Parts 54 and 79 may be found on the internet at: http://www.access.gpo.gov/nara/cfr/waisidx_06/9cfrv1_06.html.

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

WAC 16-89-022 Scrapie identification of sheep and goats. (1) ((~~Effective January 1, 2003, all sheep and goats of any age not in slaughter channels upon any change of ownership or intrastate movement must be officially identified as defined in 9 CFR Parts 54 and 79 and any sheep or goat over eighteen months of age as evidenced by eruption of the second incisor identified such that the animal may be traced to its flock of birth except:~~

~~(a) Commercial goats in intrastate commerce that have not been in contact with sheep as there has been no case of scrapie in a commercial goat in the past ten years that originated in the state of Washington or attributed to exposure to infected sheep and there are no exposed commercial goat herds in the state of Washington.~~

~~(b) Commercial whitefaced sheep or commercial hair sheep under eighteen months of age in intrastate commerce as there has been no case of scrapie in this exempted class that originated in the state of Washington in the last ten years and there are no exposed commercial whitefaced or hair sheep flocks in the state that have been exposed by a female animal.~~

~~(2) The exemptions granted in subsection (1)(a) and (b) of this section will be void after ninety days if the conditions in subsection (1)(a) and (b) of this section no longer exist.~~)) All sheep that are placed into commerce must have official scrapie program identification.

(2) All goats that are commingled with or exposed to sheep must have official scrapie program identification.

Exemptions

(3) Official scrapie program identification is not required for:

(a) Sheep or goats less than eighteen months of age that are moving directly to a slaughter facility or to an approved terminal feedlot;

(b) Wether goats and low-risk commercial goats (goats that are not registered or exhibited; goats that are not used for milk production; and goats that have not commingled with or have not been exposed to high-risk animals);

(c) Sheep or goats that do not enter commerce and never leave their premises of origin;

(d) Sheep or goats moved for grazing or other management purposes without change of ownership.

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

WAC 16-89-030 Quarantine. ((~~Infected and source flocks or flocks that have received high risk animals must be placed and held under quarantine until the infected or high risk animals have been depopulated or the flock has qualified for and has been enrolled in the Scrapie Flock Certification Program (9 CFR Part 54, Subpart B). Flocks not participating in the certification program will remain under quarantine until the entire flock has been slaughtered or depopulated. Infected or high risk animals must be destroyed by means other than by slaughter under the direction of the state veterinarian.~~)) Sheep or goats that are infected or suspected of being infected with an infectious or communicable disease after a positive official test, or other probable cause as determined by the director, will be quarantined as provided under RCW 16.36.010. If owners refuse to allow the department to test for diseases provided for in this chapter, all sheep and goats on the premises will be regarded as a menace to the health of livestock, and the premises on which they are kept will be immediately quarantined and no animals or products of these animals may be removed from the premises.

AMENDATORY SECTION (Amending WSR 99-09-026, filed 4/15/99, effective 5/16/99)

WAC 16-89-090 ((~~Condemnation and~~)) Destruction and disposal of scrapie infected animals or flocks. ((~~Animals~~)) (1) As provided for under RCW 16.36.090, the director may order the slaughter or destruction of animals or flocks determined by the director or representatives of USDA to be infected with scrapie ((~~may be condemned and destroyed by order of the director~~)).

(2) The disposal of condemned scrapie infected animals and flocks will be under the direction of the director and the means of disposal will be other than by offering for human or animal consumption.

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

WAC 16-89-100 Indemnification. (1) As provided for under RCW 16.36.096, subject to the availability of amounts appropriated for this specific purpose, owners, individuals, partnerships, corporations or other legal entities whose animals ((~~or flocks~~)) have been slaughtered or destroyed ((~~or otherwise disposed of~~)) by order of the director may be eligible for indemnification in ((~~the form of cash payment for part of the value of the animals destroyed or otherwise disposed of and for reasonable actual costs for burial or disposal of animal carcasses~~)) an amount not to exceed seventy-five percent of the appraised or salvage value of the animal ordered slaughtered or destroyed.

(2) Indemnity payments will be paid only to an owner of sheep or goats that were born in the state of Washington or were imported into the state in compliance with existing Washington state statutes and rules. Payment of indemnity does not apply to animals belonging to the federal government or any of its agencies, this state or any of its agencies, or

any municipal corporation. Indemnity may not be paid on animals eligible for federal indemnity payments.

(((~~(3) The amount of indemnity to be paid for each animal will be determined by the state veterinarian and will not exceed seventy-five percent of the appraised value of the animal up to the following maximum amounts:~~

~~(a) Ewes or does one year of age or older - three hundred dollars per head.~~

~~(b) Rams or bucks one year of age or older - six hundred dollars per head.~~

~~(c) Lambs or kids under one year of age - one hundred twenty-five dollars per head.~~

~~(4) In addition to the indemnity payments authorized in subsection (3) of this section, owners who voluntarily destroy rams found to be genetically prone to scrapie will be paid up to twenty-five dollars of the laboratory diagnostic fee.~~))

BRUCELLOSIS

NEW SECTION

WAC 16-89-150 Brucellosis testing for sheep and goat dairies. (1) All sheep and goats whose raw milk or raw milk products are offered for sale must be from a flock or herd that is negative to a serological test for brucellosis within the previous twelve months. Any additions to the flock or herd must be tested negative for brucellosis within thirty days before introduction into the flock or herd.

(2) All raw milk and raw milk products from animals that test positive for brucellosis are prohibited from sale and must be destroyed.

(3) All sheep and goats whose raw milk or raw milk products are offered for sale must have official identification.

NEW SECTION

WAC 16-89-160 Brucellosis quarantine and release. (1) Any herd of goats in which brucellosis reactors are found will be quarantined. Positive or reactor classification shall be based on standards listed in USDA Brucellosis Eradication Uniform Methods and Rules, effective October 1, 2003. The department maintains a copy of this document for public inspection. You may also find the information on the internet at: www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/umr_bovine_bruc.pdf.

(2) The quarantine will be released when the entire quarantined herd has passed two consecutive negative blood tests without reactors. The first test must be not less than thirty days following removal of all reactors from the herd. The second test must not be less than ninety days nor more than one year following the date of the previous test.

(3) Goats that test positive to the brucellosis test must not be sold or offered for sale except for immediate slaughter.

(4) Quarantined goats may only be moved when accompanied by an official USDA form number VS1-27.

Q FEVER

NEW SECTION

WAC 16-89-170 Q fever testing requirements for sheep and goat dairies. (1) All sheep and goats whose raw milk or raw milk products are offered for sale must be from a herd that has tested negative for Q fever within the previous twelve months. Q fever is caused by the coccobacillus *Coxiella burnetii* and is highly infectious to humans.

(a) Any additions to the herd must be tested negative for Q fever within thirty days before introduction into the herd.

(b) Herds must be tested negative annually to maintain the dairy's raw milk license.

(c) The state veterinarian shall direct all testing procedures in accordance with state and federal standards for animal disease eradication.

(d) All raw milk and raw milk products from animals that test positive for Q fever are prohibited from sale and must be destroyed or pasteurized.

(2) All sheep and goats whose raw milk or raw milk products are offered for sale must have official identification.

TUBERCULOSIS

NEW SECTION

WAC 16-89-180 Tuberculosis testing for goat dairies. (1) All goats whose raw milk or raw milk products are offered for sale must be from a herd that has tested negative for tuberculosis within the previous twelve months. Any additions to the herd must be tested negative for tuberculosis within sixty days before introduction into the herd.

(2) All raw milk and raw milk products from animals that test positive for tuberculosis are prohibited from sale and must be destroyed.

(3) All goats whose raw milk or raw milk products are offered for sale must have official identification.

NEW SECTION

WAC 16-89-190 Tuberculosis quarantine and release. (1) Any herd of goats in which tuberculosis reactors are found will be quarantined. The sale or removal of any animal out of a quarantined herd is prohibited except for removal for immediate slaughter.

(2) Herds in which no gross lesions reactors occur and in which no evidence of *Mycobacterium bovis* infection has been disclosed may be released from quarantine after a sixty-day negative caudal fold tuberculosis retest of the entire herd. Herds containing one or more suspects to the caudal fold tuberculosis test will be quarantined until the suspect animals are:

(a) Retested by the comparative-cervical tuberculosis test within ten days of the caudal fold injection; or

(b) Retested by the comparative-cervical tuberculosis test after sixty days and the tuberculosis status of the suspect has been determined; or

(c) Shipped under permit directly to slaughter in accordance with state or federal laws and regulations and the tuberculosis status of the suspect has been determined.

(3) Herds in which *Mycobacterium bovis* infection has been confirmed and the herd has not been depopulated will remain under quarantine and must pass two tuberculin tests at intervals of at least sixty days and one additional test after six months from the previous negative test. Following the release from quarantine, these herds will also be subject to five annual tests on the entire herd.

NEW SECTION

The following sections of the Washington Administrative Code are decodified as follows:

Old WAC number	New WAC number
WAC 16-89-030	WAC 16-89-012
WAC 16-89-100	WAC 16-89-013

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-89-005	Purpose.
WAC 16-89-025	Recordkeeping.
WAC 16-89-040	Restriction of exposed animals.
WAC 16-89-050	Scrapie source flocks.
WAC 16-89-060	Movement and disposition of restricted animals.
WAC 16-89-070	Importation of exposed, suspect and high risk animals.
WAC 16-89-080	Reporting scrapie.
WAC 16-89-110	Cleaning and disinfection.

WSR 08-13-103
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed June 18, 2008, 11:55 a.m., effective July 19, 2008]

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

Purpose: Amendments were made to chapter 16-42 WAC to update the list of diseases for which veterinary biologics are restricted, allows the director to restrict certain veterinary biologics developed to combat diseases, update the definitions, and maintains compliance with rules review and regulatory improvement processes outlined by executive order to improve the readability and clarity of the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 16-42-005, 16-42-015, 16-42-017, 16-42-023, 16-42-026, and 16-42-035.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Adopted under notice filed as WSR 08-09-050 on April 14, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: June 18, 2008.

Mary A. Martin Toohey
for Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

WAC 16-42-005 Definitions. (((~~(1)~~))) "Department" means the Washington state department of agriculture ((~~of the state of Washington~~)) (WSDA).

(((~~(2)~~))) "Director" means the director of ((~~the department of agriculture of the state of Washington or his/her~~)) WSDA or the director's authorized representative.

(((~~(3) "Biologics," sometimes referred to as biologicals or biological products, means all bacteria, viruses, serums, toxins, and analogous products of natural or synthetic origin, or products prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment, or prevention of diseases in animals.~~)) "Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals.

AMENDATORY SECTION (Amending Order 1866, filed 7/10/85)

WAC 16-42-015 License. Only veterinary biologics ((~~which~~)) that have been produced under a ((~~regular~~)) U.S. Veterinary Biological Product License ((~~issued by the United States Department of Agriculture~~)) may be imported into the state of Washington. The director may allow the importation of unlicensed veterinary biologics ((~~when the director determines it necessary for the protection of humans or domestic animals~~)) under special use permits.

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

WAC 16-42-017 Permits required. (1) Any person manufacturing veterinary biologics within the state must first obtain a permit from the director. This permit may be revoked or suspended under chapter 34.05 RCW for any violation of this chapter.

(2) Written approval of the director is required before any newly licensed veterinary biologic is imported into the state for sale, use or distribution. The director may also require a special permit for the importation or distribution of ((~~other~~)) prelicensed veterinary biologics into ((~~the~~)) Washington state.

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

WAC 16-42-023 Sale of licensed products. Veterinary biologics produced in accordance with WAC 16-42-015 or 16-42-017 may be sold over the counter as well as by persons or firms properly licensed under chapter 18.64 RCW and by any veterinarian licensed ((~~pursuant to~~)) under chapter 18.92 RCW. Persons other than licensed veterinarians or state or federal veterinarians may purchase and administer veterinary biologics to their own animals, except for those veterinary biologics restricted in WAC 16-42-026.

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

WAC 16-42-026 Restricted products. (1) All veterinary biologics now in existence or newly developed to diagnose, prevent, or combat the following diseases are declared by the director to be of such a nature that their control is necessary to protect animal ((~~or human~~)) health ((~~and welfare, to ensure accurate diagnosis, to prevent the spread of infectious, contagious, communicable, and dangerous diseases affecting domestic animals within the state and/or to effectuate state-federal animal disease control and eradication programs~~)):

(a) ((~~Anaplasmosis~~)) Avian influenza.
(b) Anthrax.
(c) Bluetongue.
(d) Brucellosis.
(e) Equine infectious anemia.
(f) Equine viral arteritis.
(g) Paratuberculosis.
(h) Pseudorabies.
(i) Rabies.
(j) Tuberculosis.
(k) ((~~Swine erysipelas (Avirulent vaccine exempted)~~)) Foot and mouth.
(l) Vesicular stomatitis.
(m) All conditionally approved vaccines.

(2) All veterinary biologics used to control or diagnose any of the diseases listed in subsection (1) of this section are restricted, and may only be purchased, administered, or otherwise used by or under the direct supervision of veterinarians licensed ((~~pursuant to~~)) under chapter 18.92 RCW, or by state or federal veterinarians. The director may authorize others by written permit to purchase the veterinary biologics listed in subsection (1) of this section for research agencies or laboratories authorized by the department, for emergency disease control programs, or for other limited and controlled purposes ((~~which are not likely to create a hazard to the public health or to the health of domestic animals. In issuing this permit, the director will consider:~~

~~(a) The known effectiveness of the biologic;~~

~~(b) Whether or not the disease for which the biologic is used or intended to be used is present in this state and to what extent it is present;~~

~~(c) Degree of isolation of the animals and area, and availability of veterinary service; and~~

~~(d) Any other factor which, having due regard for the properties of the biologic, may constitute a hazard to animal or public health in this state~~)).

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

WAC 16-42-035 Reports. In the interest of public health and good cooperative disease control it is recommended that any person using any veterinary biologics immediately report to the department any suspected or actual disease outbreak that occurs in connection with use of the veterinary biologic.