WSR 08-12-029
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 29, 2008, 3:42 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The DSHS division of child support (DCS) is adopting new sections and/or amendments in chapter 388-14A WAC to implement state legislation which implements the Federal Deficit Reduction Act of 2005, and to clarify DCS procedure and policy around the establishment and enforcement of child support obligations.

See Citation of Existing Rules below.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-1025 What are the responsibilities of the division of child support?, 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?, 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue, 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity, 388-14A-3200 How does DCS determine my support obligation?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3315 When DCS serves a notice of support debt or notice of support owed or notice of support owed for unreimbursed medical expenses, we notify the ((~~custodial parent and/or the payee under the~~)) other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do?, 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4122 What kind of information is included in the National Medical Support Notice?, 388-14A-4124 Who are the parties involved with the National Medical Support Notice?, 388-14A-4125 What must an employer do after receiving a National Medical Support Notice?, 388-14A-4130 What must a plan administrator do after receiving a National Medical Support Notice from the division of child support?, 388-14A-4135 What must the plan administrator do when the ((~~noncustodial~~)) obligated parent has health insurance but the children are not included in the coverage?, 388-14A-4140 What must the plan administrator do when the ((~~noncustodial~~)) obligated parent is eligible for health insurance but is not yet enrolled?, 388-14A-4143 What must the plan administrator do when the employer provides health insurance but the ((~~noncustodial~~)) obligated parent is not yet eligible for coverage?, 388-14A-4145 What must the plan administrator do when the insurance plan in which the ((~~noncustodial~~)) obligated parent is enrolled does not provide coverage which is accessible to the children?, 388-14A-4150 What must the plan administrator do when the ((~~noncustodial~~)) obligated parent has more than one family?, 388-14A-4160 Are there any limits on the amount ((~~a noncustodial~~)) an obligated parent may be required to pay for health insurance premiums?, 388-14A-4175 Is an employer ((~~obligated~~)) required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS ((~~medical assistance~~)) health and recovery services administration?, 388-14A-5000 How does the division of child support distribute support payments?, 388-14A-5002 How does DCS distribute support money in a nonassistance case?, 388-14A-5005 How does DCS distribute intercepted federal income tax refunds?, 388-14A-5100 What kind of distribution notice does the division of child support send?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation, 388-14A-6400 The division of child support's grievance and dispute resolution method is called a conference board and 388-14A-6415 Scope of authority of conference board chair defined; and new sections WAC 388-14A-2200 When does DCS charge a twenty-five dollar annual fee on a child support case?, 388-14A-2205 How can a custodial parent be excused from payment of the annual fee?, 388-14A-3312 The division of child support serves a notice of support owed for unreimbursed medical expenses to establish a fixed dollar amount owed under a child support order, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, and 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide health insurance coverage?

Statutory Authority for Adoption: Sections 1, 2, 3, 4, 5, 7, 8, and 9, chapter 143, Laws of 2007.

Adopted under notice filed as WSR 08-07-045 on March 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 5, Amended 34, 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 5, Amended 34, Repealed 0.

Date Adopted: May 28, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state. In Washington, this is DCS.

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid for families with dependent children (AFDC) program, federally-funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and **"recipient"** means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Birth costs" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

"Department" means the Washington state department of social and health services (DSHS).

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

((~~**"Health care costs"**:~~

~~(1) For the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, means medical, dental and optometrical expenses; and~~

~~(2) For the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical, dental and optometrical costs stated as a fixed dollar amount by a support order.~~))

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

(1) All gains in real or personal property;

(2) Net proceeds from the sale or exchange of real or personal property;

(3) Earnings;

(4) Interest and dividends;

(5) Proceeds of insurance policies;

(6) Other periodic entitlement to money from any source; and

(7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

(1) Asserting liens under RCW 74.20A.060;

(2) Serving and enforcing liens under chapter 74.20A RCW;

(3) Issuing orders to withhold and deliver under chapter 74.20A RCW;

(4) Issuing notices of payroll deduction under chapter 26.23 RCW; and

(5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical expenses" for the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means:

• Medical costs incurred on behalf of a child, which include:

• Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and

• Prescribed medical equipment and prescribed pharmacy products;

• Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;

• Dental and optometrical costs incurred on behalf of a child; and

• Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" means either or both:

(1) ((~~Health care costs stated as a fixed dollar amount in a support order~~)) Medical expenses; and

(2) Health insurance coverage for a dependent child.

"National Medical Support Notice" or **"NMSN"** is a federally-mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. ((~~Also called the NCP.~~)) A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Obligated parent" means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

(1) Directly benefits the dependent child; and

(2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrearages" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

(1) Delinquent support;

(2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including ((~~health care costs,~~)) medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;

(3) A debt under RCW 74.20A.100 or 74.20A.270; or

(4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, ((~~medical support~~)) enforcement of medical expenses, health insurance, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, ((~~health care costs~~)) medical expenses, birth costs, and child care or special child rearing expenses.

"TANF" means the temporary assistance for needy families (TANF) program.

"Temporarily assigned arrearages" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Uninsured medical expenses":

(1) For the purpose of enforcing support obligations under RCW 26.23.110, means

(a) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

(b) Copayments, or deductibles incurred on behalf of a child; and

(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:

(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or

(b) The premium for covering the child exceeds the maximum limit provided in the support order.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 01-24-080, filed 12/3/01, effective 1/3/02)

WAC 388-14A-1025 What are the responsibilities of the division of child support? (1) The division of child support (DCS) provides support enforcement services when:

(a) The department of social and health services pays public assistance or provides foster care services;

(b) A former recipient of public assistance is eligible for services, as provided in WAC 388-14A-2000 (2)(c);

(c) A custodial parent (CP) or noncustodial parent (NCP) requests nonassistance support enforcement services under RCW 74.20.040 and WAC 388-14A-2000;

(d) A support order or wage assignment order under chapter 26.18 RCW directs the NCP to make support payments through the Washington state support registry (WSSR);

(e) A support order under which there is a current support obligation for dependent children is submitted to the WSSR;

(f) A former custodial parent (CP) requests services to collect a support debt accrued under a court or administrative support order while the child(ren) resided with the CP;

(g) A child support enforcement agency in another state or foreign country requests support enforcement services; or

(h) A child support agency of an Indian tribe requests support enforcement services.

(2) DCS takes action under chapters 26.23 and 74.20A RCW to establish, enforce and collect child support obligations.

(a) DCS refers cases to the county prosecuting attorney or attorney general's office when judicial action is required.

(b) If DCS has referred a case to the county prosecuting attorney or attorney general's office and the CP has been granted good cause level A, DCS does not share funding under Title IV-D for any actions taken by the prosecutor or attorney general's office once DCS advises them of the good cause finding.

(3) DCS does not take action on cases where the community services office (CSO) has granted the CP good cause not to cooperate under WAC 388-422-0020, when the CSO grants "level A good cause." If the CSO grants "level B good cause," DCS proceeds to establish and/or enforce support obligations but does not require the CP to cooperate with DCS. WAC 388-14A-2065 and 388-14A-2070 describe the way DCS handles cases with good cause issues.

(4) DCS establishes, maintains, retains and disposes of case records in accordance with the department's records management and retention policies and procedures adopted under chapter 40.14 RCW.

(5) DCS establishes, maintains, and monitors support payment records.

(6) DCS receives, accounts for and distributes child support payments required under court or administrative orders for support.

(7) DCS charges and collects fees as required by federal and state law regarding the Title IV-D child support enforcement program.

(8) DCS files a satisfaction of judgment when we determine that a support obligation is either paid in full or no longer legally enforceable. WAC 388-14A-2099 describes the procedures for filing a satisfaction of judgment. WAC 388-14A-2099(4) describes how DCS determines a support obligation is satisfied or no longer legally enforceable.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2000 Who can receive child support enforcement services from the division of child support? (1) The division of child support (DCS) provides payment processing and records maintenance services (called "payment services only") to parties to a court order who are not receiving a public assistance grant when:

(a) A Washington superior court order, tribal court order, administrative order, or wage assignment order under chapter 26.18 RCW directs payments through DCS or through the Washington state support registry (WSSR);

(b) The custodial parent (CP) of a dependent child or a noncustodial parent (NCP) requests payment services only, provided that:

(i) An NCP's request for payment services only may not cause a reduction of service from the level of service provided under section (2) of this section; and

(ii) The support obligation is set by a Washington state superior court order, tribal court order, administrative order or wage assignment order, directing payment to DCS or to WSSR.

(2) DCS provides full support enforcement services under Title IV-D of the social security act to custodial parents or noncustodial parents who are not receiving a public assistance grant when:

(a) The custodial parent or former physical custodian of a child requests support enforcement services;

(b) The noncustodial parent of a dependent child requests support enforcement services;

(c) An NCP submits a support order for inclusion in or a support payment to the WSSR, together with an application for support enforcement services;

(((~~(c)~~))) (d) A public assistance recipient stops receiving a cash grant under the temporary assistance for needy families program;

(((~~(d)~~))) (e) The department provides Medicaid-only benefits to a CP on behalf of a dependent child, unless the recipient of the Medicaid-only benefits declines support enforcement services not related to paternity establishment, medical support establishment or medical support enforcement; or

(((~~(e)~~))) (f) A man requests paternity establishment services alleging he is the father of a dependent child.

(3) DCS provides payment processing, records maintenance, paternity establishment, medical support establishment, and medical support enforcement services when a recipient of Medicaid-only benefits declines support enforcement services in writing.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance? (1) If you are not receiving public assistance, you can apply for support enforcement services. Your case is called a nonassistance case. A nonassistance case receives the same level of services as a case that was opened because of the payment of public assistance.

(2) Generally, the person applying for nonassistance support enforcement services is the custodial parent or former custodial parent of a child. However, the noncustodial parent may apply for services as well, as provided in WAC 388-14A-2000 (2)(b), (c) and (((~~(e)~~))) (f).

(3) A person wishing to apply for nonassistance support enforcement services must submit a written application for support enforcement services except as provided in WAC 388-14A-2000 (2)(((~~(c)~~))) (d); and

(a) Have or have had physical custody of the child for whom support is sought, or for whom a support debt has accrued, or be the person with whom the child resided the majority of the time for which support is sought; or

(b) Be the noncustodial parent.

(4) The applicant must:

(a) Give consent for the division of child support (DCS) to take an assignment of earnings from the noncustodial parent (NCP) if the parents are still married;

(b) Agree to send to DCS any support payments received directly from the NCP within eight days of receipt;

(c) Agree to direct a payor or forwarding agent to make payments to the Washington state support registry (WSSR);

(d) Agree not to hire an attorney or collection agency, or apply to any other state's IV-D agency to collect the same support obligation or support debt, without notifying DCS;

(e) Complete, sign, date and submit to DCS the application form and any other required documents;

(f) Supply copies of divorce and dissolution decrees, support orders and modification orders, and any related documents affecting a support obligation;

(g) Provide a statement of the amount of support debt owed by the NCP; ((~~and~~))

(h) Include or attach a list, by date, of the support payments received from the NCP during the time period for which the CP seeks support; and

(i) Pay any applicable fee imposed by state or federal law.

(5) If someone other than the CP has legal custody of the child under a court order, the CP must affirm that:

(a) The CP has not wrongfully deprived the legal custodian of custody; and

(b) The person with legal custody has not been excused from making support payments by a court or administrative tribunal.

NEW SECTION

WAC 388-14A-2200 When does DCS charge a twenty-five dollar annual fee on a child support case? (1) Under RCW 74.20.040, the division of child support (DCS) must impose an annual fee of twenty-five dollars for each case in which:

(a) The custodial parent (CP) has never received TANF, Tribal TANF or AFDC as the custodian of minor children; and

(b) DCS has collected and disbursed to the CP at least five hundred dollars on the case during that federal fiscal year. The federal fiscal year runs from October 1 through September 30.

(2) A custodial parent who has children with more than one noncustodial parent (NCP) may be assessed a separate twenty-five dollar fee for each case in which DCS collects at least five hundred dollars in a federal fiscal year.

(3) If DCS has already collected the twenty-five dollar annual fee on a Washington state case and the CP begins receiving TANF or Tribal TANF during the same federal fiscal year, DCS is not required to refund or cancel the fee.

(4) If the CP with a Washington case has paid a fee to another state during the same federal fiscal year, the CP is still subject to the fee in Washington if the Washington case qualifies for a fee under subsection (1) above.

(5) A CP has the burden of proving prior receipt of TANF, Tribal TANF or AFDC in any jurisdiction, which would exempt the CP from paying the annual fee.

(a) DCS may impose the fee until the CP provides proof of prior receipt of TANF, Tribal TANF or AFDC.

(b) DCS does not refund any fee which has been retained by the state, but stops charging the fee immediately when the CP provides proof that the CP is not subject to the fee.

(6) The fee is retained from support payments collected, which means that the NCP gets credit against the child support obligation for the total amount of the payment.

NEW SECTION

WAC 388-14A-2205 How can a custodial parent be excused from payment of the annual fee? (1) WAC 388-14A-2200 describes the cases that qualify for the twenty five dollar annual fee.

(2) A custodial parent (CP) seeking to be excused from payment of the fee may provide proof that he or she is exempt from the fee because he or she received TANF, Tribal TANF or AFDC from another state or tribe.

(3) A CP may request a conference board under WAC 388-14A-6400 to request a waiver of the fee for hardship reasons. The CP must provide proof that hardship in the CP's household justifies waiver of the fee.

(4) Payment of the annual fee in another state does not excuse the CP from the annual fee charged for a Washington case.

(5) If the CP seeks a waiver from payment of the annual fee during a year when the fee has already been collected, the fee for that year is not refunded, but DCS waives collection of the fee for future years unless the waiver is overturned at a later time.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue. (1) A notice and finding of financial responsibility (NFFR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.055.

(2) The NFFR:

(a) Advises the noncustodial parent and the custodial parent (who can be either a parent or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFFR fully and fairly advises the parents of their rights and responsibilities under the NFFR.

(b) Includes the information required by RCW 26.23.050 and 74.20A.055.

(c) Includes ((~~the noncustodial parent's health insurance obligation~~)) a provision that both parents are obligated to provide medical support, as required by RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to the custodial parent when the custodial parent is not one of the parents of the child covered by the order.

(d) Includes a provision that apportions the share of uninsured medical expenses to both the mother and the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

(e) May include an obligation to provide support for day care or special child-rearing expenses, pursuant to chapter 26.19 RCW.

(((~~(e)~~))) (f) Warns the noncustodial parent (NCP) and the custodial parent (CP) that at an administrative hearing, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFFR, if necessary for an accurate support order.

(3) After service of the NFFR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

(4) The NCP must make all support payments to the Washington state support registry after service of the NFFR. DCS does not give the NCP credit for payments made to any other party after service of a NFFR, except as provided by WAC 388-14A-3375.

(5) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFFR is a final order. WAC 388-14A-3110 describes when the notice becomes a final order.

(6) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFFR can end sooner or later than age eighteen.

(7) If paternity has been established by an affidavit or acknowledgment of paternity, DCS attaches a copy of the acknowledgment, affidavit, or certificate of birth record information to the notice. A party wishing to challenge the acknowledgment or denial of paternity may only bring an action in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335.

(8) If the parents filed a paternity affidavit or acknowledgment of paternity in another state, and by that state's law paternity is therefore conclusively established, DCS may serve a NFFR to establish a support obligation.

(9) A hearing on a NFFR is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity. (1) A notice and finding of parental responsibility (NFPR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.056.

(2) The NFPR differs from a notice and finding of financial responsibility (NFFR) (see WAC 388-14A-3115) because the parties may request genetic testing to contest paternity after being served with a NFPR.

(3) DCS serves a NFPR when:

(a) An affidavit acknowledging paternity is on file with the center for health statistics and was filed before July 1, 1997; or

(b) An affidavit acknowledging paternity is on file with the vital records agency of another state and the laws of that state allow the parents to withdraw the affidavit or challenge paternity.

(4) DCS attaches a copy of the acknowledgment of paternity or certification of birth record information to the NFPR.

(5) The NFPR advises the noncustodial parent (NCP) and the custodial parent (who is either the mother or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFPR fully and fairly advises the parents of their rights and responsibilities under the NFPR. The NFPR warns the NCP and the custodial parent (CP) that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFPR, if necessary for an accurate support order.

(6) The NFPR includes the information required by RCW 26.23.050, 74.20A.055, and 74.20A.056.

(7) The NFPR includes ((~~the NCP's health insurance obligation~~)) a provision that both parents are obligated to provide medical support, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to the custodial parent when the custodial parent is not one of the parents of the child covered by the order.

(8) The NFPR includes a provision that apportions the share of uninsured medical expenses to both the mother and the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

(9) The NFPR may include an obligation to provide support for day care expenses or special child-rearing expenses, pursuant to chapter 26.19 RCW.

(((~~(9)~~))) (10) DCS may not assess an accrued support debt for a period longer than five years before the NFPR is served. This limitation does not apply to the extent that the NCP hid or left the state of Washington for the purpose of avoiding service.

(((~~(10)~~))) (11) After service of the NFPR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

(((~~(11)~~))) 12 The NCP must make all support payments to the Washington state support registry after service of the NFPR. DCS does not give the NCP credit for payments made to any other party after service of the NFPR, except as provided by 388-14A-3375.

(((~~(12)~~))) (13) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFPR is a final order. See WAC 388-14A-3110 for when the notice becomes a final order.

(((~~(13)~~))) (14) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFPR can end sooner or later than age eighteen.

(((~~(14)~~))) (15) Either the NCP, or the mother, if she is also the CP, may request genetic tests. A mother who is not the CP

may at any time request that DCS refer the case for paternity establishment in the superior court.

(((~~(15)~~))) (16) DCS does not stop enforcement of the order unless DCS receives a timely request for hearing or a timely request for genetic tests. See WAC 388-14A-3110 for time limits. DCS does not refund any money collected under the notice if the NCP is later:

(a) Excluded from being the father by genetic tests; or

(b) Found not to be the father by a court of competent jurisdiction.

(((~~(16)~~))) (17) If the NCP requested genetic tests and was not excluded as the father, he may request within twenty days from the date of service of the genetic tests in Washington, or sixty days from the date of service of the genetic tests outside of Washington:

(a) A hearing on the NFPR.

(b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

(((~~(17)~~))) (18) If the NCP was not excluded as the father, the CP (or the mother, if she is also the CP), may within twenty days of the date of service of the genetic tests request:

(a) A hearing on the NFPR; or

(b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

(((~~(18)~~))) (19) If the NCP is excluded by genetic testing, DCS may refer the case for paternity establishment in the superior court.

(((~~(19)~~))) (20) A hearing on a NFPR is for the limited purpose of resolving the NCP's current support obligation, accrued support debt and amount of reimbursement to DCS for paternity-related costs. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-06-053, filed 3/2/07, effective 4/2/07)

WAC 388-14A-3200 How does DCS determine my support obligation? (1) The division of child support (DCS) determines support obligations using the Washington state child support schedule (the WSCSS), which is found in chapter 26.19 RCW, for the establishment and modification of support orders.

(2) See WAC 388-14A-8100 for rules on completing the worksheets under the WSCSS for cases where DCS is determining support for a child in foster care.

(3) DCS does not have statutory authority to set the child support obligations of both the noncustodial parent (NCP) and custodial parent (CP) in the same administrative proceeding, except that RCW 26.09.105, 26.18.170 and 26.23.050 provide that an administrative order that sets the NCP's child support obligation can also determine the CP's medical support obligation.

(a) DCS orders can not set off the support obligation of one parent against the other.

(b) Therefore, the method set forth in Marriage of Arvey, 77 Wn. App 817, 894 P.2d 1346 (1995), must not be applied when DCS determines a support obligation.

(4) The limitations in this section apply to DCS staff and to administrative law judges (ALJs) who are setting child support obligations.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-3205 How does DCS calculate my income? (1) The division of child support (DCS) calculates a parent's income using the best available information, in the following order:

(((~~(1)~~))) (a) Actual income;

(((~~(2)~~))) (b) Estimated income, if DCS has:

(((~~(a)~~))) (i) Incomplete information;

(((~~(b)~~))) (ii) Information based on the prevailing wage in the parent's trade or profession; or

(((~~(c)~~))) (iii) Information that is not current.

(((~~(3)~~))) (c) Imputed income under RCW 26.19.071(6).

(2) In the absence of actual income information, DCS imputes full time earnings at the minimum wage to a TANF recipient. You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order. (1) The division of child support (DCS) may serve a notice of support owed on a noncustodial parent (NCP) under RCW 26.23.110 to establish a fixed dollar amount of monthly support and accrued support debt:

(a) If ((~~a~~)) the support obligation under ((~~a court~~)) an order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of ((~~the~~)) a court order.

(2) The notice of support owed may include day care costs and medical support if the court order provides for such costs. WAC 388-14A-3312 describes the use of a notice of support owed to collect unreimbursed medical expenses from either of the parties to a support order, no matter which one has custody of the child.

(3) DCS serves a notice of support owed on an NCP like a summons in a civil action or by certified mail, return receipt requested.

(4) Following service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(5) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support;

(b) Any other information not contained in the order that was used to calculate monthly support and the support debt; and

(c) Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.

(6) The NCP must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(7) A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

(8) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(9) For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.

(10) A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(11) If an NCP or custodial parent (CP) requests a late hearing, the party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.

(12) A notice of support owed fully and fairly informs the NCP of the rights and responsibilities in this section.

(13) For the purposes of this section, WAC 388-14A-3312, 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian," ((~~or~~)) "custodial parent," or "party seeking reimbursement."

NEW SECTION

WAC 388-14A-3312 The division of child support serves a notice of support owed for unreimbursed medical expenses to establish a fixed dollar amount owed under a child support order. (1) The division of child support (DCS) may serve a notice of support owed for unreimbursed medical expenses under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) in order to collect the obligated parent's share of uninsured medical expenses owed to the party seeking reimbursement.

(2) Either the NCP or CP (if the CP is a party to the support order) may ask DCS to serve a notice of support owed for unreimbursed medical expenses on the other party to the support order, if that party is an obligated party under the support order.

(a) If the CP is not a party to the support order, DCS can not assist the CP in making a claim for unreimbursed medical expenses, but the CP may seek to recover such expenses by filing an action in court.

(b) DCS serves the notice if the party seeking reimbursement provides proof of payment of at least five hundred dollars in uninsured medical expenses.

(3) A notice of support owed for unreimbursed medical expenses:

(a) May be for a period of up to twenty-four consecutive months.

(b) May include only medical services provided after July 21, 2007.

(c) May not include months which were included in a prior notice of support owed for unreimbursed medical expenses or a prior judgment.

(d) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for unreimbursed medical expenses.

(4) The party seeking reimbursement must ask DCS to serve a notice of support owed for unreimbursed medical expenses within two years of the expense being incurred.

(a) The fact that a claim for unreimbursed medical expenses is rejected by DCS does not mean that the parent cannot pursue reimbursement of those expenses by proceeding in court.

(b) If a parent obtains a judgment for unreimbursed medical expenses, DCS enforces the judgment.

(5) DCS does not serve a notice of support owed for unreimbursed medical expenses unless the party seeking reimbursement declares under penalty of perjury that he or she has asked the obligated party to pay his or her share of the medical expenses, or provides good cause for not asking the obligated party.

(a) If the medical expenses have been incurred within the last twelve months, this requirement is waived.

(b) If the obligated party denies having received notice that the other party was seeking reimbursement for medical expenses, the service of the notice of support owed for unreimbursed medical expenses constitutes the required notice.

(6) The NCP must apply for full child support enforcement services before the NCP may ask DCS to enforce the CP's medical support obligation.

(a) DCS opens a separate case to enforce a CP's medical support obligation.

(b) The case where DCS is enforcing the support order and collecting from the NCP is called the main case.

(c) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case.

(7) DCS serves a notice of support owed on the obligated parent like a summons in a civil action or by certified mail, return receipt requested.

(8) Following service on the obligated parent, DCS mails a notice to the party seeking reimbursement under WAC 388-14A-3315.

(9) In a notice of support owed for unreimbursed medical expenses, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Notice of the right to request an annual review of the order, as provided in WAC 388-14A-3318.

(10) A notice of support owed for unreimbursed medical expenses becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the obligated parent, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(b) Files a request with DCS for a hearing under this section; or

(c) Obtains a stay from the superior court.

(11) A notice of support owed for unreimbursed medical expenses served in another state becomes final according to WAC 388-14A-7200.

(12) For the rules on a hearing on a notice of support owed for unreimbursed medical expenses, see WAC 388-14A-3320.

(13) A notice of support owed for unreimbursed medical expenses or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(14) If the obligated parent is the NCP, any amounts owing determined by the final administrative order are added to the debt on the main case.

(15) If the obligated parent is the CP, any amounts owing determined by the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final, but not to exceed ten percent of the current support amount; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order, but not to exceed ten percent of the current support amount.

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

(16) If either the obligated parent or the parent seeking reimbursement requests a late hearing, that party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed for unreimbursed medical expenses.

(17) A notice of support owed for unreimbursed medical expenses fully and fairly informs the obligated parent of the rights and responsibilities in this section.

(18) A notice of support owed for unreimbursed medical expenses under this section is subject to annual review as provided in WAC 388-14A-3318.

(19) If both CP and NCP request that DCS serve a notice of support owed for unreimbursed medical expenses on the other party, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

(20) DCS does not serve a second or subsequent notice of support owed for unreimbursed medical expenses on an obligated parent until the party seeking reimbursement meets the conditions set forth in WAC 388-14A-3318.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-3315 When DCS serves a notice of support debt or notice of support owed or notice of support owed for unreimbursed medical expenses, we notify the ((~~custodial parent and/or the payee under the~~)) other party to the child support order. (1) The division of child support (DCS) sends a notice to ((~~a~~)) the payee under a ((~~court~~)) Washington child support order or a foreign ((~~administrative~~)) child support order ((~~for support~~)) when DCS receives proof of service on the noncustodial parent (NCP) of:

(a) A notice of support owed under WAC 388-14A-3310; or

(b) A notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312; or

(c) A notice of support debt under WAC 388-14A-3304.

(2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the NCP.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC 388-14A-3310, a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, or a notice of support debt under WAC 388-14A-3304 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(5) The effective date of a hearing request is the date DCS receives the request.

(6) When DCS serves a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, DCS mails the notice to payee to the parent seeking reimbursement.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110? (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(a) This type of annual review concerns the annual review that takes place after service of a notice of support owed under WAC 388-14A-3310.

(b) For the definition of an annual review of a support order under RCW 26.23.110 that takes place after service of a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, see WAC 388-14A-3318.

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) Either CP or NCP may request an annual review of the support order, even though the statute mentions only the NCP.

(5) DCS may request an annual review of the support order but has no duty to do so.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(7) The twelve-month requirement for an annual review under this section runs separately from the twelve-month requirement for an annual review under WAC 388-14A-3318.

NEW SECTION

WAC 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312? (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the noncustodial parent (NCP) or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement.

(b) The party seeking reimbursement must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.

(c) At least twelve months must have passed since:

(i) The date the last notice of support owed for unreimbursed medical expenses on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for unreimbursed medical expenses on behalf of that party became a final administrative order.

(3) In the event that DCS has served both a notice of support owed under WAC 388-14A-3310 and a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312 on the same case, each type of notice of support owed has its own twelve-month cycle for annual review.

(4) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3320 What happens at a hearing on a notice of support owed? (1) A hearing on a notice of support owed is only for interpreting the ((~~court~~)) order for support and any modifying orders and not for changing or deferring the support provisions of the order.

(2) ((~~The~~)) A hearing on a notice of support owed served under WAC 388-14A-3310 is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the ((~~court~~)) order to begin or adjust the support obligation was met.

(3) A hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312 is only to determine:

(a) Whether the parent on whom the notice was served is obligated under the support order to pay for uninsured medical expenses for the children covered by the order;

(b) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(c) The obligated parent's share of the uninsured medical expenses;

(d) The amount, if any, the obligated parent has already paid to the party seeking reimbursement; and

(e) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(4) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the parent seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determination listed in subsection (3) above.

(5) The hearing is not for the purpose of setting a payment schedule on the support debt.

(((~~(4)~~))) (6) Either the noncustodial parent (NCP) or payee may request a hearing on a notice of support owed served under WAC 388-14A-3310.

(7) Either the obligated parent or the party seeking reimbursement may request a hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312.

(8) The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

(((~~(5)~~))) (9) The office of administrative hearings (OAH) sends a notice of hearing to the NCP, to the division of child support (DCS), and to the ((~~payee~~)) custodial parent (CP). The NCP and the ((~~payee~~)) CP each may participate in the hearing as an independent party.

(((~~(6)~~))) (10) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the ((~~payee~~)) CP appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

(((~~(7)~~))) (11) If ((~~the payee~~)) either party requests a late hearing on a notice of support owed, ((~~the payee~~)) that party must show good cause for filing the late hearing request, as provided in WAC 388-14A-3500.

(12) For purposes of this section, the terms "payee" and "CP" are used interchangeably and can mean either the CP, the payee under the order or both, except that a CP who is not also the payee under the support order may not ask DCS to serve a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may request a hearing to prospectively modify ((~~the NCP's obligation under a support establishment notice~~)) an administrative order for child support. The request must be in writing and must state:

(a) Any circumstances that have changed; ((~~and~~))

(b) Any relief requested; and

(c) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last known to DCS.

(4) DCS, the administrative law judge (ALJ), or the department review judge:

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.

(5) A request to add a requirement for the custodial parent (CP) to provide health insurance coverage, or to add a provision in the order to include the CP's share of medical expenses, is not by itself a sufficient basis for modification of the order.

(6) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

(((~~(6)~~))) (7) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

(((~~(7)~~))) (8) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

(b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

(((~~(8)~~))) (9) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do? (1) Once a support order is entered requiring health insurance, the ((~~noncustodial~~)) obligated parent (((~~NCP~~))) must take the following actions within twenty days:

(a) Provide health insurance coverage; and

(b) Provide proof of coverage to the division of child support (DCS), such as:

(i) The name of the insurer providing the health insurance coverage;

(ii) The names of the beneficiaries covered;

(iii) The policy number;

(iv) That coverage is current; and

(v) The name and address of the ((~~NCP's~~)) obligated parent's employer.

(2) If health insurance coverage that is accessible to the children named in the order is available, the ((~~NCP~~)) obligated parent must:

(a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(3) If health insurance is not immediately available to the ((~~NCP~~)) obligated parent, as soon as health insurance becomes available, the ((~~NCP~~)) obligated parent must:

(a) Provide for coverage for the children named in the order; and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for health insurance.

(5) ((~~A child's enrollment in Indian health services satisfies the requirements of this section.~~

~~(6)~~)) See WAC 388-14A-4165 for a description of what happens when the combined total of ((~~NCP's~~)) a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

NEW SECTION

WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide health insurance coverage? (1) A noncustodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the health insurance obligation of the custodial parent (CP).

(2) DCS does not enforce a custodial parent's obligation to provide health insurance coverage when:

(a) The support order does not include a health insurance obligation for the CP.

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health insurance exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health insurance provided by someone else.

(e) The children are receiving medicaid.

(f) The children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

(3) If none of the conditions under subsection (2) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

(4) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce ((~~a noncustodial~~)) an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the ((~~noncustodial~~)) obligated parent's employer in one of the following ways:

(a) In the same manner as a summons in a civil action,

(b) By certified mail, return receipt requested,

(c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the ((~~NCP~~)) obligated parent to provide insurance coverage for a dependent child;

(b) The ((~~NCP~~)) obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the ((~~NCP's~~)) obligated parent's employer or union.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4122 What kind of information is included in the National Medical Support Notice? The National Medical Support Notice (NMSN) and its cover letter advise the ((~~noncustodial~~)) obligated parent's employer and the plan administrator that:

(1) The ((~~noncustodial~~)) obligated parent ((~~(NCP)~~)) is required to provide health insurance coverage for the children named in the notice;

(2) Information regarding the custodial parent and children, especially address information, is confidential and may not be released to anyone, including the noncustodial parent (NCP);

(3) Within twenty business days of the date on the notice, the employer must either:

(a) Respond to the NMSN by completing the response form and returning it to DCS; or

(b) Forward Part B of the NMSN to the plan administrator.

(4) The employer or plan administrator is required to enroll the children in a health insurance plan offered by the employer or the union if insurance the children can use is or will become available as provided in WAC 388-14A-4130;

(5) The employer or plan administrator must provide:

(a) Information about the health insurance plan and policy as requested in the notice; and

(b) Any necessary claim forms or membership cards as soon as they are available.

(6) The employer or union must withhold premiums from the ((~~NCP's~~)) obligated parent's net earnings if the ((~~NCP~~)) obligated parent is required to pay part or all of the premiums for coverage under the health insurance plan.

(7) Noncompliance with the NMSN subjects the employer or union to a fine of up to one thousand dollars under RCW ((~~74.20A.350~~)) 26.18.180. See WAC 388-14A-4123 for a description of noncompliance penalties.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4124 Who are the parties involved with the National Medical Support Notice? (1) The National Medical Support Notice (NMSN) is a federally mandated form used by child support enforcement agencies to enforce ((~~a noncustodial~~)) an obligated parent's medical support obligation. The division of child support (DCS) uses the NMSN as provided in WAC 388-14A-4120.

(2) DCS sends an NMSN when there is a support order requiring the ((~~noncustodial~~)) obligated parent (((~~NCP~~))) to provide health insurance coverage for the children.

(3) DCS sends the NMSN to the ((~~NCP's~~)) obligated parent's employer.

(4) If the employer provides health insurance coverage, the employer forwards the NMSN to the appropriate plan administrator.

(5) The plan administrator is the entity which handles the ministerial functions for the group health plan maintained by the employer or a group health plan to which the employer contributes.

(6) In some cases, the employer performs the duties of the plan administrator.

(7) In some cases, the ((~~NCP's~~)) obligated parent's union either acts as or contracts with the plan administrator.

(8) The plan administrator sends coverage information to both DCS and the custodial parent (CP). In cases where the CP is the obligated parent, DCS sends coverage information to the noncustodial parent (NCP).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4125 What must an employer do after receiving a National Medical Support Notice? (1) Within twenty business days after the date on the National Medical Support Notice (NMSN), the employer must either send Part B to the plan administrator or send the employer response to the division of child support (DCS).

(2) The employer need take no action beyond responding to the NMSN if:

(a) The employer does not maintain or contribute to plans providing dependent or family health care coverage;

(b) The employee is among a class of employees (for example, part-time or nonunion) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes; or

(c) The employee either is no longer, or never has been, employed by this employer.

(3) If subsection (2) of this section does not apply, the employer must respond to the NMSN and must:

(a) Forward Part B of the NMSN to the plan administrator of each group health plan identified by the employer to enroll the ((~~noncustodial~~)) obligated parent's eligible children (see WAC 388-14A-4130 for what the plan administrator must do after receiving an NMSN); and

(b) When notified by the plan administrator that the children are enrolled:

(i) Withhold any employee contributions required for health insurance premiums and transfer those premiums to the appropriate plan; or

(ii) Notify DCS that enrollment cannot be completed because the noncustodial parent's net earnings are not high enough to allow withholding of child support and health insurance premiums; in this situation, the employer must notify DCS of the amount of the premium required to cover the children.

(c) When notified by the plan administrator that the ((~~noncustodial~~)) obligated parent ((~~NCP~~)) is subject to a waiting period, notify the plan administrator when the ((~~NCP~~)) obligated parent is eligible to enroll in the plan, and that the NMSN requires the enrollment of the children named in the NMSN.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4130 What must a plan administrator do after receiving a National Medical Support Notice from the division of child support? (1) A plan administrator who receives a National Medical Support Notice (NMSN) must respond to the NMSN within forty business days after the date on the NMSN.

(2) If the ((~~noncustodial~~)) obligated parent (((~~NCP~~))) and the children are to be enrolled in a health insurance plan, the plan administrator must:

(a) Notify the ((~~NCP~~)) obligated parent, each child, and the custodial parent (CP) (if the obligated parent is not the CP) that coverage of the children is or will become available (notifying the CP is considered the same as notifying the child if they live at the same address); and

(b) If not previously provided, send the CP a description of the coverage available, including the effective date of coverage, a summary plan description and any forms or information necessary to start coverage, and information on how to submit claims for benefits.

(3) If there is more than one option available under the plan and the ((~~NCP~~)) obligated parent is not yet enrolled, the plan administrator must:

(a) Provide to the division of child support (DCS) copies of applicable summary plan descriptions for available coverage, including the additional participant contribution necessary to obtain coverage for the children under each option and whether any option has a limited service area; and

(b) If the plan has a default option, enroll the children in the plan's default option if the plan administrator has not received DCS' election within twenty business days of the date the plan administrator returned the response to DCS; or

(c) If the plan does not have a default option, enroll the children in the option selected by DCS.

(4) If the ((~~NCP~~)) obligated parent is subject to a waiting period that expires within ninety days from the date the plan administrator receives the NMSN, the plan administrator must enroll the children named in the NMSN immediately.

(5) If the ((~~NCP~~)) obligated parent is subject to a waiting period that expires more than ninety days from the date the plan administrator receives the NMSN, the plan administrator must notify the employer, DCS, the ((~~NCP~~)) obligated

parent and the CP (if the obligated parent is not the CP) of the waiting period. When the waiting period has expired, the plan administrator must:

(a) Enroll the ((~~NCP~~)) obligated parent and the children named in the NMSN, as provided in subsection (2) or (3) above; and

(b) Notify the employer of enrollment so that the employer may determine if the NCP's income is sufficient to withhold health insurance premiums, and then either withhold accordingly or notify DCS, as provided in WAC 388-14A-4125 (3)(b).

(6) If the ((~~NCP~~)) obligated parent is subject to a waiting period whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), the plan administrator must notify the employer, DCS, the ((~~NCP~~)) obligated parent and the CP (if the CP is not the obligated parent) of the waiting period. When the waiting period has expired, the plan administrator must:

(a) Enroll the ((~~NCP~~)) obligated parent and the children named in the NMSN, as provided in subsection (2) or (3) above; and

(b) Notify the employer of enrollment so that the employer may determine if the ((~~NCP's~~)) obligated parent's income is sufficient to withhold health insurance premiums, and then either withhold accordingly or notify DCS, as provided in WAC 388-14A-4125 (3)(b).

(7) If the plan administrator determines that the NMSN does not constitute a qualified medical child support order as defined by ERISA, the plan administrator must:

(a) Notify DCS using the part of the NMSN called the plan administrator response; and

(b) Notify the ((~~NCP~~)) obligated parent, the CP (if the CP is not the obligated parent) and the children of the specific reasons for the determination. A copy of the plan administrator response is considered sufficient notice under this section.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4135 What must the plan administrator do when the ((~~noncustodial~~)) obligated parent has health insurance but the children are not included in the coverage? (1) If the ((~~noncustodial~~)) obligated parent ((~~(NCP)~~)) is enrolled in a health insurance plan through the employer but has not enrolled the children named in the National Medical Support Notice (NMSN), the plan administrator must follow the steps outlined in WAC 388-14A-4130(2) and:

(a) Enroll the child(ren) named in the NMSN under the ((~~NCP's~~)) obligated parent's health insurance plan; and

(b) Notify the employer and the division of child support (DCS) that the child(ren) have been enrolled.

(2) Under RCW 48.01.235 (4)(a), the plan administrator must enroll a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions.

(3) WAC 388-14A-4145 discusses what the plan administrator must do if the obligated parent's ((~~NCP's~~)) health insurance plan is not accessible to the children.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4140 What must the plan administrator do when the ((~~noncustodial~~)) obligated parent is eligible for health insurance but is not yet enrolled? (1) If the ((~~noncustodial~~)) obligated parent ((~~(NCP)~~)) is eligible for health insurance through the employer but has not enrolled on his or her own, the plan administrator must proceed under WAC 388-14A-4130(3) and:

(a) Enroll the ((~~NCP~~)) obligated parent and the children in the least expensive plan which provides accessible coverage for the children named in the National Medical Support Notice (NMSN); and

(b) Notify the employer and the division of child support (DCS) that the ((~~NCP~~)) obligated parent and the children have been enrolled.

(2) The plan administrator notifies DCS of all health insurance plans for which the ((~~NCP~~)) obligated parent is eligible, and notifies DCS which plan is the default option.

(3) If DCS does not specify otherwise within twenty business days of the date the plan administrator responds to DCS, the plan administrator must enroll the ((~~NCP~~)) obligated parent and the children in the default plan.

(4) Under RCW 48.01.235 (4)(a), the plan administrator must enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions. In order to obtain coverage for the children, the plan administrator must enroll an otherwise eligible ((~~NCP~~)) obligated parent without regard to any enrollment season restrictions.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4143 What must the plan administrator do when the employer provides health insurance but the ((~~noncustodial~~)) obligated parent is not yet eligible for coverage? If the ((~~noncustodial~~)) obligated parent is subject to a waiting period before being eligible for coverage under a health insurance plan provided by the employer, the plan administrator must proceed as follows:

(1) If the ((~~NCP~~)) obligated parent is subject to a waiting period that expires ninety days or less from the date of receipt of the National Medical Support Notice (NMSN), see WAC 388-14A-4130(4);

(2) If the ((~~NCP~~)) obligated parent is subject to a waiting period that expires more than ninety days from the date of receipt of the NMSN, see WAC 388-14A-4130(5); and

(3) If the ((~~NCP~~)) obligated parent is subject to a waiting period whose duration is determined by a measure other than the passage of time, see WAC 388-14A-4130(6).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4145 What must the plan administrator do when the insurance plan in which the ((~~noncustodial~~)) obligated parent is enrolled does not provide coverage which is accessible to the children? (1) If more than one insurance plan is offered by the employer or union, and each

plan may be extended to cover the child, then the plan administrator must enroll the children named in the national medical support notice (NMSN) in the plan in which the ((~~noncustodial~~)) obligated parent (((~~NCP~~))) is enrolled.

(2) If the ((~~NCP's~~)) obligated parent's plan does not provide coverage which is accessible to the child, the plan administrator:

(a) May give the ((~~NCP~~)) obligated parent the opportunity to change plans so that ((~~NCP~~)) obligated parent and the children may be enrolled in a plan which provides accessible coverage for the children; but

(b) Is not required to change the ((~~NCP's~~)) obligated parent's plan to one which provides accessible coverage for the children.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4150 What must the plan administrator do when the ((~~noncustodial~~)) obligated parent has more than one family? (1) When ((~~a noncustodial parent (NCP)~~)) an obligated parent has a health insurance obligation for more than one family, the division of child support (DCS) sends one national medical support notice (NMSN) for each family to the ((~~NCP's~~)) obligated parent's employer.

(2) If the ((~~NCP~~)) obligated parent is already enrolled in a health insurance plan, the plan administrator must attempt to enroll all children named in all of the NMSNs in the ((~~NCP's~~)) obligated parent's plan.

(3) If the ((~~NCP~~)) obligated parent is not already enrolled in a health insurance plan, and the employer offers a health insurance plan which would cover all children named in all of the NMSNs, the plan administrator must enroll the children in that plan. See WAC 388-14A-4140.

(4) If the employer offers only one health insurance plan, or multiple plans which would cover some, but not all of the children named in the NMSNs, the plan administrator must so notify DCS.

(5) DCS chooses the appropriate health insurance plan by considering the following factors:

(a) The wishes of the custodial parent of each family;

(b) The premium limits set by the support orders;

(c) The relative ages of all the children;

(d) How many of ((~~NCP's~~)) the obligated parent's children live in Washington and how many live elsewhere;

(e) How many of ((~~NCP's~~)) the obligated parent's children receive Medicaid;

(f) How many of ((~~NCP's~~)) the obligated parent's children are already covered by private health insurance;

(g) Which plan covers the most children; and

(h) Other factors as may be developed in DCS policy.

(6) The factors listed in subsection (5) are not exclusive, nor are they equally weighted.

(7) Nothing in this section requires the plan administrator to take action to change the ((~~NCP's~~)) obligated parent's plan unless the ((~~NCP~~)) obligated parent requests a change.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4160 Are there any limits on the amount ((~~a noncustodial~~)) an obligated parent may be required to pay for health insurance premiums? (1) The National Medical Support Notice (NMSN) advises the employer of any limitations on the amount ((~~a noncustodial parent (NCP)~~)) an obligated parent may be required to pay for health insurance premiums to cover the children.

(2) Often the support order which contains the health insurance obligation determines the limitation on premium amounts, or states that there is no limitation. See WAC 388-14A-4100 for a discussion of premium limitation amounts.

(3) The premium limitation amount stated in the NMSN:

(a) Describes the premium amount required to cover the children named in the notice; and

(b) Does not include any amounts required to cover the ((~~NCP~~)) obligated parent.

(4) Even if the medical insurance premium is within the limits set by the order or by WAC 388-14A-4100, the fifty percent limitation on withholding found in RCW 26.23.060 (3) still applies. See WAC 388-14A-4165 for a description of what happens when the fifty percent limitation is exceeded.

(5) When calculating the fifty percent limitation for withholding purposes:

(a) The premium attributable to coverage for the children is always included in this calculation; but

(b) The premium attributable to coverage for the ((~~NCP~~)) obligated parent is included only when DCS requires the employer or plan administrator to enroll the ((~~NCP~~)) obligated parent in a health insurance plan in order to obtain coverage for the ((~~NCP's~~)) obligated parent's children. See also WAC 388-14A-4165(3).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4175 Is an employer ((~~obligated~~)) required to notify the division of child support when insurance coverage for the children ends? (1) Once the division of child support (DCS) has notified an employer that ((~~the noncustodial~~)) a parent (((~~NCP~~))) is obligated by a support order to provide health insurance coverage for the children named in the order, the national medical support notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

AMENDATORY SECTION (Amending WSR 05-08-060, filed 3/31/05, effective 5/1/05)

WAC 388-14A-4180 When must the division of child support communicate with the DSHS ((~~medical assistance~~)) health and recovery services administration? (1) The division of child support (DCS) must inform the DSHS ((~~medical assistance~~)) health and recovery services administration (((~~MAA~~))) (HRSA) of the existence of a new or modified court or administrative order for child support when the

order includes a requirement for medical support. ((~~MAA~~)) HRSA is the part of DSHS which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide ((~~MAA~~)) HRSA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, Medicaid number or the individual's Social Security number;

(b) Name of the ((~~noncustodial parent (NCP)~~)) obligated parent;

(c) Social Security number of the ((~~NCP~~)) obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the ((~~NCP~~)) obligated parent;

(f) Name and address of the ((~~NCP's~~)) obligated parent's employer;

(g) Information regarding the ((~~NCP's~~)) obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with ((~~MAA~~)) HRSA to determine if there have been any lapses (stops and starts) in the ((~~NCP's~~)) obligated parent's health insurance coverage for Medicaid applicants.

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

WAC 388-14A-5000 How does the division of child support distribute support payments? (1) Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services; ((~~or~~))

(e) Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information.

(2) DCS distributes support based on the date of collection. DCS considers the date of collection to be the date that DCS receives the payment, no matter when the payment was withheld from the noncustodial parent (NCP).

(3) If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter 63.29 RCW, the Uniform Unclaimed Property Act.

(4) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.

(5) DCS changes the distribution rules based on changes in federal statutes and regulations.

(6) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5002 How does DCS distribute support money in a nonassistance case? (1) A nonassistance case is one where the family has never received a cash public assistance grant.

(2) The division of child support (DCS) applies support money within each Title IV-D nonassistance case:

(a) First, to satisfy the current support obligation for the month DCS received the money;

(b) Second, to the noncustodial parent's support debts owed to the family;

(c) Third, to prepaid support as provided for under WAC 388-14A-5008.

(3) After DCS disburses at least five hundred dollars to the family on a case in a federal fiscal year, DCS may retain a twenty-five dollar annual fee for that case from a custodial parent who has never received AFDC, TANF or Tribal TANF. DCS gives the noncustodial parent credit against the child support debt for the amount retained for the fee.

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

WAC 388-14A-5005 How does DCS distribute intercepted federal income tax refunds? (1) The division of child support (DCS) applies intercepted federal income tax refunds in accordance with 42 U.S.C. Sec. 657, as follows:

(a) First, to support debts which are permanently assigned to the department to reimburse public assistance payments; and

(b) Second, to support debts which are temporarily assigned to the department to reimburse public assistance payments; and

(c) Third, to support debts that are not assigned to the department; and

(d) To support debts only, not to current and future support obligations. DCS must refund any excess to the noncustodial parent (NCP).

((~~(3)~~)) (2) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and RCW 74.20.040 from federal income tax refunds applied to nonassistance support debts.

(3) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a payment on behalf of an NCP is from an intercepted refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5100 What kind of distribution notice does the division of child support send? (1) The division of child support (DCS) mails a distribution notice once each month, or more often, to the last known address of a person for whom it received support during the month, except as provided under subsection (6) of this section.

(2) DCS includes the following information in the notice:

(a) The amount of support money DCS received and the date of collection;

(b) A description of how DCS allocated the support money between current support and the support debt and any fees required by state or federal law; and

(c) The amount DCS claims as reimbursement for public assistance paid, if applicable.

(3) The person to whom a distribution notice is sent may file a request for a hearing under subsection (4) of this section within ninety days of the date of the notice to contest how DCS distributed the support money, and must make specific objections to the distribution notice. The effective date of a hearing request is the date DCS receives the request.

(4) A hearing under this section is for the limited purpose of determining if DCS correctly distributed the support money described in the contested notice.

(a) There is no hearing right regarding fees that have been charged on a case.

(b) If a custodial parent (CP) wants to request a hardship waiver of the fee, the CP may request a conference board under WAC 388-14A-6400.

(5) A person who requests a late hearing must show good cause for being late.

(6) This section does not require DCS to send a notice to a recipient of payment services only.

AMENDATORY SECTION (Amending WSR 07-06-053, filed 3/2/07, effective 4/2/07)

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105 and 26.18.170, and in RCW 26.23.050 (3) and (5). The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) If requested by a party, the NCP's share of any special child-rearing expenses in a sum certain amount per month;

(f) ((~~The NCP's obligation~~)) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, including but not limited to the following:

(i) A requirement that either or both parents are obligated to provide health insurance coverage for the child covered by the support order if coverage that can be extended to cover the child is or becomes available through the parent's employment or union;

(ii) Notice that if proof of health insurance coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent; and

(iii) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

(g) A provision which determines the mother and the father's proportionate share of uninsured medical expenses;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(((~~h~~))) (i) The NCP's current and future monthly support obligation as a per month per child amount and order payments in that amount; and

(((~~(i)~~))) (j) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(3) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(4) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(5) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

(6) In a hearing held on a notice issued under WAC 388-14A-3312, the ALJ must determine the amount owed by the obligated parent to the other for unreimbursed medical expenses.

(a) The ALJ does not specify how the amount owed by the obligated parent should be paid.

(b) In the event that DCS has served a notice under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-6400 The division of child support's grievance and dispute resolution method is called a conference board. (1) The division of child support (DCS) provides conference boards for the resolution of complaints and problems regarding DCS cases, and for granting exceptional

or extraordinary relief. A conference board is an informal review of case actions and of the circumstances of the parties and children related to a child support case.

(a) The term conference board can mean either of the following, depending on the context:

(i) The process itself, including the review and any meeting convened; or

(ii) The DCS staff who make up the panel which convenes the hearing and makes factual and legal determinations.

(b) A conference board chair is an attorney employed by DCS in the conference board unit. In accordance with section WAC 388-14A-6415, the conference board chair reviews a case, and:

(i) Issues a decision without a hearing, or

(ii) Sets a hearing to take statements from interested parties before reaching a decision.

(2) A person who disagrees with any DCS action related to establishing, enforcing or modifying a support order may ask for a conference board.

(3) DCS uses the conference board process to:

(a) Help resolve complaints and problems over agency actions;

(b) Determine when hardship in the paying parent's household, as defined in RCW 74.20A.160, justifies the release of collection action or the refund of a support payment;

(c) Determine when hardship in the custodial parent's household justifies the waiver of any required fee;

(d) Set a repayment rate on a support debt; and

(((~~d~~))) (e) Determine when it is appropriate to write off support debts owed to the department based on:

(i) Hardship to the paying parent or that parent's household;

(ii) Settlement by compromise of disputed claims;

(iii) Probable costs of collection in excess of the support debt; or

(iv) An error or legal defect that reduces the possibility of collection.

(4) A conference board is not a formal hearing under the administrative procedure act, chapter 34.05 RCW.

(5) A conference board does not replace any formal hearing right created by chapters 388-14A WAC, or by chapters 26.23, 74.20 or 74.20A RCW.

(6) This section and WAC 388-14A-6405 through 388-14A-6415 govern the conference board process in DCS cases.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-6415 Scope of authority of conference board chair defined. The conference board chair has the authority to:

(1) Subpoena witnesses and documents, administer oaths and take testimony;

(2) Grant relief by setting payment plans, writing off debt owed to the department, waiving fees, or refunding collected money;

(3) Adjust support debts based on evidence gathered during the conference board process;

(4) Direct distribution of collected support; and

(5) Take any action consistent with Washington law and DCS policy to resolve disputes, grant relief or address issues of equity.

WSR 08-12-037
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed May 30, 2008, 11:21 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is adding the residential algorithm to chapter 388-828 WAC. The residential algorithm determines the residential service levels of support for clients receiving supported living, group home, group training home, and companion home residential services. The department is amending the following sections to include references to the residential algorithm and the individual and family services algorithm: WAC 388-828-1060, 388-828-5020, 388-828-5140, 388-828-5520, and 388-828-8020. The department is amending the following sections to maintain consistency with the DDD computer based assessment, agency standards, and to correct references to other rules: WAC 388-828-1480, 388-828-1540, 388-828-1640, and 388-828-5940.

These rules incorporate the following emergency rules:

- WAC 388-828-5080 filed as WSR 08-05-021 which amends the WAC to accurately reflect the protective supervision age-based score adjustment.
- WAC 388-828-1200 through 388-828-1300 filed as WSR 08-07-018 which amends the WAC to remove penalties for clients and their families that decline to provide income information when receiving the DDD assessment.
- WAC 388-828-5360 filed as WSR 08-08-039 which amends the back-up caregiver availability table. The department will propose the other emergency rules included in WSR 08-08-039 when it proposes rules for the individual and family services program.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-828-1240, 388-828-1260 and 388-828-1280; and amending WAC 388-828-1060, 388-828-1200, 388-828-1220, 388-828-1300, 388-828-1480, 388-828-1540, 388-828-1640, 388-828-5020, 388-828-5080, 388-828-5140, 388-828-5360, 388-828-5520, 388-828-5940, and 388-828-8020.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 08-05-097 on February 15, 2008.

A final cost-benefit analysis is available by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey,

WA 98504, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@dshs.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 21, Amended 14, Repealed 3.

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 28, 2008.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1200 ((~~Will DDD ask your family to disclose~~)) Who does DDD ask to disclose financial ((~~and dependent~~)) information? When administering the DDD assessment, DDD ((~~will only~~)) is required to ask for ((~~information regarding your family's~~)) annual gross income information ((~~and the number of household dependents when~~)) from:

(1) Your family, if:

(a) You are age seventeen or younger; and

(((~~2~~))) (b) Your family has not made a request for your admission to a residential habilitation center (RHC)((~~.~~)); or

(2) You, if:

(a) You are age eighteen or older; and

(b) You are receiving state-only funded services.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1220 Will DDD require ((~~your family to provide supporting documentation of their annual gross income and number of household dependents~~)) the reported annual gross income to be verified with supporting documentation? DDD accepts ((~~your family's~~)) a verbal report of annual gross income and does not require ((~~your family to provide~~)) supporting documentation ((~~of their annual gross income and number of household dependents~~)) to verify the reported information.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-828-1240	What does DDD do when family income and household dependent information are not provided?
WAC 388-828-1260	What action will DDD take if your family does not report income and dependent information?
WAC 388-828-1280	How will your access to, or receipt of, DDD HCBS waiver services be affected if your family does not report family income and dependent information?

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1300 How will your access to, or receipt of, ((~~Medicaid personal care~~)) DDD paid services, private duty nursing services, or SSP be affected if ((~~your family does not report family~~)) income ((~~and dependent~~)) information is not reported? Your access to, or receipt of, ((~~Medicaid personal care~~)) DDD paid services per ((~~chapter 388-106~~)) WAC 388-828-1440, Private duty nursing services for children seventeen years of age and younger per WAC 388-551-3000, or SSP per chapter 388-827 WAC is not affected if ((~~your family does not report~~)) income ((~~and dependent~~)) information is not reported.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5080 How does DDD determine your adjusted protective supervision acuity score? DDD determines your adjusted protective supervision acuity score by applying the following age-based score adjustments to your level of monitoring score for question number one in WAC 388-828-5060:

If you are:	Then your age-based score adjustment is:
18 years or older	Score is equal to your level of monitoring score
16-17 years of age	Subtract ((~~1~~)) 2 from your level of monitoring score
12-15 years of age	Subtract ((~~2~~)) 3 from your level of monitoring score
8-11 years of age	Subtract ((~~3~~)) 4 from your level of monitoring score
5-7 years of age	Subtract ((~~4~~)) 5 from your level of monitoring score
0-4 years of age	Subtract ((~~5~~)) 6 from your level of monitoring score
If your adjusted level of monitoring score is a negative number, your adjusted protective supervision acuity score is zero.	

Example: If you are fifteen years old and "close proximity, (e.g., 1-2 hours, structured)" is identified as your level of

monitoring score, your adjusted protective supervision acuity score is: Your close proximity score of four minus age-based score adjustment of ((~~two~~)) three. For age twelve through fifteen, this equals an adjusted protective supervision score of ((~~two~~)) one.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5360 How does DDD determine the risk level score of your backup caregiver not being able to provide the supports you need when you need them? The following table identifies the criteria that are used to calculate the risk level score of your backup caregiver not being able to provide the supports you need when you need them:

If the availability of your backup caregiver is:	Then your risk level score is:
(1) Your backup caregivers are available routinely or upon request as evidenced by a score of 0 to 2 for question 1 of the backup caregiver subscale; and (2) You have a person identified as a backup caregiver that does not live with you evidenced by the "Lives with client" checkbox not being selected as contact details information for him or her.	1 (Not at risk)
(3) Your backup caregivers are available upon an emergency only basis evidenced by a score of 4 for question 1 of the backup caregiver subscale; ((~~and~~)) or (4) "Lives with client" has been selected for **all** of the persons you have identified as your backup caregivers.	2 (Some risk)
(5) You have no other caregiver available evidenced by a score of 9 for question 1 of the backup caregiver subscale.	3 (High risk)

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1060 What is the purpose of the DDD assessment? The purpose of the DDD assessment is to provide a comprehensive assessment process that:

(1) Collects a common set of assessment information for reporting purposes to the legislature and the department.

(2) Promotes consistency in evaluating client support needs for purposes of planning, budgeting, and resource management.

(3) Identifies a level of service and/or number of hours that is used to support the assessed needs of clients who have been authorized by DDD to receive:

(a) Medicaid personal care services or DDD HCBS waiver personal care per chapter 388-106 WAC;

(b) Waiver respite care services per chapter 388-845 WAC;

(c) Services in the voluntary placement program (VPP) per chapter 388-826 WAC;

(d) Supported living residential services per chapter 388-101 WAC;

(e) Group home residential services per chapter 388-101 WAC;

(f) Group training home residential services per chapter 388-101 WAC;

(g) Companion home residential services per chapter 388-829C WAC; or

(h) Individual and family services per chapter 388-832 WAC.

(4) Records your service requests.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1480 Are there any exceptions allowing authorization of a DDD paid service prior to administering a DDD assessment? During the year prior to July ((~~2008~~)) 2009, due to staff resources, DDD may authorize or reauthorize the following services before a DDD assessment is administered:

(1) Funding from the legislature that provides resources for services to be available by a certain date; or

(2) ((~~The annual reallocation of dollars for traditional family support in June 2007; or~~

(~~3~~))) Emergency services as determined by DDD as critical to the client's health and safety.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1540 Who participates in your DDD assessment? (1) All relevant persons who are involved in your life may participate in your DDD assessment, including your parent(s), legal representative/guardian, advocate(s), and service provider(s).

(2) DDD requires that at a minimum: You, one of your respondents, and ((~~your~~)) a DDD ((~~case resource manager/ social worker~~)) employee participate in your DDD assessment interview. In addition:

(a) If you are under the age of eighteen, your parent(s) or legal guardian(s) must participate in your DDD assessment interview.

(b) If you are age eighteen or older, your court appointed legal representative/guardian must be consulted if he/she does not attend your DDD assessment interview.

(c) If you are age eighteen and older and have no legal representative/guardian, DDD will assist you to identify a respondent.

(d) DDD may require additional respondents to participate in your DDD assessment interview, if needed, to obtain complete and accurate information.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1640 What are the mandatory panels in your DDD assessment? After DDD has determined your client group, DDD determines the mandatory panels in your DDD assessment using the following tables. An "X" indicates that the panel is mandatory; an "O" indicates the panel is optional. If it is blank, the panel is not used.

(1) DDD "Assessment main" and client details information

	Client Group			
DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State Only Paid Services
Assessment Main	X	X	X	X
Demographics	X	X	X	X
Overview	X	X	X	X
Addresses	X	X	X	X
Collateral Contacts	X	X	X	X
Financials	X	X	X	X

(2) Supports intensity scale assessment

	Client Group			
DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Home Living	X	X	X	X
Community Living	X	X	X	X
Lifelong Learning	X	X	X	X
Employment	X	X	X	X
Health & Safety	X	X	X	X
Social Activities	X	X	X	X
Protection & Advocacy	X	X	X	X

(3) Support assessment for children

	Client Group			
DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Activities of Daily Living	X	X	X	X
IADLs (Instrumental Activities of Daily Living)	X	X	X	X
Family Supports	X	X	X	X
Peer Relationships	X	X	X	X
Safety & Interactions	X	X	X	X

(4) Common support assessment panels

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Medical Supports	X	X	X	X
Behavioral Supports	X	X	X	X
Protective Supervision	X	X	X	X
DDD Caregiver Status*	X	X	X	X
Programs and Services	X	X	X	X
*Information on the DDD Caregiver Status panel is not mandatory for clients receiving paid services in an AFH, BH, SL, GH, SOLA, or RHC.				

(5) Service level assessment panels

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Environment		X	X	O
Medical Main		O	X	O
Medications		X	X	X
Diagnosis		X	X	X
Seizures		X	X	X
Medication Management		X	X	X
Treatments/programs		X	X	X
ADH (Adult Day Health)		O	O	O
Pain		X	X	X
Indicators-Main		O	X	O
Allergies		X	X	X
Indicators/Hospital		X	X	X
Foot		X	X	O
Skin		X	X	O
Skin Observation		O	O	O
Vitals/Preventative		X	X	O
Comments		O	O	O
Communication-Main		O	X	O
Speech/Hearing		O	X	O
Psych/Social		O	X	O
MMSE (Mini-Mental Status Exam)		O	X	O
Memory		O	X	O
Behavior		O	X	O
Depression		O	X	O
Suicide		O	O	O
Sleep		O	O	O
Relationships & Interests		O	O	O
Decision Making		O	X	O
Goals		X	O	O
Legal Issues		O	O	O
Alcohol		O	O	O
Substance Abuse		O	O	O
Tobacco		O	X	O
Mobility Main		O	X	O
Locomotion In Room		O	X	O
Locomotion Outside Room		O	X	O
Walk in Room		O	X	O
Bed Mobility		O	X	O
Transfers		O	X	O
Falls		O	O	O
Toileting-Main		O	X	O
Bladder/Bowel		O	X	O
Toilet Use		O	X	O
Eating-Main		O	X	O
Nutritional/Oral		O	X	O

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Eating		O	X	O
Meal Preparation		O	X	O
Hygiene-Main		O	X	O
Bathing		O	X	O
Dressing		O	X	O
Personal Hygiene		O	X	O
Household Tasks		O	X	O
Transportation		O	X	O
Essential Shopping		O	X	O
Wood Supply		O	X	O
Housework		O	X	O
Finances		O	O	O
Pet Care		O	O	O
Functional Status		O	O	O
Employment Support*		X*	X*	X*
Mental Health		X	X	X
DDD Sleep*		X*	O	O

*Indicates that:

(a) The "Employment Support" panel is mandatory only for clients age twenty-one and older who are on or being considered for one of the county services listed in WAC 388-828-1440(2).

(b) The "DDD Sleep" panel is mandatory only for clients who are age eighteen or older and who are receiving:

(i) DDD HCBS Core or Community Protection waiver services; or

(ii) State-Only residential services.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5020 How is information in the protective supervision acuity scale used by DDD? (1) Information obtained in the protective supervision acuity scale is one of the factors used by DDD to determine:

(a) The amount of waiver respite, if any, that you are authorized to receive;

(b) Your individual and family services level, if you are authorized to receive individual and family services per chapter 388-832 WAC; and

(c) Your residential service level of support, if you are authorized to receive a residential service listed in WAC 388-828-10020.

(2) The protective supervision acuity scale is not used when determining your Medicaid personal care or waiver personal care; and

(3) The information is used for reporting purposes to the legislature and the department.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5140 How is information in the DDD caregiver status acuity scale used by DDD? (1) Information obtained in the DDD caregiver status acuity scale is one of the factors used by DDD to determine:

(a) The amount of waiver respite, if any, that you are authorized to receive; and

(b) Your individual and family services level, if you are authorized to receive individual and family services.

(2) The DDD caregiver status acuity scale does not affect service determination for the Medicaid personal care or waiver personal care assessment; and

(3) The information is used for reporting purposes to the legislature and the department.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5520 How is information in the DDD behavioral acuity scale used by DDD? (1) Information obtained in the DDD behavioral acuity scale is one of the factors used by DDD to determine:

(a) The amount of waiver respite, if any, that you are authorized to receive;

(b) Your individual and family services level, if you are authorized to receive individual and family services per chapter 388-832 WAC; and

(c) Your residential service level of support, if you are authorized to receive a residential service listed in WAC 388-828-10020.

(2) The DDD behavioral acuity scale does not affect service determination for the Medicaid personal care or waiver personal care assessment.

(3) The information is used for reporting purposes to the legislature and the department.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5940 Are there any exceptions when the respite assessment is not used to determine the number of hours for waiver respite services? The respite assessment is not used to determine waiver respite when you are receiving any of the following:

(1) Voluntary placement program services per chapter 388-826 WAC; or

(2) Companion home services per chapter ((~~388-821~~)) 388-829C WAC.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-8020 What components contained in the individual support plan module determine a service level and/or number of hours? The following components of the individual support plan module determine a service level and/or number of hours:

(1) The foster care rate assessment, as defined in chapter 388-826 WAC((~~, is the only component in the individual support plan module that determines a service level and/or number of hours~~));

(2) The individual and family services algorithm, as defined in WAC 388-828-9000 through 388-828-9140; and

(3) The residential algorithm, as defined in WAC 388-828-10000 through 388-828-10380.

NEW SECTION

WAC 388-828-10000 What is the residential algorithm? The residential algorithm is a formula in the DDD assessment that determines the level of residential services and supports you may expect to receive based on your assessed support needs.

NEW SECTION

WAC 388-828-10020 When is the residential algorithm administered? The residential algorithm must be administered when you are approved to receive one of the following paid services:

(1) Supported living residential services per chapter 388-101 WAC;

(2) Group home residential services per chapter 388-101 WAC;

(3) Group training home services per chapter 388-101 WAC; or

(4) Companion home residential services per chapter 388-829C WAC.

NEW SECTION

WAC 388-828-10040 Where does the residential algorithm obtain your support needs information? The residential algorithm obtains your support needs information from the following components of your current DDD assessment:

(1) The supports intensity scale assessment (SIS) per WAC 388-828-4000 through 388-828-4320;

(2) The DDD protective supervision acuity scale per WAC 388-828-5000 through 388-828-5100;

(3) The DDD behavioral acuity scale per WAC 388-828-5500 through 388-828-5640;

(4) The DDD medical acuity scale per WAC 388-828-5660 through 388-828-5700;

(5) The program and services panel per WAC 388-828-6020;

(6) The DDD seizure acuity scale per WAC 388-828-7040 through 388-828-7080; and

(7) The DDD sleep panel per WAC 388-828-10260.

NEW SECTION

WAC 388-828-10060 How does the residential algorithm identify your residential support needs score? The residential algorithm uses the support needs information from your current DDD assessment to identify the following residential support needs scores:

(1) Community protection program enrollment as defined in WAC 388-828-10100;

(2) Daily support needs score as defined in WAC 388-828-10120;

(3) Mid-frequency support needs score as defined in WAC 388-828-10140;

(4) Behavior support needs score as defined in WAC 388-828-10160;

(5) Medical support needs score as defined in WAC 388-828-10180;

(6) Seizure support needs score as defined in WAC 388-828-10200;

(7) Protective supervision support needs score as defined in WAC 388-828-10220;

(8) Ability to Seek Help score as defined in WAC 388-828-10240;

(9) Nighttime support needs score as defined in WAC 388-828-10260;

(10) Toileting support needs score as defined in WAC 388-828-10280; and

(11) Total critical support time as defined in WAC 388-828-10300 through 388-828-10360.

NEW SECTION

WAC 388-828-10080 What residential service levels of support does DDD use? DDD uses the following residential service levels of support which correspond with your assessed support needs (see WAC 388-828-10060):

Support Need Level	Typical Support Need Characteristics from the DDD Assessment	Expected Level of Support*
Weekly or less Support Level 1	Client requires supervision, training, or physical assistance in areas that typically occur weekly or less often, such as shopping, paying bills, or medical appointments. Client is generally independent in support areas that typically occur daily or every couple of days.	Clients assessed to need this level receive support on a weekly basis or less frequently.
Multiple times per week Support Level 2	Client is able to maintain health and safety for a full day or more at a time AND needs supervision, training, or physical assistance with tasks that typically occur every few days, such as light housekeeping, menu planning, or guidance and support with relationships. Client is generally independent in support areas that must occur daily.	Clients assessed to need this level receive support multiple times per week.
Intermittent daily - Low Support Level 3A	Client is able to maintain health and safety for short periods of time (i.e., hours, but not days) OR needs supervision, training, or physical assistance with activities that typically occur daily, such as bathing, dressing, or taking medications.	Clients assessed to need this level receive daily support.
Intermittent daily -Moderate Support Level 3B	Client requires supervision, training, or physical assistance with multiple tasks that typically occur daily OR requires frequent checks for health and safety or due to disruptions in routines.	Clients assessed to need this level receive daily support and may receive checks during nighttime hours as needed.
Close proximity Support Level 4	Client requires support with a large number of activities that typically occur daily OR is able to maintain health and safety for very short periods of time (i.e., less than 2 hours, if at all) AND requires occasional health and safety checks or support during overnight hours.	Clients assessed to need this level receive supports in close proximity 24 hours per day. Support hours may be shared with neighboring households.
Continuous day and continuous night Support Level 5	Client is generally unable to maintain health and safety OR requires support with a large number of activities that occur daily or almost every day AND requires nighttime staff typically within the household.	Clients assessed to need this level receive support 24 hours per day.
Community Protection Support Level 6	Client is enrolled in the community protection program.	Clients assessed to need this level of support will receive 24 hour per day supervision per community protection program policy.
*Emergency access to residential staff is available to all clients, 24-hours per day, regardless of the residential service level of support the assessment indicates.		

NEW SECTION

WAC 388-828-10100 How does the residential algorithm determine if you are enrolled in the community protection program? The residential algorithm determines that you are enrolled in the community protection program if your current DDD assessment (see WAC 388-828-6020) shows that you are:

(1) On the community protection waiver; or

(2) Considered for the community protection waiver.

NEW SECTION

WAC 388-828-10120 How does the residential algorithm determine your daily support needs score? The residential algorithm determines that you have daily support needs if you meet or exceed all of the qualifying scores for one or more of the following activities from the SIS:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your score for type of support is:	And your score for frequency of support is:	And your daily support time is:
A1: Using the toilet	2 or more	3 or more	1 or more
A4: Eating food	2 or more	3 or more	1 or more

SIS Activity	If your score for type of support is:	And your score for frequency of support is:	And your daily support time is:
A6: Dressing	2 or more	3 or more	1 or more
A7: Bathing, personal hygiene, grooming	2 or more	3 or more	1 or more
A9: Using currently prescribed equipment or treatments	2 or more	3 or more	1 or more
E1: Taking medication	2 or more	3 or more	1 or more
E2: Avoiding health and safety hazards	1 or more	3 or more	1 or more
E4: Ambulating and moving about	3 or more	3 or more	1 or more
Or			
Any combination of 3 of the SIS activities listed above (A1, A4, A6, A7, A9, E1, E2, E4)	1 or more	3 or more	1 or more

NEW SECTION

WAC 388-828-10130 How does DDD define mid-frequency support? DDD defines mid-frequency support as support for selected SIS activities that most people perform every two to four days.

NEW SECTION

WAC 388-828-10140 How does the residential algorithm determine your mid-frequency support needs score? The residential algorithm determines that you have mid-frequency support needs if you meet one of the following three conditions:

(1) You meet or exceed all of the qualifying scores for one or more of the following activities from the SIS assessment:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:
A3: Preparing food	2 or more	2 or more	2 or more
A5: Housekeeping and cleaning	3 or more	3 or more	2 or more
B2: Participating in recreational/leisure activities in community settings	3 or more	2 or more	2 or more
B7: Interacting with community members	3 or more	2 or more	2 or more
G3: Protecting self from exploitation	2 or more	2 or more	2 or more

(2) Or you meet or exceed all of the qualifying scores for four or more of the following activities from the SIS assessment:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)				
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Score if you meet or exceed criteria
A1: Using the toilet	1 or more	2 or more	1 or more	
A3: Preparing food	1 or more	2 or more	1 or more	
A4: Eating food	1 or more	2 or more	1 or more	

SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Score if you meet or exceed criteria
A5: Housekeeping and cleaning	1 or more	2 or more	1 or more	
A6: Dressing	1 or more	2 or more	1 or more	
A7: Bathing, personal hygiene and grooming	1 or more	2 or more	1 or more	
A9: Using currently prescribed equipment and medications	1 or more	2 or more	1 or more	
B2: Participating in recreational/leisure activities in community settings	1 or more	2 or more	1 or more	
B7: Interacting with community members	1 or more	2 or more	1 or more	
E1: Taking medications	1 or more	2 or more	1 or more	
E2: Avoiding health and safety hazards	1 or more	2 or more	1 or more	
E4: Ambulating and moving about	1 or more	2 or more	1 or more	
G3: Protecting self from exploitation	1 or more	2 or more	1 or more	
			Total of all questions where criteria is met or exceed =	Sum of scores entered

(3) Or you meet the qualifying scores for the following SIS activities and your total weekly critical support time score exceeds ten hours:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Your weekly critical support time is:	Enter one time for each qualifying SIS activity
A2: Taking care of clothes (includes laundering)	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B3: Using public services in the community	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B6: Shopping and purchasing foods and services	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	

SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Your weekly critical support time is:	Enter one time for each qualifying SIS activity
F2: Participation in recreational / leisure activities with others	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
F8: Engaging in volunteer work	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
G2: Managing money and personal finances	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
Mid-frequency support needs weekly critical support time total =					Sum of times entered

NEW SECTION

WAC 388-828-10160 How does the residential algorithm determine your behavior support needs score? The residential algorithm uses your behavioral acuity level from the behavioral acuity scale, per WAC 388-828-5500 through 388-828-5640, to determine your behavior support needs score.

NEW SECTION

WAC 388-828-10180 How does the residential algorithm determine your medical support needs score? The residential algorithm uses your medical acuity level from the medical acuity scale, per WAC 388-828-5660 through 388-828-5700, to determine your medical support needs score.

NEW SECTION

WAC 388-828-10200 How does the residential algorithm determine your seizure support needs score? The residential algorithm uses your seizure acuity level from the seizure acuity scale, per WAC 388-828-7040 through 388-828-7080, to determine your seizure support needs score.

NEW SECTION

WAC 388-828-10220 How does the residential algorithm determine your protective supervision support needs score? The residential algorithm uses your adjusted protective supervision score from the protective supervision acuity scale, per WAC 388-828-5000 through 388-828-5100, to determine your protective supervision support needs score.

NEW SECTION

WAC 388-828-10240 How does the residential algorithm determine your ability to seek help score? The residential algorithm determines your ability to seek help score by using your answer to the following question found in the protective supervision acuity scale (WAC 388-828-5060(3))

Protective Supervision Acuity Scale Question:	If your answer to the following question is:	Then your ability to seek help score is:
Is client able to summon help?	Can call someone who is remote	Yes
	Can seek help outside the house, nearby	Yes
	Can seek help inside house	No
	Cannot summon help	No

NEW SECTION

WAC 388-828-10260 How does the residential algorithm determine your nighttime support needs score? The residential algorithm scores the answers to each of the five following questions from the DDD sleep panel in the service level assessment to determine your nighttime support needs:

(1)

DDD Sleep Panel Question	If you answer to the question is:	Then your support needs score for this question is:
Nighttime Assistance*needed? Frequency	0 = None or less than monthly	Less than daily
	1 = At least once a month but not once a week	Less than daily
	2 = At least once a week but not once a day	Less than daily
	3 = At least once a day but not once an hour	Daily or more frequently
	4 = Hourly or more frequently	Daily or more frequently
* Nighttime assistance needed means that the person wakes in the night and requires assistance with toileting, mobility, medical issues, behaviors, guidance through sleepwalking, or other support requiring intervention.		

(2)

DDD Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Nighttime assistance needed? Daily support time	0 = None	Less than (<) 30 minutes
	1 = Less than 30 minutes	Less than (<) 30 minutes
	2 = 30 minutes to less than 2 hours	30 minutes or more
	3 = 2 hours to less than 4 hours	30 minutes or more
	4 = 4 hours or more	30 minutes or more

(3)

DDD Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Can toilet self at night?	Yes	Yes
	No	No

(4)

DDD Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Wakes to toilet most nights?	Yes	Yes
	No	No

(5)

DDD Sleep Panel Question	If your answer to this question is:		Then your support needs score for this question is:
Nighttime behavioral/anxiety issues?	None	Defined as: No behavioral or anxiety issues at night.	No
	Minor	Defined as: You experience low to medium behavioral or anxiety issues when left alone at night, but can manage the behaviors/anxiety with minimal or no intervention.	No
	Moderate	Defined as: You experience intense behavioral or anxiety issues when left alone at night, but you are managing to cope, even if only minimally, by yourself or with remote or occasional onsite help as needed.	No

DDD Sleep Panel Question	If your answer to this question is:		Then your support needs score for this question is:
	Severe	Defined as: You experience intense behavioral or anxiety issues on most nights if left alone and require a support person within your home during all overnight hours in order to maintain yours and/or other's health and safety.	Yes

NEW SECTION

WAC 388-828-10280 How does the residential algorithm determine your toileting support needs score? The residential algorithm adds the three dimensions of the SIS activity "A1: Using the toilet" (see WAC 388-828-4200) to determine your toileting support score. Formula:

Type of support score (0-4)
+
Frequency of support score (0-4)
+
Daily support time score (0-4)
=
Toileting support needs score (0-12)

NEW SECTION

WAC 388-828-10300 How does the residential algorithm calculate your daily critical support time? The residential algorithm uses the following chart to calculate your daily critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
A1: Using the toilet	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
A4: Eating food	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	

SIS activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
A6: Dressing	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
A7: Bathing and taking care of personal hygiene and grooming needs	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
A9: Using currently prescribed equipment or treatment	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	

SIS activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
E1: Taking medications	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
E2: Avoiding health and safety hazards	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
E4: Ambulating and moving about	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
				Daily critical support time score =	Sum of all times entered.

NEW SECTION

WAC 388-828-10320 How does the residential algorithm calculate your mid-frequency critical support time? The residential algorithm uses the following chart to calculate your mid-frequency critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
A1: Using the toilet	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0 or more	0	
		4	0 or more	0	
A3: Preparing food	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
A4: Eating food*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0 or more	0	
		4	0 or more	0	
A5: Housekeeping and cleaning	1 or more	0	0 or more	0	
		1	0 or more	0	

SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
A6: Dressing*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0 or more	0	
		4	0 or more	0	
A7: Bathing and taking care of personal hygiene and grooming needs*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0 or more	0	
		4	0 or more	0	
A9: Using currently prescribed equipment or treatment*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0 or more	0	
		4	0 or more	0	

SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
B2: Participating in recreation/leisure activities in community settings	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B7: Interacting with community members	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
E1: Taking medications*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0 or more	0	
		4	0 or more	0	

SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
E2: Avoiding health and safety hazards*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0 or more	0	
		4	0 or more	0	
E4: Ambulating and moving about*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0 or more	0	
		4	0 or more	0	
G3: Protecting self from exploitation	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
				Mid-frequency critical support time score =	Sum of all times entered

*Daily support activities that have less than daily support needs are added into the mid-frequency critical support time score.

NEW SECTION

WAC 388-828-10340 How does the residential algorithm determine your weekly critical support time? The residential algorithm uses the following chart to calculate your weekly critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)

SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
A2: Taking care of clothes (including laundering)	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B3: Using public services in the community	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B6: Shopping and purchasing goods and services	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	

SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
F2: Participating in recreation and/or leisure activities with others	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
F8: Engaging in volunteer work	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	

SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
G2: Managing money and personal finances	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
				Weekly critical support time score =	Sum of all times entered

NEW SECTION

WAC 388-828-10360 How does the residential algorithm calculate your total critical support time (CST)? The residential algorithm uses the following formula to calculate your total critical support time (CST):

$$\frac{DailyCST}{1} + \frac{MidFreqCST}{3} + \frac{WeeklyCST}{7} = \text{Total CST (hours per day)}$$

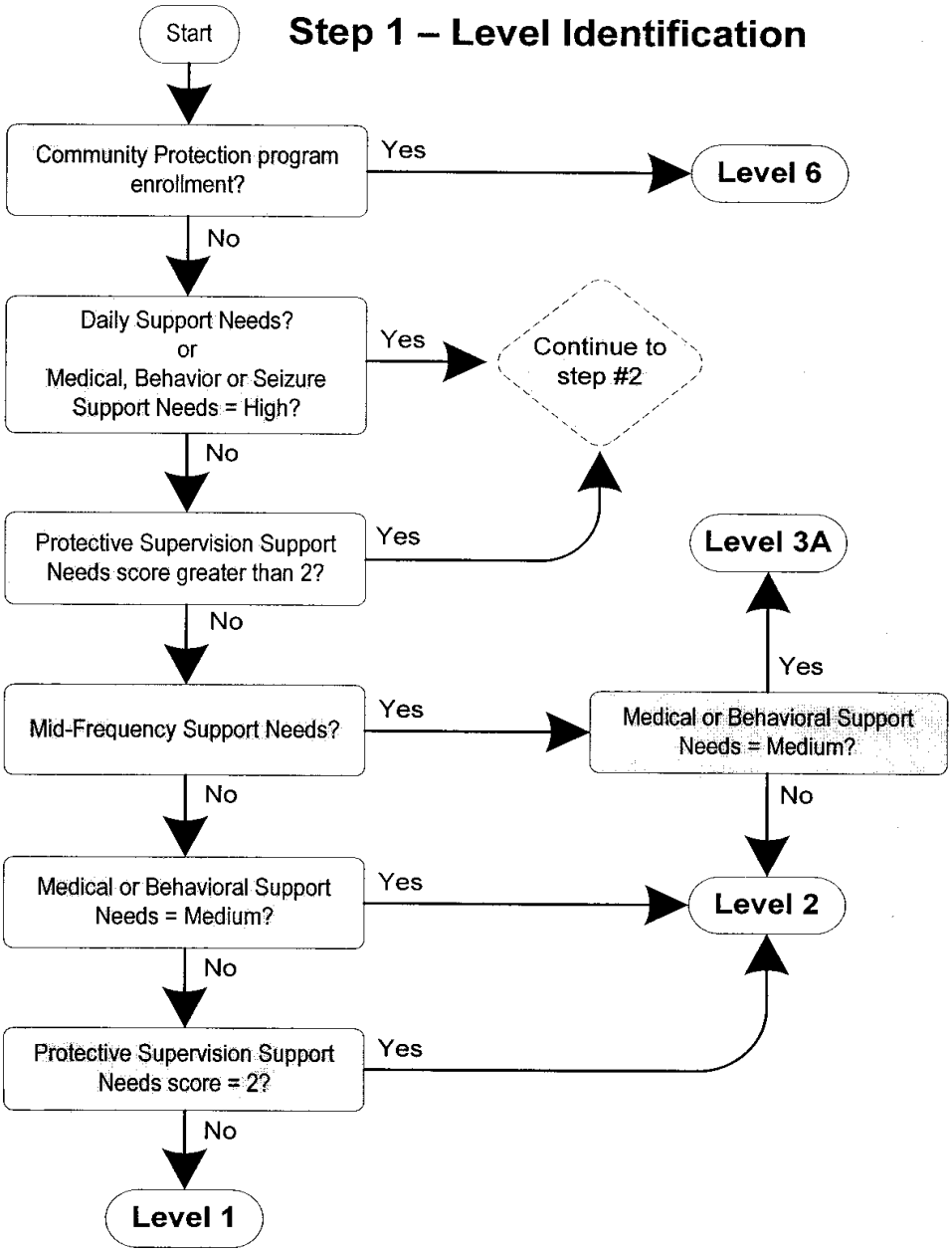
NEW SECTION

WAC 388-828-10380 How does the residential algorithm use your assessed support needs scores to determine your residential service level of support? (1) The residential algorithm uses your assessed support needs scores (as defined in WAC 388-828-10100 through 388-828-10300) to answer questions in a decision tree.

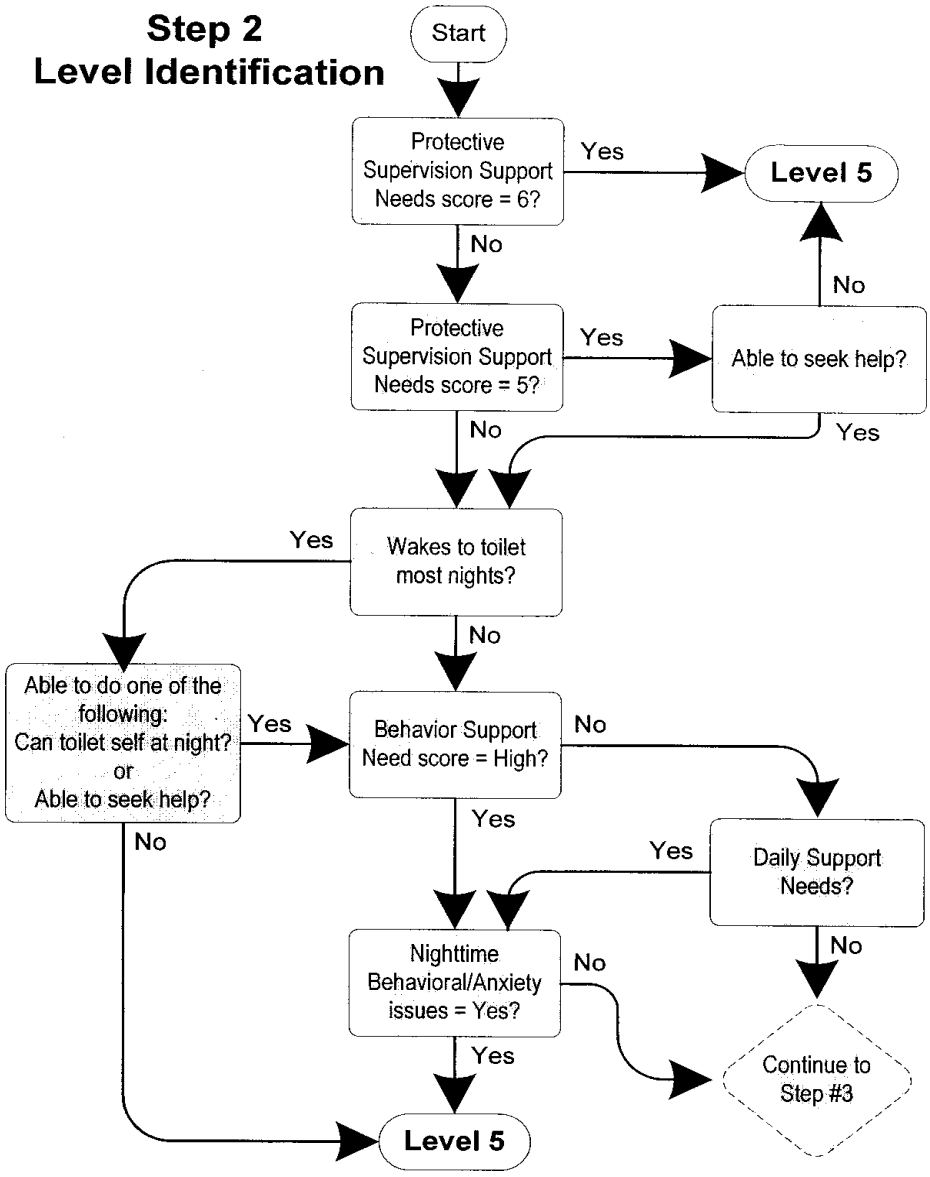
(2) The decision tree path determines your residential service level of support (WAC 388-828-10080).

(3) The decision tree is separated into the following three steps:

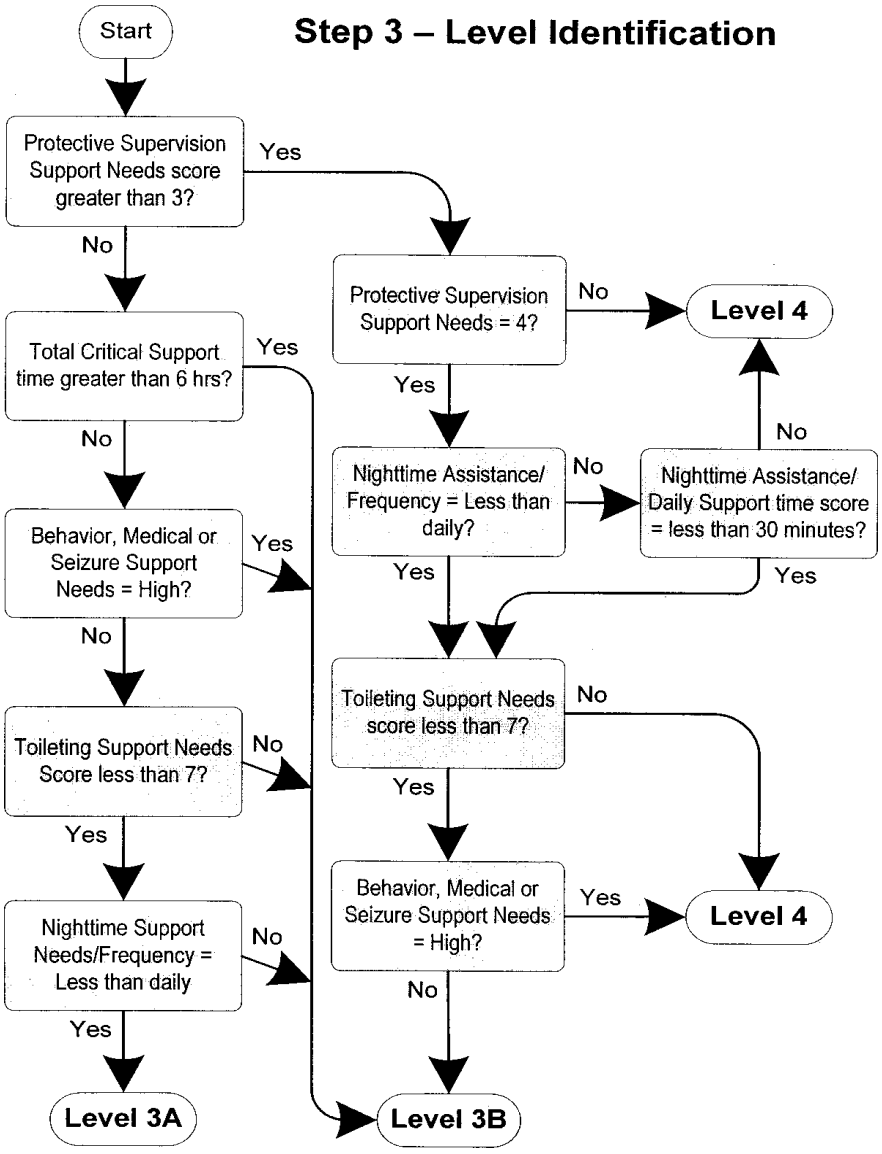
(a) Step 1 determines whether your residential support needs scores meet the criteria for less than daily support or the criteria for community protection.



(b) Step 2 determines whether your residential support needs scores meet the criteria for continuous day and night support.



(c) Step 3 determines whether your residential support needs scores meet the criteria for intermittent support.



WSR 08-14-006
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Securities Division)
[Filed June 19, 2008, 12:43 p.m., effective July 20, 2008]

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

Purpose: The securities division is adopting a new set of rules and is amending its existing rules to address the misleading use of professional designations that state or imply that a person has special expertise, certification, or training in financial planning by investment advisers, broker-dealers and their representatives who do not possess special expertise, certification or training. The securities division is adopting, as a new chapter in its regulations, rules regulating the use of senior designations and certifications that are based on the Model Rule on the Use of Senior-Specific Certifications and Professional Designations adopted by the North American Securities Administrators Association, Inc. on March 20, 2008. In addition, the division is amending the list of dishonest and unethical business practices provisions applicable to investment advisers, broker-dealers and their representatives set forth in WAC 460-24A-220, 460-21B-060 and 460-22B-090 to clarify that the use of any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning is prohibited, including the misleading use of senior designations or certifications.

Citation of Existing Rules Affected by this Order: Amending WAC 460-21B-060, 460-22B-090, and 460-24A-220.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.020 (1)(c), 21.20.110 (1)(g).

Adopted under notice filed as WSR 08-09-127 on April 22, 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 6, Amended 3, 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 6, Amended 3, Repealed 0.

Date Adopted: June 18, 2008.

Scott Jarvis
Director

Chapter 460-25A WAC

USE OF SENIOR DESIGNATIONS

NEW SECTION

WAC 460-25A-010 Purpose of chapter. The rules in this chapter apply to the use of senior certifications and designations.

NEW SECTION

WAC 460-25A-020 Use of Senior-Specific Certifications and Professional Designations. (1) Consistent with the Model Rule on the Use of Senior-Specific Certifications and Professional Designations adopted by the North American Securities Administrators Association, Inc. on March 20, 2008, the use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of RCW 21.20.020 (1)(c) and 21.20.110 (1)(g).

(2) The prohibited use of such certifications or professional designations includes, but is not limited to, the following:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(i) Is primarily engaged in the business of instruction in sales and/or marketing;

(ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

NEW SECTION

WAC 460-25A-030 Designations awarded by recognized designating or certifying organizations. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of WAC 460-25A-020 (2)(d) when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies; or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

NEW SECTION

WAC 460-25A-040 Factors considered to determine whether a term is a senior-specific certification or professional designation. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as a "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

NEW SECTION

WAC 460-25A-050 Exception for certain job titles. (1) There is a rebuttable presumption that a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(a) Indicates seniority or standing within the organization; or

(b) Specifies an individual's area of specialization within the organization.

(2) For purposes of this section, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

NEW SECTION

WAC 460-25A-060 Application of chapter not exclusive. Nothing in this chapter shall limit the director's authority to enforce existing provisions of law.

AMENDATORY SECTION (Amending WSR 02-19-093, filed 9/17/02, effective 10/18/02)

WAC 460-21B-060 Dishonest or unethical business practices—Broker-dealers. The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1)(g) as applied to broker-dealers is hereby defined to include any of the following:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer to purchase, sell or exchange any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he/she is acting or with whom he/she is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(15) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(16) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data,

material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(19) Failing to make bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member;

(20) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

(21) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(22) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(23) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain: Provided, That this subsection shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued;

(24) Failing to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; ((~~or~~))

(25) Any acts or practices enumerated in WAC 460-21B-010; or

(26) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

AMENDATORY SECTION (Amending WSR 02-19-093, filed 9/17/02, effective 10/18/02)

WAC 460-22B-090 Dishonest and unethical business practices-salespersons. The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1)(g) as applied to salespersons, is hereby defined to include any of the following:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(7) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(8) Executing a transaction on behalf of a customer without authorization to do so;

(9) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(10) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(11) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(12) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(13) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program,

design or contrivance, which may include but is not ((~~be~~)) limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(14) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(15) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;

(16) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions ((~~of~~)) in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(17) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(18) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(19) Failing to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; ((~~or~~))

(20) Any act or practice enumerated in WAC 460-21B-010; or

(21) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

The conduct set forth above is not inclusive. Engaging in other conduct such a forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

AMENDATORY SECTION (Amending WSR 99-03-051, filed 1/15/99, effective 2/15/99)

WAC 460-24A-220 Unethical business practices—Investment advisers and federal covered advisers. A person who is an investment adviser or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship ((~~between an investment adviser and its~~)) with the client((~~s~~)) and the circumstances of each case, in accordance with RCW 21.20.020 (1)(c) and 21.20.110 (1)(g) an investment adviser or a federal covered adviser shall not engage in dishonest or unethical business practices, including the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of

loaning funds or the client is an affiliate of the investment adviser.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employees of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Securities Act of Washington, chapter 21.20 RCW, or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative ((~~in~~)) contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder.

(22) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

WSR 08-14-010

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed June 19, 2008, 3:55 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: RCW 34.05.380 (3)(a) such action is required by the state or federal constitution, a statute, or court order. Action is required by chapter 269, Laws of 2007 (SHB 1099).

Purpose: Amending and adding new sections to chapter 246-817 WAC, Credentialing and scope of practice requirements for dental assistants and expanded function dental auxiliaries. The adopted rules provide clear registration requirements for dental assistants and licensing requirements for

expanded function dental auxiliaries (EFDAs). Adopted changes and new sections also provide detailed scope of practice for dental assistants and EFDAs.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-210, 246-817-510, 246-817-520 and 246-817-540; and new sections WAC 246-817-190, 246-817-195, 246-817-200, 246-817-525, and 246-817-545.

Statutory Authority for Adoption: RCW 18.260.120 and 18.32.0365.

Adopted under notice filed as WSR 08-07-099 on March 19, 2008.

Changes Other than Editing from Proposed to Adopted Version: The dental quality assurance commission adopted the rules with the following changes that are nonsubstantive and only clarify the rules:

1. WAC 246-817-510(2) Coronal polishing, removed language that named type of instrument to be used. This change creates a general definition and allows for changes in technology.

2. WAC 246-817-520(30), changed the term anxiolysis to minimal sedation. The change is consistent with other rule language in chapter 246-817 WAC.

3. WAC 246-817-520 (38), (39), (40), combined these three acts into one item subsection (38) and added temporary oral devices to further clarify the three acts. The term night guard was changed to occlusal guard. Occlusal is consistent with other rule language in chapter 246-817 WAC.

4. WAC 246-817-525 [(1)](w), changed the term anxiolysis to minimal sedation. The change is consistent with other rule language in chapter 246-817 WAC.

5. WAC 246-817-525 [(1)](ff), (gg), (hh), combined these three acts into one item subsection (ff) and added temporary oral devices to further clarify the three acts. The term night guard was changed to occlusal guard. Occlusal is consistent with other rule language in chapter 246-817 WAC.

6. WAC 246-817-540(20), the act of using a laser was clarified to meet dental practice needs. The original language was modeled after the medical practice act.

7. WAC 246-817-540(21), removed air polishing from this act. Air polishing is a different act than air abrasion and should not have been included in this act.

8. WAC 246-817-540(22), changed capping to caps. This is a grammatical correction.

9. WAC 246-817-540(23), changed night guards to occlusal guards. Occlusal is consistent with other rule language in chapter 246-817 WAC.

10. WAC 246-817-545(18), the act of using a laser was clarified to meet dental practice needs. The original language was modeled after the medical practice act.

11. WAC 246-817-545(19), removed air polishing from this act. Air polishing is a different act than air abrasion and should not have been included in this act.

12. WAC 246-817-545(20), changed capping to caps. This is a grammatical correction.

13. WAC 246-817-545(21), changed night guards to occlusal guards. Occlusal is consistent with other rule language in chapter 246-817 WAC.

14. WAC 246-817-190 and 246-817-195, both reference WAC 246-817-990 for applicable fees. The correct fee number is WAC 246-817-99005. The administrative change was made to both WAC 246-817-190 and 246-817-195.

A final cost-benefit analysis is available by contacting Jennifer Bressi, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4893, fax (360) 664-9077, e-mail jennifer.bressi@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 5, Amended 4, 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 5, Amended 4, Repealed 0.

Date Adopted: May 1, 2008.

Pramod Sinha, DDS, BDS, MS
Chair

NEW SECTION

WAC 246-817-190 Dental assistant registration. To be eligible for registration as a dental assistant you must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-99005;

(3) Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and

(4) Provide any other information determined by the secretary.

NEW SECTION

WAC 246-817-195 Licensure requirements for expanded function dental auxiliaries (EFDAs). To be eligible for licensure as an EFDA in Washington an applicant must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-99005;

(3) Provide evidence of:

(a) Completion of a dental assisting education program accredited by the Commission on Dental Accreditation (CODA); or

(b) Obtain the Dental Assisting National Board (DANB) certified dental assistant credential, earned through pathway II, which includes:

(i) A minimum of three thousand five hundred hours of experience as a dental assistant within a continuous twenty-four through forty-eight month period;

(ii) Employer-verified knowledge in areas as specified by DANB;

(iii) Passage of DANB certified dental assistant examination; and

(iv) An additional dental assisting review course, which may be provided on-line, in person or through self-study; or

(c) A Washington limited license to practice dental hygiene; or

(d) A Washington full dental hygiene license and completion of a course in taking final impressions affiliated with or provided by a CODA accredited dental assisting program, dental hygiene school or dental school.

(4) Except for applicants qualified under subsection (3)(d) of this section, provide evidence of completing an EFDA education program approved by the commission where training includes:

(a) In a didactic, clinical and laboratory model to the clinically competent level required for close supervision:

(i) In placing and finishing composite restorations on a typodont and on clinical patients; and

(ii) In placing and finishing amalgam restorations on a typodont and on clinical patients; and

(iii) In taking final impressions on a typodont; and

(b) In a didactic, clinical and laboratory model to the clinically competent level required for general supervision:

(i) In performing coronal polish, fluoride treatment, and sealants on a typodont and on clinical patients; and

(ii) In providing patient oral health instructions; and

(iii) In placing, exposing, processing, and mounting dental radiographs; and

(c) The basic curriculum shall require didactic, laboratory, and clinical competency for the following:

(i) Tooth morphology and anatomy;

(ii) Health and safety (current knowledge in dental materials, infection control, ergonomics, mercury safety, handling);

(iii) Placement and completion of an acceptable quality reproduction of restored tooth surfaces—laboratory and clinic only;

(iv) Radiographs (covered in path II)—laboratory and clinic only;

(v) Ethics and professional knowledge of law as it pertains to dentistry, dental hygiene, dental assisting, and EFDA;

(vi) Current practices in infection control;

(vii) Health history alerts;

(viii) Final impression;

(ix) Matrix and wedge;

(x) Rubber dam;

(xi) Acid etch and bonding;

(xii) Occlusion and bite registration;

(xiii) Temporary restorations;

(xiv) Dental emergencies;

(xv) Risk management and charting;

(xvi) Intra-oral anatomy;

(xvii) Pharmacology; and

(xviii) Bases, cements, liners and sealers.

(5) Except for applicants qualified under subsection (3)(d) of this section, attain a passing score on:

(a) A written restorations examination approved by the commission; and

(b) A clinical restorations examination approved by the commission.

(6) Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8.

(7) Provide any other information determined by the secretary.

NEW SECTION

WAC 246-817-200 Licensure without examination for expanded function dental auxiliary (EFDA). To be eligible for a license as an EFDA without examination you must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-990;

(3) Provide evidence of:

(a) A current license in another state with substantially equivalent licensing standards as determined by the commission; or

(b) A Washington full dental hygiene license and completion of a course in taking final impressions affiliated with or provided by a CODA accredited dental assisting program, dental hygiene school or dental school.

(4) Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and

(5) Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-817-210 Expired ((~~license~~)) credential. (1) If the ((~~license~~)) credential has expired for three years or less, the practitioner must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the ((~~license~~)) credential has expired for over three years, the practitioner must:

(a) Comply with the current statutory conditions;

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-510 Definitions for WAC 246-817-501 through 246-817-570. (1) **"Close supervision"** means that a licensed dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. A dentist shall be physically present in the treatment facility while the procedures are performed. Close supervision does not require a dentist to be physically present in the operatory; however, an attending dentist must be in the treatment facility and be capable of responding immediately in the event of an emergency.

(2) **"Coronal polishing"** means a procedure limited to the removal of plaque and stain from exposed tooth surfaces,

utilizing an appropriate ((~~rotary~~)) instrument ((~~with rubber cap or brush~~)) and ((~~a~~)) polishing agent.

This procedure shall not be intended or interpreted as an oral prophylaxis as defined in WAC 246-817-510 a procedure specifically reserved to performance by a licensed dentist or dental hygienist. Coronal polishing may, however, be performed by dental assistants under close supervision as a portion of the oral prophylaxis. In all instances, however, a licensed dentist shall determine that the teeth need to be polished and are free of calculus or other extraneous material prior to performance of coronal polishing by a dental assistant.

(3) **"Debridement at the periodontal surgical site"** means curettage ((~~and/~~))or root planing after reflection of a flap by the supervising dentist. This does not include cutting of osseous tissues.

(4) **"Elevating soft tissues"** is defined as part of a surgical procedure involving the use of the periosteal elevator to raise flaps of soft tissues. Elevating soft tissue is not a separate and distinct procedure in and of itself.

(5) **"General supervision"** means supervision of dental procedures based on examination and diagnosis of the patient and subsequent instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist in the treatment facility during the performance of those procedures.

(6) **"Incising"** is defined as part of the surgical procedure of which the end result is removal of oral tissue. Incising, or the making of an incision, is not a separate and distinct procedure in and of itself.

(7) **"Luxation"** is defined as an integral part of the surgical procedure of which the end result is extraction of a tooth. Luxation is not a distinct procedure in and of itself. It is the dislocation or displacement of a tooth or of the temporomandibular articulation.

(8) **"Oral prophylaxis"** means the preventive dental procedure of scaling and polishing which includes complete removal of calculus, soft deposits, plaque, stains and the smoothing of unattached tooth surfaces. The objective of this treatment shall be creation of an environment in which hard and soft tissues can be maintained in good health by the patient.

(9) **"Periodontal soft tissue curettage"** means the closed removal of tissue lining the periodontal pocket, not involving the reflection of a flap.

(10) **"Root planing"** means the process of instrumentation by which the unattached surfaces of the root are made smooth by the removal of calculus ((~~and/~~))or deposits.

(11) **"Supportive services"** means services that are related to clinical functions in direct relationship to treating a patient.

(12) **"Suturing"** is defined as the readaption of soft tissue by use of stitches as a phase of an oral surgery procedure. Suturing is not a separate and distinct procedure in and of itself.

(13) **"Treatment facility"** means a dental office or connecting suite of offices, dental clinic, room or area with equipment to provide dental treatment, or the immediately adjacent rooms or areas. A treatment facility does not extend to any other area of a building in which the treatment facility is located.

(14) **"((~~Unlicensed~~)) Noncredentialed person"** means a person who is ((~~neither~~)) not a dentist ((~~duly~~)) licensed ((~~pursuant to the provisions of~~)) under chapter 18.32 RCW ((~~nor a~~)); dental hygienist ((~~duly~~)) licensed ((~~pursuant to the provisions of~~)) under chapter 18.29 RCW; expanded function dental auxiliary licensed under chapter 18.260 RCW; or a dental assistant registered under chapter 18.260 RCW.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-520 ((~~Acts~~)) Supportive services that may be performed by ((~~unlicensed persons~~)) registered dental assistants. A dentist may allow ((~~an unlicensed person~~)) registered dental assistants to perform the following ((~~acts~~)) supportive services under the dentist's close supervision:

(1) Oral inspection, with no diagnosis.

(2) Patient education in oral hygiene.

(3) Place and remove the rubber dam.

(4) Hold in place and remove impression materials after the dentist has placed them.

(5) Take impressions solely for diagnostic and opposing models.

(6) Take impressions and wax bites solely for study casts.

(7) Take impressions, fabricate, and deliver bleaching and fluoride trays.

(8) Remove the excess cement after the dentist has placed a permanent or temporary inlay, crown, bridge or appliance, or around orthodontic bands.

((~~(8)~~)) (9) Perform coronal polish.

((~~(9)~~)) (10) Give fluoride treatments.

((~~(10)~~)) (11) Place periodontal packs.

((~~(11)~~)) (12) Remove periodontal packs or sutures.

((~~(12) Placement of~~)) (13) Place a matrix and wedge for a ((~~silver restoration~~)) metallic and nonmetallic direct restorative material after the dentist has prepared the cavity.

((~~(13)~~)) (14) Place a temporary filling (as zinc oxide-eugenol (ZOE)) after diagnosis and examination by the dentist.

((~~(14)~~)) (15) Apply tooth separators as for placement for Class III gold foil.

((~~(15)~~)) (16) Fabricate, place, and remove temporary crowns or temporary bridges.

((~~(16)~~)) (17) Pack and medicate extraction areas.

((~~(17)~~)) (18) Deliver ((~~a~~)) an oral sedative drug ((~~capsule~~)) to patient.

((~~(18)~~)) (19) Place topical anesthetics.

((~~(19) Placement of~~)) (20) Place retraction cord.

((~~(20)~~)) (21) Polish restorations at a subsequent appointment.

((~~(21)~~)) (22) Select denture shade and mold.

((~~(22)~~)) (23) Acid etch.

((~~(23)~~)) (24) Apply sealants.

((~~(24)~~)) (25) Place dental X-ray film and expose and develop the films.

((~~(25)~~)) (26) Take intra-oral and extra-oral photographs.

(((~~(26)~~))) (27) Take health histories.

(((~~(27)~~))) (28) Take and record blood pressure and vital signs.

(((~~(28)~~))) (29) Give preoperative and postoperative instructions.

(((~~(29)~~))) (30) Assist in the administration of inhalation minimal sedation (nitrous oxide) analgesia or sedation((~~, but shall not start the administration of the gases and shall not adjust the flow of the gases unless instructed to do so by the dentist. Patients must never be left unattended while nitrous oxide-oxygen analgesia or sedation is administered to them. The dentist must be present at chairside during the entire administration of nitrous oxide and oxygen analgesia or sedation if any other central nervous system depressant has been given to the patient. This regulation shall not be construed to prevent any person from taking appropriate action in the event of a medical emergency~~)).

(((~~(30)~~))) (31) Select orthodontic bands for size.

(((~~(31)~~))) (32) Place and remove orthodontic separators.

(((~~(32)~~))) (33) Prepare teeth for the bonding or orthodontic appliances.

(((~~(33)~~))) (34) Fit and adjust headgear.

(((~~(34)~~))) (35) Remove fixed orthodontic appliances.

(((~~(35)~~))) (36) Remove and replace archwires and orthodontic wires.

(((~~(36)~~))) (37) Take a facebow transfer for mounting study casts.

(38) Take impressions for temporary oral devices, such as but not limited to space maintainers, orthodontic retainers, and occlusal guards.

NEW SECTION

WAC 246-817-525 Supportive services that may be performed by expanded function dental auxiliaries (EFDAs). (1) A dentist may allow EFDAs to perform the following supportive services under the dentist's close supervision:

(a) Oral inspection, with no diagnosis.

(b) Place and remove the rubber dam.

(c) Take preliminary and final impressions and bite registrations, to include computer assisted design and computer assisted manufacture applications.

(d) Take impressions, fabricate, and deliver bleaching and fluoride trays.

(e) Remove the excess cement after the dentist has placed a permanent or temporary inlay, crown, bridge or appliance, or around orthodontic bands.

(f) Place periodontal packs.

(g) Remove periodontal packs or sutures.

(h) Place a matrix and wedge for a metallic and nonmetallic direct restorative material after the dentist has prepared the cavity.

(i) Place a temporary filling (as zinc oxide-eugenol (ZOE)) after diagnosis and examination by the dentist.

(j) Apply tooth separators as for placement for Class III gold foil.

(k) Fabricate, place, and remove temporary crowns or temporary bridges.

(l) Pack and medicate extraction areas.

(m) Deliver an oral sedative drug to patient.

(n) Place topical anesthetics.

(o) Place retraction cord.

(p) Polish restorations.

(q) Select denture shade and mold.

(r) Acid etch.

(s) Take intra-oral and extra-oral photographs.

(t) Take health histories.

(u) Take and record blood pressure and vital signs.

(v) Give preoperative and postoperative instructions.

(w) Assist in the administration of inhalation minimal sedation (nitrous oxide) analgesia or sedation.

(x) Select orthodontic bands for size.

(y) Place and remove orthodontic separators.

(z) Prepare teeth for the bonding or orthodontic appliances.

(aa) Fit and adjust headgear.

(bb) Remove fixed orthodontic appliances.

(cc) Remove and replace archwires and orthodontic wires.

(dd) Take a facebow transfer for mounting study casts.

(ee) Place and carve direct restorations.

(ff) Take impressions for temporary oral devices, such as but not limited to space maintainers, orthodontic retainers, and occlusal guards.

(2) A dentist may allow EFDAs to perform the following supportive services under the dentist's general supervision:

(a) Perform coronal polishing.

(b) Give fluoride treatments.

(c) Apply sealants.

(d) Place dental X-ray film and exposing and developing the films.

(e) Give patient oral health instructions.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-540 Acts that may not be performed by ((~~unlicensed~~)) registered dental assistants or noncredentialed persons. No dentist shall allow ((~~an unlicensed~~)) registered dental assistants or noncredentialed persons who ((~~is~~)) are in his((~~/~~)) or her employ or ((~~is~~)) are acting under his((~~/~~)) or her supervision or direction to perform any of the following procedures:

(1) Any removal of or addition to the hard or soft natural tissue of the oral cavity.

(2) Any placing of permanent or semi-permanent restorations in natural teeth.

(3) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure.

(4) Any administration of general or ((~~injected~~)) local anesthetic ((~~of any nature in connection with a dental operation~~)), including intravenous sedation.

(5) Any oral prophylaxis, except coronal polishing as a part of oral prophylaxis as defined in WAC 246-817-510 and 246-817-520(8).

(6) Any scaling procedure.

(7) The taking of any impressions of the teeth or jaws, or the relationships of the teeth or jaws, for the purpose of fabri-

cating any intra-oral restoration, appliances, or prosthesis. Not prohibited are the taking of impressions solely for diagnostic and opposing models or taking wax bites solely for study casts.

(8) Intra-orally adjust occlusal of inlays, crowns, and bridges.

(9) Intra-orally finish margins of inlays, crowns, and bridges.

(10) Cement or recement, permanently, any cast restoration or stainless steel crown.

(11) Incise gingiva or other soft tissue.

(12) Elevate soft tissue flap.

(13) Luxate teeth.

(14) Curette to sever epithelial attachment.

(15) Suture.

(16) Establish occlusal vertical dimension for dentures.

(17) Try-in of dentures set in wax.

(18) Insertion and post-insertion adjustments of dentures.

(19) Endodontic treatment—open, extirpate pulp, ream and file canals, establish length of tooth, and fill root canal.

(20) Use of any light or electronic device for invasive procedures.

(21) Intra-oral air abrasion or mechanical etching devices.

(22) Place direct pulp caps.

(23) Fit and adjust occlusal guards.

NEW SECTION

WAC 246-817-545 Acts that may not be performed by expanded function dental auxiliaries (EFDAs) or non-credentialed persons. No dentist shall allow EFDAs or non-credentialed persons who are in his or her employ or are acting under his or her supervision or direction to perform any of the following procedures:

(1) Any removal of or addition to the hard or soft natural tissue of the oral cavity except for placing and carving direct restorations by an EFDA.

(2) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure.

(3) Any administration of general or local anesthetic, including intravenous sedation.

(4) Any oral prophylaxis, except coronal polishing as a part of oral prophylaxis as defined in WAC 246-817-510 and 246-817-520(8).

(5) Any scaling procedure.

(6) Intra-orally adjust occlusal of inlays, crowns, and bridges.

(7) Intra-orally finish margins of inlays, crowns, and bridges.

(8) Cement or recement, permanently, any cast restoration or stainless steel crown.

(9) Incise gingiva or other soft tissue.

(10) Elevate soft tissue flap.

(11) Luxate teeth.

(12) Curette to sever epithelial attachment.

(13) Suture.

(14) Establish occlusal vertical dimension for dentures.

(15) Try-in of dentures set in wax.

(16) Insertion and postinsertion adjustments of dentures.

(17) Endodontic treatment—open, extirpate pulp, ream and file canals, establish length of tooth, and fill root canal.

(18) Use of any light or electronic device for invasive procedures.

(19) Intra-oral air abrasion or mechanical etching devices.

(20) Place direct pulp caps.

(21) Fit and adjust occlusal guards.

WSR 08-14-011

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 07-11—Filed June 19, 2008, 4:09 p.m., effective July 20, 2008]

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

Purpose: The purpose of amending chapter 173-407 WAC is to adopt, as directed in chapter 80.80 RCW, a greenhouse gases emissions performance standard for baseload electric generation and establish criteria to implement and enforce the emissions performance standard. The purpose of amending chapter 173-218 WAC is to protect ground water and public health and safety from contamination due to geologic sequestration of CO_2.

Citation of Existing Rules Affected by this Order: Amending WAC 173-218-030, 173-218-040, 173-218-090, 173-407-010, 173-407-020, 173-407-030, 173-407-040, 173-407-050, 173-407-060, 173-407-070, 173-407-080, and 173-407-090.

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

Adopted under notice filed as WSR 08-06-021 on February 22, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 173-218-030 and 173-218-115 were revised for clarification purposes in response to public comments. An example includes changing "layers" to "formations" throughout the rule.

Chapter 173-407 WAC includes clarifying changes within several sections in response to public comments. Examples include:

- Adding modifying text throughout the document to ensure consistent and correct usage of "baseload electric generation facility or unit" and "baseload electric cogeneration facility or unit."
- Modifying the weighted average formula in WAC 173-407-300 to be mathematically consistent with the text.

The full list of changes to chapters 173-218 and 173-407 WAC are included in Section II of the Concise Explanatory Statement.

A final cost-benefit analysis is available by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail catc461@ecy.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 17, Amended 12, 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.

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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 19, 2008.

Jay J. Manning
Director

Chapter 173-407 WAC

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The provisions of this chapter apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

where:

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

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

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

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

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

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

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

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

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

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

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

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

Fuel	K_n lb/MMBtu
#2 oil	158.16
#4 oil	160.96
#6 oil	166.67
Lignite	((~~328.57~~)) 287.50
Sub-bituminous coal	((~~282.94~~)) 267.22
Bituminous coal, low volatility	((~~312.50~~)) 232.21
Bituminous coal, medium volatility	((~~274.55~~)) 241.60
Bituminous coal, high volatility	((~~306.11~~)) 262.38
Natural gas	117.6
Propane	136.61

Fuel	K_n lb/MMBtu
Butane	139.38
Petroleum coke	242.91
Coal coke	243.1
Other ((~~fossil fuels~~)) fossil fuels	Calculate based on carbon content of the fossil fuel and application of the gross heat content (higher heating value) of the fuel
((~~Nonfossil fuels~~)) Nonfossil fuels	00.00

(2) **Step 2 - Insert the annual CO_2 rate to determine the total carbon dioxide emissions to be mitigated.** The formula below includes specifications that are part of the total carbon dioxide definition:

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

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

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

where:

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

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

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

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

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

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

Mitigation Quantity = Total CO_2 Emissions x 0.2 - Cogeneration Credit

where:

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

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

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

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

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

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

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

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

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

(2) **What are the mitigation plan options?** The options are identified in RCW 80.70.020(3), which states that "*An applicant for a fossil-fueled thermal electric generation facil-*

ity shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:

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

(b) Direct purchase of permanent carbon credits; or

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

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

The initial mitigation rate is **$1.60 per metric ton** of carbon dioxide to be mitigated. If there is a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the cogeneration credit. This rate will change when the energy facility site evaluation council adjusts it through the process described in RCW 80.70.020 (5)(a) and (b). The total payment amount = mitigation rate x mitigation quantity.

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

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

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

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

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

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

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

The applicant controlled mitigation project must be:

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

NEW SECTION

WAC 173-407-110 Definitions to Part II. The following definitions apply when these terms are used in the provisions of Part II and Part III of this chapter.

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

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent. For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale. For purposes of this rule, designed means originally specified by the design engineers for the power plant or generating units (such as simple cycle combustion turbines) installed at a power plant; and intended means allowed for by the current permits for the power plant, recognizing the capability of the installed equipment or intent of the owner or operator of the power plant.

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

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

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

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

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

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

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

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

"Commission" means the Washington utilities and transportation commission.

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

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

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

Examples:

(a) For an integrated gasification combined cycle combustion turbine plant, the EGU consists of all equipment involved in fuel delivery to the unit, as well as all equipment used in the fuel conversion and combustion processes, any installed emission control equipment, and all equipment used for the generation of electricity.

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

(c) An EGU also includes fuel cells fueled by hydrogen produced:

(i) In a reformer utilizing nonrenewable fuels; or

(ii) By a gasifier producing hydrogen from nonrenewable fuels.

"Electricity from unspecified sources" means electricity that is to be delivered in Washington pursuant to a long-term

financial commitment entered into by an electric utility and whose sources or origins of generation and expected average annual deliveries cannot be ascertained with reasonable certainty.

"EFSEC" means the energy facility site evaluation council.

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

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

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

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

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

"Long-term financial commitment" means:

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

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

"MWh" means megawatt-hour electricity.

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

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

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

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

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

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

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

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

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

"Renewable fuel" means:

(a) Landfill gas;

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

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

(d) Gas from sewage treatment facilities.

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

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy; or

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

"Sequential use of energy" means:

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

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

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

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

"Supplementary firing" means an energy input to:

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

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

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

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

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

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

"Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade does not include:

(a) Routine or necessary maintenance;

(b) Installation of emission control equipment;

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

WAC 173-407-130 Emissions performance standard under Part II. (1) Beginning July 1, 2008, all baseload electric generation facilities and units and baseload electric cogeneration facilities and units subject to WAC 173-407-120 are not allowed to emit to the atmosphere regulated greenhouse gases at a rate greater than one thousand one hundred pounds per megawatt-hour, annual average.

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

(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded. For purposes of this section, exclusive use of renewable fuel shall mean at least ninety percent of total annual heat input by a renewable fuel.

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

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

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

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

NEW SECTION

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

(a) Fuels and fuel feed stocks.

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

(ii) Fuel usage and heat content, which are to be monitored, and reported as directed by WAC 173-407-230.

(b) Electrical output in MWh as measured and recorded per WAC 173-407-230.

(c) Regulated greenhouse gases emissions from the baseload electric generation facility or unit as monitored, reported and calculated in WAC 173-407-230.

(d) Adjustments for use of renewable resources. If the owner or operator of a baseload electric generation facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(2) By January 31 of each year, the owner or operator of each baseload electric generation facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Use the data collected under subsection (1) of this section to calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the total MWh produced in that year; and

(b) Submit that calculation and all supporting information to ecology.

NEW SECTION

WAC 173-407-150 Calculating greenhouse gases emissions and determining compliance for baseload electric cogeneration facilities under Part II. (1) To use this section for determining compliance with the greenhouse gases emissions performance standard, a facility must have certified to the Federal Energy Regulatory Commission (FERC) under the provisions of 18 CFR 292 Subpart B as a qualifying cogeneration facility.

(2) The owner or operator of a baseload electric cogeneration facility or unit that must demonstrate compliance with the emissions performance standard in WAC 173-407-130(1) shall collect the following data:

(a) Fuels and fuel feed stocks.

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

(ii) Fuel and fuel feed stocks usage and heat content, which are to be monitored, and reported as directed by WAC 173-407-230.

(b) Electrical output in MWh as measured and recorded per WAC 173-407-230.

(c) All useful thermal energy and useful energy used for nonelectrical generation uses converted to units of megawatts energy equivalent (MWeq) using the conversion factor of 3.413 million British thermal units per megawatt hour (MMBtu/MWh).

(d) Regulated greenhouse gases emissions from the baseload electric cogeneration facility or unit as monitored, reported and calculated in WAC 173-407-230.

(e) Adjustments for use of renewable resources. If the owner or operator of a baseload electric cogeneration facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, the greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(3) Bottoming-cycle cogeneration facilities. The formula to determine compliance of a bottoming-cycle cogeneration facility or unit with the emissions performance standard will be jointly developed by ecology and the facility. To the extent possible, the facility-specific formula must be based on the one for topping-cycle facilities identifying the amount of energy converted to electricity, thermal losses, and energy from the original fuel(s) used to provide useful thermal energy in the industrial process. The formula should be specific to the installed equipment, other thermal energy uses in the facility, and specific operating conditions of the facility.

(4) Topping-cycle cogeneration facilities. To demonstrate compliance with the emissions performance standard, a topping-cycle facility or unit must:

(a) Determine annual electricity produced in MWh.

(b) Determine the annual electrical energy equivalent of the useful thermal energy output in MWh_{eq}.

(c) Determine the annual regulated greenhouse gases emissions produced in pounds.

(5) By January 31 of each year, the owner or operator of each baseload electric cogeneration facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the sum of the MWh and MWh_{eq} produced in that year; and

(b) Submit that calculation and all supporting information to ecology.

NEW SECTION

WAC 173-407-200 Requirement for and timing of sequestration plan or sequestration program submittals under Part II. (1) A sequestration plan for a source that begins sequestration after the start of commercial operation shall be submitted when:

(a) A site certification application is submitted to EFSEC for a new baseload electric generation facility or baseload electric cogeneration facility or new unit at an existing base-

load electric generation facility or baseload electric cogeneration facility;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(c) A notice of construction application is submitted to ecology or a local authority for a new baseload electric generation facility or baseload electric cogeneration facility or unit at a baseload electric generation facility or baseload electric cogeneration facility;

(d) A notice of construction application is submitted to ecology or a local authority for an upgrade to an existing baseload electric generation facility or unit or an existing baseload electric cogeneration facility or unit and the upgrade is not an exempt upgrade;

(e) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit enters a new long-term financial commitment with an electric utility to provide baseload power and the facility or unit does not comply with the emissions performance standard in effect at the time the new long-term financial commitment occurs; or

(f) A qualifying ownership interest change occurs and the facility or unit does not comply with the emissions performance standard in effect at the time the change in ownership occurs.

(2) A sequestration program for a source that begins sequestration on or before the start of commercial operation is required to be submitted when:

(a) A site certification application is submitted to EFSEC for new baseload electric generation facility or unit or baseload electric cogeneration facility or unit;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(c) A notice of construction application is submitted to ecology or a local authority for a new baseload electric generation facility or unit or baseload electric cogeneration facility or unit;

(d) A notice of construction application is submitted to ecology or a local authority for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit and the upgrade is not an exempt upgrade;

(e) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit enters a new long-term financial commitment with an electric utility to provide baseload power if the facility or unit does not comply with the emissions performance standard in effect at the time the new long-term financial commitment occurs; or

(f) A qualifying ownership interest change occurs and the facility does not comply with the emissions performance standard in effect at the time the change in ownership occurs.

NEW SECTION

WAC 173-407-210 Types of permanent sequestration under Part II. Specific requirements for permanent geologic sequestration of greenhouse gases can be found in WAC 173-218-115. Requirements for approval of sequestration plans or sequestration programs for other (nongeologic) types of permanent sequestration containment systems are found in WAC 173-407-220.

NEW SECTION

WAC 173-407-220 Requirements for nongeologic permanent sequestration plans and sequestration programs under Part II. In order to meet the emissions performance standard, all baseload electric generation facilities or individual units that are subject to this rule, and must use nongeologic sequestration of greenhouse gases to meet the emissions performance standard, will submit sequestration plans or sequestration programs for approval to EFSEC or ecology, as appropriate.

(1) Sequestration plans and sequestration programs must include:

(a) Financial requirements. As a condition of plant operation, each owner or operator of a baseload electric generation facility or unit or baseload electric cogeneration facility or unit utilizing nongeologic sequestration as a method to comply with the emissions performance standard in WAC 173-407-130 is required to provide a letter of credit sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan or sequestration program, including construction and operation of necessary equipment, and any other significant costs.

(i) The owner or operator of a proposed sequestration project shall establish a letter of credit to cover all expenses for construction and operation of necessary equipment, and any other significant costs. The cost estimate for the sequestration project shall be revised annually to include any changes in the project and to include cost changes due to inflation.

(ii) Closure and post-closure financial assurances. The owner or operator shall establish a closure and a post-closure letter of credit to cover all closure and post-closure expenses, respectively. The owner or operator must designate ecology or EFSEC, as appropriate, as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure accounts shall cover all costs of closure and post-closure care identified in the closure and post-closure plan. The closure and post-closure cost estimates shall be revised annually to include any changes in the sequestration project and to include cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure accounts is enforceable regardless of whether the requirement is a specific condition of the permit.

(b) The application for approval of a sequestration plan or sequestration program shall include (but is not limited to) the following:

(i) A current site map showing the boundaries of the permanent sequestration project containment system(s) and all areas where greenhouse gases will be stored.

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

(A) The name of the area in which the sequestration will take place;

(B) A description of the facilities and place of greenhouse gases containment system;

(C) A complete site description of the site, including but not limited to the terrain, the geology, the climate (including rain and snowfall expected), any land use restrictions that exist at the time of the application or will be placed upon the site in the future;

(D) The proposed calculated maximum volume of greenhouse gases to be sequestered and areal extent of the location where the greenhouse gases will be stored using a method acceptable to and filed with ecology; and

(E) Evaluation of the quantity of sequestered greenhouse gases that may escape from the containment system at the proposed project.

(iii) A public safety and emergency response plan for the proposed project. The plan shall detail the safety procedures concerning the sequestration project containment system and residential, commercial, and public land use within one mile, or as necessary to identify potential impacts, of the outside boundary of the project area.

(iv) A greenhouse gases loss detection and monitoring plan for all parts of the sequestration project. The approved greenhouse gases loss detection and monitoring plan shall address identification of potential release to the atmosphere.

(v) A detailed schedule of annual benchmarks for sequestration of greenhouse gases.

(vi) Any other information that the department deems necessary to make its determination.

(vii) A closure and post-closure plan.

(c) In order to monitor the effectiveness of the implementation of the sequestration plan or sequestration program, the owner or operator shall submit a detailed monitoring plan that will ensure detection of failure of the sequestration method to place the greenhouse gases into a sequestered state. The monitoring plan will be sufficient to provide reasonable assurance that the sequestration provided by the project meets the definition of permanent sequestration. The monitoring shall continue for the longer of twenty years beyond the end of placement of the greenhouse gases into a sequestration containment system, or twenty years beyond the date upon which it is determined that all of the greenhouse gases have achieved a state at which they are now stably sequestered in that environment.

(d) If the sequestration plan or sequestration program fails to sequester greenhouse gases as provided in the plan or program, the owner or operator of the baseload electric generation facility or unit or baseload electric cogeneration facility or unit is no longer in compliance with the emissions performance standard.

(2) **Public notice and comment.** Ecology must provide public notice and a public comment period before approving or denying any sequestration plan or sequestration program.

(a) Public notice. Public notice shall be made only after all information required by the permitting authority has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include analyses of the effects on the local, state and global environment in the case of failure of the sequestration plan or sequestration program. The sequestration plan or sequestration program must be available for public inspection in at least one location near the proposed project.

(b) Public comment.

(i) The public comment period must be at least thirty days long or may be longer as specified in the public notice.

(ii) The public comment period must extend through the hearing date.

(iii) Ecology shall make no final decision on any sequestration plan or sequestration program until the public comment period has ended and any comments received during the public comment period have been considered.

(c) Public hearings.

(i) Ecology will hold a public hearing within the thirty-day public comment period. Ecology will determine the location, date, and time of the public hearing.

(ii) Ecology must provide at least thirty days prior notice of a hearing on a sequestration plan or sequestration program.

NEW SECTION

WAC 173-407-230 Emissions and electrical production monitoring, recordkeeping and reporting requirements under Part II. (1) Monitoring and recordkeeping requirements. For all baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 173-407-120, the following parameters shall be monitored and reported as explained below:

(a) Electrical output: Electrical output as measured at the point of connection with the local electrical distribution network or transmission line, as appropriate. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard;

(b) Useful thermal energy output: Quantity of energy supplied to nonelectrical production uses determined by monitoring both the energy supplied and the unused energy returned by the thermal energy user or uses. The required monitoring can be accomplished through:

(i) Measurement of the mass, pressure, and temperature of the supply and return streams of the steam or thermal fluid; or

(ii) Use of thermodynamic calculations as approved by ecology.

(iii) Measurements will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard.

(c) Regulated greenhouse gases emissions.

(i) The regulated greenhouse gases emissions are the emissions of regulated greenhouse gases from the main plant exhaust stack and any bypass stacks or flares. For baseload electric generation facilities or units and baseload electric

cogeneration facilities or units utilizing CO_2 controls and sequestration to comply with the greenhouse gases emissions performance standard, direct and fugitive CO_2 emissions from the CO_2 separation and compression process are included.

(ii) Carbon dioxide (CO_2).

(A) For baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 173-407-120, producing 25 MW or more of electricity, CO_2 emissions will be monitored by a continuous emission monitoring system meeting the requirements of 40 CFR Sections 75.10 and 75.13 and 40 CFR Part 75 Appendix F. If allowed by the requirements of 40 CFR Part 72, a facility may estimate CO_2 emissions through fuel carbon content monitoring and methods meeting the requirements of 40 CFR Sections 75.10 and 75.13 and 40 CFR Part 75 Appendix G.

(B) For baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing less than 25 MW of electricity, the owner or operator may either utilize a continuous emission monitoring system meeting the requirements of 40 CFR Sections 75.10 and 75.13 and 40 CFR Part 75 Appendix F, or use fuel carbon content monitoring and methods meeting the requirements of 40 CFR Sections 75.10 and 75.13 and 40 CFR Part 75 Appendix G.

(C) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 CFR Part 75, the baseload electric generation facility operator or operator will substitute data according to the process in 40 CFR Part 75.

(D) Continuous emission monitors for CO_2 will be installed at a location meeting the requirements of 40 CFR Part 75, Appendix A. The CO_2 and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 CFR Part 75, Appendix B.

(iii) Nitrous oxide (N_2O).

(A) For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing 25 MW or more of electricity, N_2O emissions shall be determined as follows:

(I) For the first year of operation, N_2O emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(II) For succeeding years, N_2O emissions will be estimated through use of generating unit specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing N_2O emissions from the stack at varying loads and through at least four separate test periods spaced evenly throughout the first year of commercial operation.

(B) For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing less than 25 MW of electricity, the annual N_2O emissions will be estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(iv) Methane (CH_4).

(A) For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing 25 MW or more of electricity, CH_4 emissions shall be determined as follows:

(I) For the first year of operation, CH_4 emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(II) For succeeding years, CH_4 emissions will be estimated through use of plant specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing CH_4 emissions from the stack at varying loads and through at least four separate test periods spaced evenly through the first year of commercial operation.

(B) For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing less than 25 MW of electricity. The annual CH_4 emissions will be estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(d) Fuel usage and heat content information.

(i) Fossil fuel usage will be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(ii) Renewable energy fuel usage will be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(iii) Heat content of fossil fuels shall be tested at least once per calendar year. The owner or operator of the baseload electric generation facility or unit shall submit a proposed fuel content monitoring program to ecology for ecology approval. Upon request and submission of appropriate documentation of fuel heat content variability, ecology may allow a source to:

(A) Test the heat content of the fossil fuel less often than once per year; or

(B) Utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(iv) Renewable energy fuel heat content will be tested monthly or with a different frequency approved by ecology. A different frequency will be based on the variability of the heat content of the renewable energy fuel.

(A) If the baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 using a mixture of renewable and fossil fuels do not adjust their greenhouse gases emissions by accounting for the heat input from renewable energy fuels,

monitoring of the heat content of the renewable energy fuels is not required.

(B) Upon request and with appropriate documentation, ecology may allow a source to utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(2) Reporting requirements. The results of the monitoring required by this section shall be reported to ecology and the permitting authority annually.

(a) Facilities or units subject to the reporting requirements of 40 CFR Part 75. Annual emissions of CO_2, N_2O and CH_4 will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year. The report may be an Excel™ or CSV format copy of the report submitted to EPA per 40 CFR Part 75 with the emissions for N_2O and CH_4 appended to the report.

(b) For facilities or units not subject to the reporting requirements of 40 CFR Part 75, annual emissions of CO_2, N_2O and CH_4 and supporting information will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year.

NEW SECTION

WAC 173-407-240 Enforcement of the emissions performance standard under Part II. (1) Any power plant subject to WAC 173-407-120 that does not meet the emissions performance standard on schedule shall be subject to enforcement under chapter 70.94 RCW.

Penalties can include:

(a) Financial penalties, which shall be assessed after any year of failure to meet a sequestration benchmark established in the sequestration plan or sequestration program. Each pound of greenhouse gases above the emissions performance standard will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of approval to construct the source or to operate the source.

(2) If a new, modified or upgraded baseload electric generation facility or unit or baseload electric cogeneration facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program will be required to be submitted no later than one hundred fifty calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program is to be submitted to ecology or EFSEC, as appropriate, for approval.

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility operated under an approved sequestration plan or sequestration program shall have the burden of proving to ecology, EFSEC, or the decision-making authority in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration shall be a condition to obtaining relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark shall be reported by January 31 of the year following the year during which the event occurred or as part of the routine sequestration monitoring reports. Upon request by ecology, the owner(s) or operator(s) of the sequestration project source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that the failure to meet a sequestration benchmark could not have been prevented through careful planning and design and if a bypass of equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) Maintenance. Failure to meet a sequestration benchmark due to scheduled maintenance shall be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations.

(a) Enforcement of an ecology or local air agency permitting authority notice of construction will take place under the authority of chapter 70.94 RCW. Enforcement of an ecology approved sequestration plan or sequestration program will be in accordance with this section.

(b) Enforcement of any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.-150.

PART III
LONG-TERM FINANCIAL COMMITMENTS; RELATIONSHIP OF ECOLOGY AND THE WUTC; AND RELATIONSHIP OF ECOLOGY AND THE GOVERNING BOARDS OF CONSUMER-OWNED UTILITIES UNDER CHAPTER 80.80 RCW

NEW SECTION

WAC 173-407-300 Procedures for determining the emissions performance standard of a long-term financial commitment and addressing electricity from unspecified sources and specified sources under Part II. (1) The fol-

lowing procedures are adopted by the department to be utilized by the department under RCW 80.80.060 and to be available to and utilized by the governing boards of consumer-owned utilities pursuant to RCW 80.80.070 when evaluating a potential long-term financial commitment when the long-term financial commitment includes electricity from unspecified sources, electricity from one or more specified sources, and/or provisions to meet load growth with electricity from unspecified and/or specified sources.

(2) For each year of a long-term financial commitment for electric power, the regulated greenhouse gases emissions from specified and unspecified sources of power are not to exceed the emissions performance standard in WAC 173-407-130(1), in effect on the date the long-term contract is executed. The emissions performance standard for a long-term financial commitment for electricity that includes electricity from specified and unspecified sources is calculated using a time-weighted average of all sources of generation and emissions in the years in which they are contributing electricity and emissions in the commitment. Each source's proportional contribution to emissions per each MWh delivered under the contract is added together and summed for each year and divided by the number of years in the term of the commitment.

(3) An extension of an existing long-term financial commitment is treated as a new commitment, not an extension of an existing commitment.

(4) Annual and lifetime calculations of greenhouse gases emissions.

(a) The annual average emissions shall be calculated, for every year of the contract, using the formula in subsection (5) of this section. The calculation of the pounds of greenhouse gases per megawatt-hour is based upon the delivered electricity, including the portion from specified and unspecified sources, of the total portfolio for the year for which the calculation is being made.

(b) The average greenhouse gases emissions per MWh of the power supply portfolio over the life of the long-term financial commitment is compared to the emissions performance standard. The calculation of the pounds of greenhouse gases per MWh is based on the expected annual delivery contracted or expected to be supplied by each specified and unspecified source's portion of the total portfolio of electricity to be provided under the contract for the year for which the calculation is being made.

(c) Default values adopted in this procedure shall be used for each source unless actual emissions are known or specified by the manufacturer. A default greenhouse gases emissions value of an average pulverized coal plant per WAC 173-407-300 (5)(b) shall be used for unspecified sources in the procedure.

(5) The annual average calculation shall be performed using the regulated greenhouse gases emissions factors as follows:

(a) For a specified source, utilize the manufacturer's emissions specification or the measured emission rate for a specified generator. When there is no available information on greenhouse gases emissions from a specified source, utilize the following:

(i) Combined cycle combustion turbines that begin operation after July 1, 2008 = 1,100 lbs/MWh or as updated by rule in 2012 and every five years thereafter.

(ii) Steam turbines using pulverized coal = 2,600 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(iii) Integrated gasification combined cycle turbines = 1,800 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(iv) Simple cycle combustion turbines = 1,800 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(v) Combined cycle combustion turbines that begin operation before July 1, 2008 = 1,100 lbs/MWh.

(b) Electricity from unspecified sources = 2,600 lbs/MWh.

(c) Renewable resources = 0 lbs/MWh.

Example Calculation

$$AE = \frac{(F_1 \times MWh_1) + (F_2 \times MWh_2) + (F_3 MWh_3) + \ldots (F_n \times MWh_n)}{Total\ MWh}$$

where:

AE	=	Average emissions in lb/MWh
F	=	Regulated greenhouse gases emissions factor in lb/MWh
MWh	=	Total MWh purchased or generated by the utility's own generation capacity during the year
Total MWh	=	Total MWh from all source types for that year

NEW SECTION

WAC 173-407-310 Relationship of ecology and Washington utilities and transportation commission under Part II. (1) The Washington utilities and transportation commission (commission) shall consult with ecology to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. Ecology shall report to the commission whether baseload electric generation will comply with the greenhouse gases emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company. (RCW 80.80.060(7).)

(2) Ecology's consultation with the commission:

(a) In assisting the commission to apply the emissions verification procedures adopted, ecology will compare the commission's procedures to the ecology procedures found in WAC 173-407-130, 173-407-140, and 173-407-230.

(b) In consulting with the commission to determine if a long-term financial commitment for baseload electric generation meets the greenhouse gases emissions performance

standard, ecology shall consider whether the commitment meets WAC 173-407-300.

(3) When conducting the consultation and reporting processes, ecology will conclude this process of consultation and assistance within thirty days of receiving all necessary information from the commission to determine compliance.

NEW SECTION

WAC 173-407-320 Relationship of ecology and the governing boards of consumer-owned utilities under Part II. (1) RCW 80.80.070(2) requires the governing boards of consumer-owned utilities to "review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040." During this consultation process, ecology shall assist the governing boards with the utilization of the method in WAC 173-407-300 to determine whether the long-term financial commitment for baseload electric generation meets the emissions performance standard. Ecology's assistance will be limited to that assistance necessary for the board to interpret, clarify or otherwise determine that the proposed long-term financial commitment for baseload electric generation will comply with the emissions performance standard.

(2) RCW 80.80.070(5) also requires the governing boards of consumer-owned utilities to "apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040," and allow them to "request assistance from the department in doing so." The procedures adopted by the department to be utilized by the governing boards are found in WAC 173-407-300. Ecology shall provide consultation or further assistance to the governing boards of a consumer-owned utility to apply such procedures if the governing board makes such a request.

(3) Ecology will conclude this process of consultation and assistance within thirty days unless the governing board requesting the assistance grants additional time.

NEW SECTION

The following section of the Washington Administrative Code is decodified as follows:

Old WAC number	New WAC number
173-407-090	173-407-400

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

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

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

"Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of ground water to wells or springs.

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

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

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

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

"Commercial business" means a type of business activity that may distribute goods or provide services, but does not involve the manufacturing, processing or production of goods.

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

"Contamination" means introduction of a contaminant.

"Dangerous waste" means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in chapter 173-303 WAC, Dangerous waste regulations, the words "dangerous waste" will refer to the full universe of wastes regulated by chapter 173-303 WAC.

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

"Department" means department of ecology.

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

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

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

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

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

"Geologic sequestration of carbon dioxide" means the injection of carbon dioxide into subsurface geologic formations to permanently prevent its release into the atmosphere.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Point of compliance" means the location where the facility must be in compliance with chapter 173-200 WAC Water quality standards for ground waters of the state of

Washington; the top of the aquifer, as near to the source as technically, hydrogeologically, and geographically feasible.

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

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

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

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

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

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

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

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

"Sequestration" means to set apart or remove.

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

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

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

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

"Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Mining of sulfur by Frasch process; or

(c) Solution mining of salts or potash.

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

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

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

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

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

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

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

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

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

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

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

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

(viii) Injection wells used in experimental technologies;

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

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

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

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

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

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

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

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

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

(ii) Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities (see definition of motor vehicle waste disposal wells in WAC 173-218-030). UIC wells receiving storm water located at vehicular repair, maintenance or dismantling

facilities shall not be considered waste disposal wells if the wells are protected from receiving vehicle waste;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **Existing registered** UIC wells that are **not** used for storm water management are already considered to be rule authorized. To verify that current site practices are protective of ground water quality, the owner or operator must complete a survey from the department except for UIC wells used at CERCLA sites. The department will provide written notification that the current site practices are adequate.

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

NEW SECTION

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

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

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

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

(ii) The operator has obtained a permit under the state waste discharge permit program or the waste discharge general permit program establishing enforcement limits which

may exceed the ground water quality criteria, as allowed under WAC 173-200-050 (3)(b)(vi);

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

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

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

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

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

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

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

(b) A current site map showing:

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

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

(iii) Monitoring wells;

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

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

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

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

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

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

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

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

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

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

(A) Rock properties;

(B) Regional pressure gradients;

(C) Structural features; and

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

(v) The evaluation shall also identify:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Identification of release to the atmosphere;

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

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

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

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

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

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

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

(ii) Identification of release to the atmosphere;

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

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

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

(m) A mitigation and remediation plan that identifies trigger thresholds and corrective actions to be taken prior to a containment system failure, if ground water quality in the monitoring zone or above is degraded, or if carbon dioxide is released to the atmosphere. The mitigation and remediation plan must conform to the standards set by subsection (8) of this section and must be approved by the department before injection begins;

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

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

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

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

(r) The payment of the application fee; and

(s) Any other information that the department requires.

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

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

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

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

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

(e) Wells must be logged with appropriate geophysical methods which include: Cement bonding and evaluation logs, and casing inspection logs. In addition a standard suite of wireline logs shall be run on each well to document physical properties of the well, the well integrity and any potential leakage points. The wireline logging suite must include: Gamma ray, resistivity, temperature, formation pressure, both p- and v-sonic and neutron-density. The department may approve alternate logging suites that provide equivalent information or allow the use of improved methods as new technologies are developed.

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

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

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

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

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

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

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

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

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

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

(i) That the geology, including geochemistry, of the site and all proposed plans developed for the permit application will:

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

(B) The caprock and other features of the geologic containment system have the appropriate characteristics to prevent migration of carbon dioxide, other contaminants and nonpotable water.

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

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

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

(b) Pilot studies at potential geologic sequestration project sites shall be encouraged to collect site characteriza-

tion, risk assessment and feasibility information. Permits for pilot studies may be issued without meeting all the Class V geologic sequestration project requirements only when:

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

(ii) Public health and the environment are protected;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Monitoring for geologic sequestration projects shall include:

(i) Characterization of injected fluids;

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

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

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

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

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

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

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

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

(iv) Results from monitoring zone leak detection;

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

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

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

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

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

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

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

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

(5) **Closure.** If all of the project's carbon dioxide injections are interrupted for a period of one hundred eighty consecutive days, the operator shall begin implementing the approved closure plan. Injection project management may include injection and resting periods possibly exceeding one hundred eighty days for individual injection wells. The closure triggers are for the entire injection facility, not individual wells. The department may extend this one hundred eighty day period, in writing, upon the request of the operator, if the operator demonstrates that carbon dioxide injection will resume within a period of not more than two years. The operator shall review and amend the closure plan as needed, at a minimum the plan shall be reviewed at each permit renewal.

Proposed amendments shall be effective only after approved in writing by the department. Approval of proposed amendments shall not delay the commencement of closure activities using the most recent approved closure plan. If the operator fails to begin closure, or is not able to begin closure, the department shall use the financial assurance account to begin closure activities.

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

(7) **Financial assurance.**

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

(i) Bank letters of credit;

(ii) Cash deposits;

(iii) Negotiable securities;

(iv) An assignment of savings account;

(v) A savings certificate in a Washington bank;

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

(vii) Other financial instruments or performance security acceptable to the department.

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

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

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

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

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

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

(b) Address caprock and spill-point leaks;

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

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

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

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

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

WSR 08-14-017

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 20, 2008, 2:46 p.m., effective July 21, 2008]

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

Purpose: WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing, has been revised to recognize that effective July 1, 2008, an exemption certificate continues as long as the seller has a recurring business relationship with the buyer, which is defined by law as making at least one purchase from the vendor within a period of twelve consecutive months.

The sample blank exemption certificate form has been deleted from the rule, and an explanation on how a "farmers' retail sales tax exemption certificate" can be obtained has been added.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.08.02745 and 82.12.02685.

Adopted under notice filed as WSR 08-06-097 on March 5, 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 1, 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 20, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 98-24-069, filed 11/30/98, effective 12/31/98)

WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing. (1) **Introduction.** RCW 82.08.02745 and 82.12.02685 provide a retail sales and use tax exemption for agricultural employee housing ((~~as of March 20, 1996. Chapter 438, Laws of 1997, effective May 20, 1997, amended both RCW 82.08.02745 and 82.12.02685 by limiting the exemptions and allowing additional agricultural employee housing providers to receive the exemption~~)). This ((~~rule~~)) section also explains the exemptions, who is entitled to the exemption and ((~~the required information to be contained in~~)) how to obtain an exemption certificate.

(2) **Definitions.** The following definitions apply throughout this section.

(a) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity (RCW 19.30.010).

(b) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash, the harvest of Christmas trees, and other related activities (RCW 19.30.010).

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps ((~~under RCW 70.54.110~~)). The term also includes but is not limited to mobile homes, travel trailers, mobile bunkhouses, modular homes, fabricated components of a house, and tents. Agricultural employee housing does not include housing regularly provided on a commercial basis to the general public ((~~(chapter 438, Laws of 1997)~~)). Agricultural employee housing does not include housing provided by a housing authority unless at least eighty percent of the occupants are agricultural employees whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided.

(d) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof (RCW 82.04.030).

(e) "Agricultural land" has the same meaning as "agricultural and farm land" in RCW 84.34.020(2).

(3) **Retail sales and use tax exemptions for agricultural employee housing.** RCW 82.08.02745 and 82.12.02685, respectively, provide retail sales tax and use tax exemptions for the purchase, construction, and use of agricultural employee housing. Both exemptions require that agricultural employee housing provided to year-round employees of the agricultural employer must be built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW. Neither of these exemptions apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(a) The retail sales tax does not apply to charges for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing. Also exempt are sales of tangible personal property that becomes an ingredient or component of the buildings or other structures, including but not limited to septic tanks, pump houses, cisterns, and driveways. Examples of ingredients or components include but are not limited to cement, lumber, nails, paint and wallpaper.

(i) Appliances and furniture, including but not limited to stoves, refrigerators, bed frames, lamps and television sets, bolted or strapped directly to the building or structure are considered components of the building or structure. Additionally, appliances and furniture bolted or strapped to another item that is bolted or strapped directly to the building or structure (e.g., a television set bolted to a refrigerator that is strapped to the structure) are considered components of the building or structure.

(ii) Items that are not bolted or strapped directly to the building or structure, or to another item similarly bolted or strapped, do not qualify for this exemption. These items include but are not limited to kitchen utensils, mattresses, bedding, portable heating units, and throw rugs. Stoves, refrigerators, bed frames, lamps and television sets that are not bolted or strapped as discussed in (a)(i) of this subsection,

also do not qualify as components of the building or structure.

(iii) Purchases of labor and transportation charges necessary to move and set up mobile homes, mobile bunkhouses, and other property and component parts as agricultural employee housing are exempt of retail sales tax.

(iv) As a condition for exemption, the seller must take from the buyer an exemption certificate ((~~which substantially contains the information included in the sample form provided in subsection (5) of this section.~~)) completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department of revenue's "Farmers' Retail Sales Tax Exemption Certificate" which can be obtained through the following means:

(A) From the department's internet site at http://dor.wa.gov;

(B) By calling taxpayer services at 1-800-647-7706; or

(C) By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

The seller may accept a legible fax or duplicate copy of an original exemption certificate. In all cases, the exemption certificate must be ((~~accepted in good faith by the seller, and must be~~)) retained by the seller for a period of at least five years. An exemption certificate may be provided for a single ((~~purpose,~~)) purchase or for multiple purchases over a period ((~~not to exceed four years~~)) of time. If the certificate is provided for multiple purchases over a period of time, the certificate is valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c). Failure to comply with the provisions in this section may result in a denial of the exemption and the agricultural employer may be subject to use tax plus penalties and interest. ((~~Copies of the sample form provided in subsection (5) of this section are available through the department of revenue's taxpayer services division (360) 753-7634.~~))

(b) The use tax exemption is available for the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person. Again, appliances and furniture that are bolted or strapped to the actual building or structure are considered components of the building or structure.

(i) The exemption for materials incorporated into buildings or other structures used as agricultural employee housing also applies to persons/consumers constructing these buildings or structures for the federal government or county housing authorities. (See also WAC 458-20-17001 on government contracting.)

(ii) An agricultural employer claiming the exemption who retitles a used mobile home or titles a new mobile home acquired from an out-of-state seller must provide a completed exemption certificate to the department of licensing or its agent to substantiate the exempt nature of the home.

(4) **Requirement to remit payment of tax if agricultural housing fails to continue to satisfy the conditions of exemption.** The agricultural employee housing must be used for at least five consecutive years from the date the housing is approved for occupancy to retain the retail sales and use tax exemption. If this condition is not satisfied, the full amount of tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment.

If at any time agricultural employee housing that is not located on agricultural land ceases to be used as agricultural employee housing, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceased to be used as agricultural employee housing.

((~~(5) **Retail sales tax exemption certificate.** The agricultural employer (buyer) must provide an exemption certificate to a seller to show entitlement to the exemption provided by the statute. This exemption certificate must be substantially in the form shown below.~~

~~AGRICULTURAL EMPLOYEE HOUSING EXEMPTION CERTIFICATE~~

~~This exemption certificate is to be solely for allowable purchases by an agricultural employee housing provider.~~

~~1. Name of Seller:~~

~~2. Name of Agricultural Employee Housing Provider:~~

~~3. Address of Agricultural Employee Housing Provider:~~

~~*Street, City, State* *Zip Code*~~

~~4. Agricultural Employee Housing Providers UBI/Registration No.:~~

~~For the purpose of the exemption, the agricultural employer certifies the following:~~

- The buildings or other structures built on agricultural land will be used as agricultural employee housing for at least five years from the date the housing is approved for occupation otherwise the entire tax becomes due plus interest from the time the housing ceases to be used for agricultural housing until date of payment.
- It is understood that buildings or other structures built on nonagricultural land must conform to the state building code and be provided to year-round agricultural employees otherwise the total tax exempted is due plus interest from the date the housing ceases to be used as agricultural employee housing as defined in WAC 458-20-262(3) until date of payment.
- The buildings or other structures used to house year-round agricultural employees will be constructed to meet the state building code (chapter 19.27 RCW) for single-family or multifamily dwelling.
- The buildings or other structures will not be used as housing for an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.
- The buildings or other structures will not be used to regularly provide housing on a commercial basis to the general public.
- If purchases are being made to construct agricultural employee housing for a housing authority, at least eighty percent of the occupants will be agricultural employees whose adjusted gross income is less than fifty percent of median family income adjusted for household size, for the county where the housing is provided.

Is the agricultural employee housing being built on agricultural land: Yes No

If yes, please provide parcel number:
Print Name of Buyer:

Signature:

Date Signed: Effective Date: through *(Not to exceed 4 years)*

To inquire about the availability of this document in an alternate format for the visually impaired or a language other than English, please call (360) 753-3217. Teletype (TTY) users may call (800) 451-7985. You may also access tax information on our internet home page at http://www.wa.gov/dor/wador.htm))

WSR 08-14-018
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 20, 2008, 2:47 p.m., effective July 21, 2008]

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

Purpose: WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce, explains the retail sales tax exemptions provided in RCW 82.08.0262 and 82.08.0263 for sales to for-hire motor carriers operating in interstate or foreign commerce. This rule has been revised to recognize that effective July 1, 2008, a blanket exemption certificate continues as long as the seller has a recurring business relationship with the buyer, which is defined by law as making at least one purchase from the vendor within a period of twelve consecutive months.

The department has also added a reference to the department's internet site for locating standard revenue forms.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.08.0262 and 82.08.0263.

Adopted under notice filed as WSR 08-06-090 on March 5, 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 1, 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 20, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 97-11-022, filed 5/13/97, effective 6/13/97)

WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce. (1) **Introduction.** This section explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to for hire motor carriers operating in interstate or foreign commerce. Addressed are the requirements which must be met and the documents which must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW 82.12.0254.

(2) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers when delivery is made in Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and 82.08.0263.

(a) **Retailing of interstate transportation equipment.** This B&O tax classification, with respect to sales to motor carriers, applies to retail sales which are exempt from retail sales tax because of the provisions of RCW 82.08.0262 or 82.08.0263. (See RCW 82.04.250.) The retailing of interstate transportation B&O tax applies to the following, but only when the retail sales tax exemption requirements for RCW 82.08.0262 or 82.08.0263 are met:

(i) Sales of motor vehicles, trailers, and component parts thereof;

(ii) The lease of motor vehicles and trailers without operator; and

(iii) Charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof. The term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(b) **Retailing.** The retailing B&O tax applies to the following:

(i) Sales and services as described in (a)(i) through (iii) of this subsection, which do not meet the exemption requirements provided in RCW 82.08.0262 or 82.08.0263;

(ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;

(iii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice; and

(iv) Towing charges.

(c) **Interstate sales deduction for lease income.** Persons who lease motor vehicles and trailers to motor carriers at retail (without operator) may claim an interstate sales deduction for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being used in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce. See also WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.

(3) **Retail sales tax.** RCW 82.08.0262 and 82.08.0263 provide retail sales tax exemptions for certain sales to motor carriers when delivery is made in Washington.

(a) **Sales of motor vehicles and trailers.** RCW 82.08.-0263 provides an exemption from the retail sales tax for sales of motor vehicles and trailers to be used for transporting therein persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons operating the vehicles and trailers under contract with a for hire motor carrier. The for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission or its successor agency to qualify for this exemption. The seller, at the time of the sale, must retain as a part of its records an exemption certificate which must be completed in its entirety. The ((~~exemption certificate~~)) buyers' retail sales tax exemption certificate is available on the department's internet site at http://dor.wa.gov, or can be obtained by contacting the department at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of carrier permit No. . . . ., issued by the Interstate Commerce Commission or its successor agency, and that the vehicle this date purchased from you being a (specify truck or trailer and make) , Motor No.. . . . . , Serial No.. . . . . is entitled to exemption from the Retail Sales Tax under the provisions of RCW 82.08.0263. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated . . . . . .

. . . . . .
(name of carrier-purchaser)

By . . . . . .
(title)

. . . . . .
(address)

The lease of motor vehicles and trailers to motor carriers, without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease. However, where the exemption from retail sales tax has not been met, a retail sales tax exemption may continue to apply to that portion of the lease while the vehicle is being used outside Washington, provided the lessor can substantiate the usage outside Washington. (See WAC 458-20-193.)

(b) **Sales of component parts of motor vehicles and trailers and charges for repairs, etc.** RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency which authorizes transportation by motor vehicle across the boundaries of Washington. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles which are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

(i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in hauling for hire.

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:

(A) Issued for each purchase;

(B) Incorporated in or stamped upon the purchase order; or

(C) In blanket form certifying all future purchases as being exempt from sales tax. ((~~Blanket forms must be renewed every four years.~~)) Blanket exemption certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c).

(iii) ((~~This certificate~~)) The buyers' retail sales tax exemption certificate is available on the department's internet site at http://dor.wa.gov, or can be obtained by contacting the department at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No.. . . . ., issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. The undersigned further certifies that the motor truck or trailer to be constructed, repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of transporting therein persons or property for hire; and that such sale and/or charges are exempt from the Retail Sales Tax under the provisions of RCW 82.08.0262. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated. . . . . .

. . . . . .
(name of carrier-purchaser)

. . . . . .
(address)

By . . . . . .
(title)

(c) **Taxable sales.** The following sales do not qualify for exemption under the provisions of RCW 82.08.0262 or 82.08.0263, and are subject to the retail sales tax when delivery is made in Washington.

(i) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire. This includes items such as tire chains and tarps which are not custom made for a specific vehicle.

(ii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice.

(iii) Towing charges.

WSR 08-14-019
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 20, 2008, 2:49 p.m., effective July 21, 2008]

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

Purpose: WAC 458-20-255 Carbonated beverage syrup tax, has been revised to correct an editing error that occurred when the rule was previously revised to eliminate references to a separate carbonated beverage tax that no longer exists. RCW 82.64.030(3) provides an exemption for wholesale sales of trademarked syrup "to a bottler appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked syrup within a specified geographic territory." The wording in subsection (5)(d), Wholesale sales of trademarked syrup to bottlers, has been changed to match the language in the statute. In the body of the subsection, the wording has changed from "trademarked carbonated beverage" to "trademarked syrup" which matches the heading of the subsection, as well as the statute. References to statutes were also added.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-255 Carbonated beverage syrup tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapter 82.64 RCW.

Adopted under notice filed as WSR 08-07-087 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 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 20, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 06-23-067, filed 11/9/06, effective 12/10/06)

WAC 458-20-255 Carbonated beverage syrup tax. (1) **Introduction.** This section explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state, for use in producing carbonated beverages that are sold at wholesale or retail in this state. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all general administrative provisions apply to the syrup tax.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the syrup tax. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added to carbonated water to produce a carbonated beverage. "Syrup" includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage. "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide. Examples include soft drinks, mineral waters, seltzers, and fruit juices, if carbonated, and frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

(b) **What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. A ruling may be obtained by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this section for information about an exemption or credit that may be applicable to such sales.

(4) **Who is responsible for paying the syrup tax?** This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state.

(a) **Wholesale sales.** A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the

wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this section, the buyer is not obligated to pay or report the syrup tax to the department.

(b) **Retail sales.** A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this section, the buyer is not obligated to pay or report the syrup tax to the department.

(5) **Exemptions:** This subsection provides information on exemptions from the syrup tax.

(a) **Previously taxed syrup.** Any successive sale of previously taxed syrup is exempt. See RCW 82.64.030(1). "Previously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

(i) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(iii) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(iv) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(v) Example. Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this section). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) **Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. See RCW 82.64.030(2). The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

(i) **Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information. A blank exemption certificate can be obtained through the following means:

(A) From the department's internet web site at http://dor.wa.gov;

(B) By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or

(C) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

(ii) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. Buyers providing exemption certificates for exported syrup agree to become liable for tax and any associated penalties and interest on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in ((~~subsection (5)~~))(b)(i) of this ((~~section~~)) subsection. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) **Taxation prohibited under the United States Constitution.** Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt. See RCW 82.64.050(1).

(d) **Wholesale sales of trademarked syrup to bottlers.** Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked ((~~carbonated beverage~~)) syrup within a

specific geographic territory is exempt. See RCW 82.64.030 (3).

(6) **Syrup tax credits.**

(a) **B&O tax credit for syrup tax paid.** Chapter 245, Laws of 2006 (SSB 6533) provided a B&O tax credit effective July 1, 2006. The credit is available to any buyer of syrup using the syrup in making carbonated beverages that are then sold, provided that the syrup tax, imposed by RCW 82.64.-020, has been paid. The tax credit is a percentage of the syrup tax paid.

(i) **How much is the credit?** For syrup purchased July 1, 2006, through June 30, 2007, the B&O tax credit for the buyer is equivalent to twenty-five percent of the syrup tax paid. From July 1, 2007, through June 30, 2008, the allowable credit is fifty percent. From July 1, 2008, through June 30, 2009, the credit is seventy-five percent. As of July 1, 2009, the buyer is entitled to a B&O tax credit of one hundred percent of the syrup tax paid.

(ii) **When can the credit be taken?** The B&O tax credit can be claimed against taxes due for the tax reporting period in which the taxpayer purchased the syrup. The credit cannot exceed the amount of B&O tax due, nor can credit be refunded. Unused credit may be carried over and used for future reporting periods for a maximum of one year. The year starts at the end of the reporting period in which the syrup was purchased and credit was earned. See (b)(ii)(B)(iii) of this subsection for record documentation and retention.

(b) **Credit for syrup tax paid to another state.** Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit may not be applied against any tax paid or owed in this state other than the syrup tax imposed by chapter 82.64 RCW.

(i) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

(ii) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

(A) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and

(B) Measured by the volume of the syrup.

(iii) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

WSR 08-14-021
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 20, 2008, 2:50 p.m., effective July 21, 2008]

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

Purpose: WAC 458-20-107 (Rule 107) explains the statutory requirement that retail sales tax must be separately stated from the selling price on any instrument of sale. Rule 107, as revised, no longer contains the definition of "selling price" as it is not needed for the subject matter of the rule; in addition the definition cited language from a previous version of the statute (RCW 82.08.010). The reference to WAC 458-20-119 Sales of meals, for information regarding the requirement for separately stating retail sales tax by a restaurant with a Class H liquor license has been replaced with a reference to WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses.

The reference to WAC 458-20-257 Warranties and maintenance agreements, has been removed as not necessary.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.08.050.

Adopted under notice filed as WSR 08-08-072 on March 31, 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 20, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 90-10-080, filed 5/2/90, effective 6/2/90)

WAC 458-20-107 ((~~Selling price—~~)) Requirement to separately state sales tax—Advertised prices including sales tax. (1) ((~~**Selling price.**~~)) **Introduction.** Under the provisions of RCW 82.08.020 the retail sales tax is to be collected and paid upon retail sales, measured by the ((")) selling price.((("))

(((~~(a) The term "'Selling price' means the consideration, whether money, credits, rights, or other property except~~

~~trade-in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible personal property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expenses whatsoever paid or accrued and without any deduction on account of losses; . . ." (See RCW 82.08.010(1).)~~

~~(b) Concerning the tax liabilities and benefits in connection with "trade-in" transactions, see WAC 458-20-247.~~

~~(c)~~)) (2) **Retail sales tax separately stated.** RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e., contracts, sales slips, and/or customer billing receipts. (For an exception covering restaurant receipts of Class H liquor licensees, see WAC ((~~458-20-119~~)) 458-20-124.) This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax.

(a) The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between seller and buyer.

((~~However,~~)) (b) Selling prices may be advertised as including the tax or that the seller is paying the tax and, in such cases, the advertised price ((~~shall~~)) must not be considered to be the taxable selling price under certain prescribed conditions explained in this section. Even when prices are advertised as including the sales tax, the actual sales invoices, receipts, contracts, or billing documents must list the retail sales tax as a separate charge. Failure to comply with this requirement may result in the retail sales tax due and payable to the state being computed on the gross amount charged even if it is claimed to already include all taxes due.

((~~(2)~~)) (3) **Advertising prices including tax.**

(a) The law provides that a seller may advertise prices as including the sales tax or that the seller is paying the sales tax under the following conditions:

(i) The words "tax included" are stated immediately following the advertised price in print size at least half as large as the advertised price print size, unless the advertised price is one in a listed series;

(ii) When advertised prices are listed in series, the words "tax included in all prices" are placed conspicuously at the head of the list in the same print size as the list;

(iii) If the price is advertised as including tax, the price listed on any price tag ((~~shall~~)) must be shown in the same way; and

(iv) All advertised prices and the words "tax included" are stated in the same medium, whether oral or visual, and if oral, in substantially the same inflection and volume.

(b) If these conditions are satisfied, as applicable, then price lists, reader boards, menus, and other price information mediums need not reflect the item price and separately show the actual amount of sales tax being collected on any or all items.

(c) The scope and intent of the foregoing is that buyers have the right to know whether retail sales tax is being included in advertised prices or not and that the tax is not to be used for the competitive advantage or disadvantage of retail sellers.

(~~(3) See: WAC 458-20-257 for warranties (guarantees) and maintenance agreements (service contracts).~~))

WSR 08-14-022
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 20, 2008, 2:53 p.m., effective July 21, 2008]

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

Purpose: WAC 458-20-238 (Rule 238) Sales of watercraft to nonresidents, explains the tax consequences and tax exemption requirements for sales of watercraft to nonresidents, and the use tax reporting requirements of nonresidents bringing watercraft into Washington. Rule 238 has been amended to incorporate provisions of chapter 22, Laws of 2007 (SHB 1002). This legislation provides nonresident individuals with a sales tax/one-year use tax exemption for vessels 30 feet and longer. The nonresident individual must purchase a $500 or $800 "use permit" based on the size of the vessel, either at the time of purchase in Washington or within fourteen days of bringing the vessel into Washington. The permits are sold by Washington licensed vessel dealers, who will remit the permit fees to the department of revenue.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.08.0266 and 82.08.02665.

Adopted under notice filed as WSR 08-08-073 on March 31, 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 1, 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 20, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 00-23-003, filed 11/1/00, effective 12/2/00)

WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents. (1) **Introduction.** This ((~~rule~~)) section explains the retail sales tax exemption provided by RCW 82.08.0266 for sales to nonresidents of watercraft requiring United States Coast Guard documentation or state registration((~~. It also explains~~)); the retail sales tax exemption provided by RCW 82.08.02665 for sales of watercraft to residents of foreign countries; and the retail sales and use tax exemptions contained in Substitute House Bill No. 1002 (SHB 1002), chapter 22, Laws of 2007 relating to sales or use of vessels thirty feet or longer to or by nonresident individuals. These statutes provide the exclusive authority for granting a retail sales tax exemption for sales of such watercraft when delivery is made within Washington. This ((~~rule~~)) section explains the requirements to be met, and the documents which must be preserved, to substantiate a claim of exemption. It also discusses use tax exemptions for nonresidents bringing watercraft into Washington for enjoyment and/or repair.

This ((~~rule~~)) section primarily deals with the retail sales and use taxes where delivery takes place or vessel is used in Washington. Sellers should refer to WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property if they deliver the vessel to the purchaser at an out-of-state location. Purchasers also should be aware that there is a watercraft excise tax which may apply to the purchase or use of watercraft in Washington. (See chapter 82.49 RCW et seq.) In addition, purchasers of commercial vessels may have annual liability for personal property tax. (((~~See RCW 84.08.065.~~)))

(2) **Business and occupation (B&O) tax.** Retailing B&O tax is due on all sales of watercraft to consumers if delivery is made within the state of Washington, even though the sale may qualify for an exemption from the retail sales tax. If the seller ((~~is~~)) also ((~~the manufacturer of~~)) manufactures the vessel in Washington, the seller must report under both the manufacturing and wholesaling or retailing classifications of the B&O tax, and claim a multiple activities tax credit (MATC). Manufacturers should also refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax credits).

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of watercraft to consumers when delivery is made within the state of Washington. Under certain conditions, however, retail sales tax exemptions are available for sales of watercraft to nonresidents of Washington, even when delivery is made within Washington.

(a) **Exemptions for sales of watercraft, to nonresidents, requiring United States Coast Guard documentation and certain sales of vessels to residents of foreign countries.** RCW 82.08.0266 provides an exemption from the retail sales tax for sales of watercraft to residents of states other than Washington for use outside this state, even when delivery is made within Washington. The exemption provided by RCW 82.08.0266 is limited to sales of watercraft requiring United States Coast Guard documentation or registration with the state in which the vessel will be principally used, but only when that state has assumed the registration and numbering function under the Federal Boating Act of 1958.

RCW 82.08.02665 provides a retail sales tax exemption for sales of vessels to residents of foreign countries for use outside this state, even when delivery is made in Washington. This exemption is not limited to the types of watercraft qualifying for the exemption provided by RCW 82.08.0266. The term "vessel," for the purposes of RCW 82.08.02665, means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

((~~(b)~~)) (i) **Exemption requirements.** The following requirements must be met to perfect any claim for exemption under RCW 82.08.0266 and 82.08.02665:

((~~(i)~~)) (A) The watercraft must leave Washington waters within forty-five days of delivery;

((~~(ii)~~)) (B) The seller must examine acceptable proof that the buyer is a resident of another state or a foreign country; and

((~~(iii)~~)) (C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the information as it relates to the exemption provided by RCW 82.08.0266 and 82.08.02665. The certificate must be completed in its entirety, and retained by the seller. A blank certificate can be obtained via the internet at http://dor.wa.gov, by facsimile by calling Fast Fax at (360) 786-6116 or (800) 647-7706 (using menu options), or by writing to: Taxpayer Services, ((~~Washington State~~)) Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478. The seller should not accept an exemption certificate if the seller becomes aware of any information prior to the completion of the sale which is inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application.

((~~(c)~~)) (ii) **Component parts and repairs.** The exemptions provided by RCW 82.08.0266 and 82.08.02665 apply only to sales of watercraft. For the purposes of these exemptions, the term "watercraft" includes component parts which are installed in or on the watercraft prior to delivery to and acceptance by the buyer, but only when these parts are sold by the seller of the watercraft. "Component part" means tangible personal property which is attached to and used as an integral part of the operation of the watercraft, even if the item is not required mechanically for the operation of the watercraft. Component parts include, but are not necessarily limited to, motors, navigational equipment, radios, depthfinders, and winches, whether themselves permanently attached to the watercraft or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the watercraft in a definite and secure manner.

These exemptions do not extend to the sale of boat trailers, repair parts, or repair labor. These exemptions also do not extend to a separate seller of unattached component parts, even though these parts may be manufactured specifically for the watercraft and/or permanently installed in or on the watercraft prior to the watercraft being delivered to and accepted by the buyer.

(b) **Exemption for vessels thirty feet or longer.** Effective July 1, 2007, SHB 1002, chapter 22, Laws of 2007, a retail sales tax exemption is available for sales of vessels thirty feet or longer to individuals who are nonresidents of Washington.

(i) **Exemption requirements.** The following requirements must be met in order for an individual to claim this exemption:

(A) The individual must provide valid proof of nonresidency at the time of purchase;

(B) The vessel purchased must measure at least thirty feet in length; and

(C) The individual must obtain a valid use permit from the vessel dealer authorized to sell use permits.

(ii) **Valid proof of nonresidency.** An individual may prove nonresidency with identification that:

(A) Includes a photograph of the individual;

(B) Is issued by the jurisdiction in which the individual claims residency;

(C) Includes the individual's residential address; and

(D) Is issued for the purpose of establishing an individual's residency in a jurisdiction outside Washington state.

Acceptable identification includes a valid out-of-state driver's license.

(iii) **Use permits.** A use permit is not renewable and costs five hundred dollars for vessels thirty to fifty feet and eight hundred dollars for vessels greater than fifty feet in length. The permit includes an affidavit (affidavit) from the buyer declaring that the purchased vessel will be used in a manner consistent with this exemption. The use permit also includes an adhesive sticker (sticker) that must be displayed on the purchased vessel and which is valid for twelve consecutive months from the date of purchase. The sticker serves as proof of a validly issued use permit. Vessel dealers are not obligated to issue use permits to any individual. Buyers must elect this exemption irrevocably and may not elect additional exemptions under RCW 82.08.0266 and 82.08.02665 for the same period. Individuals must wait twenty-four months from the expiration of a use permit before claiming the use tax exemption for their vessel pursuant to RCW 82.12.0251.

(iv) **What are the obligations of vessel dealers?** A vessel dealer who elects to issue a use permit under this section has the following obligations:

(A) Examine and determine, in good faith, whether the individual has valid proof of nonresidency.

(B) Use department of revenue's (department) approved use permits. Obtain department's use permits from: Taxpayer Account Administration Division, Department of Revenue, P.O. Box 47476, Olympia, Washington 98504-7476, Telephone 360-902-7065.

(C) Retain copies of issued use permits in his or her records for the statutory period. For information about the statutory period, please refer to WAC 458-20-254 Recordkeeping.

(D) Provide copies of issued use permits to the department on a quarterly basis. Copies of issued permits must be sent to: Taxpayer Account Administration Division, Department of Revenue, P.O. Box 47476, Olympia, Washington 98504-7476.

(E) Collect, remit and report use permit fees. Dealers report use permit fees on their excise tax returns and remit in accordance with RCW 82.32.045.

(F) Electronically file all returns, as described in RCW 82.32.050, with the department. Nonelectronically filed returns are not deemed filed unless approved by the department for good cause shown.

(v) **Liability for retail sales and use tax.**

(A) If an individual obtains a use permit for a vessel under this section and uses that vessel in Washington after the use permit expires, the individual will be liable for retail sales tax on the original selling price of that vessel (along with interest retroactive to the date of purchase at the rate provided in RCW 82.32.050).

(B) Vessel dealers will be personally liable for retail sales tax if the dealer either does not collect retail sales tax when making sales to individuals without valid identification establishing nonresidency, or fails to maintain records of sales as provided under (b)(iv) of this subsection.

(4) **Deferred retail sales or use tax.** If Washington retail sales tax has not been paid, persons using watercraft on Washington waters are required to report and remit to the department such sales tax (commonly referred to as deferred retail sales tax) or use tax, unless the use is specifically exempt by law. A credit against Washington's use tax is allowed for retail sales or use tax previously paid by the user or the user's bailor or donor with respect to the property to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of the property in Washington. RCW 82.12.035. See also WAC 458-20-178 Use tax.

(a) Tax is due on the use by any nonresident of watercraft purchased from a Washington vendor and first used within this state for more than forty-five days if retail sales or use tax has not been paid by the user. Tax is due notwithstanding the watercraft qualified for retail sales tax exemption at the time of purchase.

(b) Use tax does not apply to the temporary use or enjoyment of watercraft brought into this state by nonresidents while temporarily within this state.

((~~Except as otherwise provided in this rule~~)) (i) For watercraft owned by nonresident entities (i.e., corporations, limited liability companies, trusts, partnerships, etc.), it will be presumed that use within Washington exceeding sixty days in any twelve-month period is more than temporary use and use tax is due, except as otherwise provided in this section.

((~~Effective January 1, 1998,~~)) (ii) Nonresident individuals (whether residents of other states or foreign countries) may temporarily bring watercraft into this state for their use or enjoyment without incurring liability for the use tax if such use does not exceed a total of six months in any twelve-month period. To qualify for this six-month exemption period, the watercraft must be issued a valid number under federal law or by an approved authority of the state of principal operation, be documented under the laws of a foreign country, or have a valid United States customs service cruising license. The watercraft must also satisfy all identification requirements under RCW 88.02.030 for any period after the

first sixty days. Failure to meet the applicable documentation and identification requirements will result in a loss of the exemption. ((~~Prior to January 1, 1998, the temporary use exemption period was limited to sixty days for all nonresident users of watercraft.~~))

(c) Watercraft owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction are exempt from the use tax if removed from this state within sixty days. If repair, alteration, or reconstruction cannot be completed within this period, the exemption may be extended by filing with the department's ((~~of revenue~~)) compliance division an affidavit as required by RCW 88.02.030 verifying the vessel is located upon the waters of this state exclusively for repair, alteration, reconstruction, or testing. This document, titled "Nonresident Out-of-State Vessel Repair Affidavit," is effective for sixty days. If additional extensions of the exemption period are needed, additional affidavits must be sent to the department. Failure to file this affidavit can ((~~also~~)) result in requiring that the vessel be registered in Washington and subject to the use tax.

(d) **Use tax exemption for vessels thirty feet or longer.** Effective July 1, 2007, SHB 1002, chapter 22, Laws of 2007 exempts from use tax the purchase of vessels thirty feet or longer used in Washington by nonresident individuals. This exemption is available to nonresident individuals in any of the three following situations: The vessel is purchased from a vessel dealer and a use permit is obtained in accordance with subsection (3)(b) of this section; the vessel is purchased in Washington from someone other than a vessel dealer and within fourteen days of purchase the nonresident individual obtains a use permit under this subsection; the vessel is acquired outside Washington and the nonresident individual, within fourteen days of bringing the vessel into Washington, buys a use permit under this subsection. Any vessel dealer that issues permits under subsection (3)(b) of this section must also issue permits under this subsection.

(i) **What are the obligations of vessel dealers?** Vessel dealers that issue use permits have the same obligations as those described in subsection (3)(b)(iv) of this section. Vessel dealers may not issue use permits under this subsection where a nonresident individual has already obtained a use permit under subsection (3)(b) of this section.

(ii) **Valid proof of nonresidency.** Nonresident individuals must meet the same identification requirements described in subsection (3)(b)(ii) of this section.

(iii) **Use permits.** The use permit is not renewable and costs five hundred dollars for vessels thirty to fifty feet and eight hundred dollars for vessels greater than fifty feet in length. This use permit must be displayed on the vessel and is valid for twelve consecutive months from the date of issuance. Nonresident individuals must obtain a use permit from a vessel dealer; however, vessel dealers are not obligated to issue these use permits. Nonresident individuals must elect this exemption irrevocably and may not elect exemption under RCW 82.08.0266 and 82.08.02665 for the same period. The nonresident individual must wait twenty-four consecutive months from the expiration of a use permit before claiming exemption for a vessel under RCW 82.12.0251.

(iv) **Liability for use tax.**

(A) If a nonresident individual continues to use a vessel in Washington after his or her use permit expires, that individual shall be liable for use tax under RCW 82.12.020. Liability for use tax will be based upon the value of the vessel at the time it was either purchased or first brought into Washington. Interest will accrue retroactive to the date of purchase or first use in Washington at a rate set by RCW 82.32.050.

(B) Vessel dealers are personally liable for use tax where a dealer either issues a use permit to a nonresident individual who does not hold valid proof of nonresidency, or fails to maintain records for each use permit issued showing the type of identification accepted, the identification numbers, and expiration date.

(5) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances. In all examples, retailing B&O tax is due from the seller for all sales of watercraft and parts, and all charges for repair parts and labor.

(a) Mr. Kelley, a resident of California, pilots his cabin cruiser which is registered in that state into Puget Sound for his enjoyment. On the sixtieth day of his stay, Mr. Kelley obtains an identification document for the cabin cruiser under RCW 88.02.030 ((~~for the boat~~)) from the department of licensing. To further extend his stay in Washington waters, he applies for a second identification document within the prescribed period. In the middle of his fifth month on Puget Sound, Mr. Kelley departs and returns the craft to its home port in California. The stay would not subject Mr. Kelley to use tax. On the other hand, if Mr. Kelley were a resident of Vancouver, British Columbia, bringing a vessel registered in Canada, he would also have to timely obtain and display the appropriate identification document required by RCW 88.02.030 to allow his temporary use of the watercraft in Washington.

(b) Company A sells a yacht to John Doe, an Oregon resident, who takes delivery in Washington. The yacht is required to be registered by the state of Oregon. The vessel is removed from Washington waters within forty-five days of delivery. Company A examines a driver's license confirming John Doe to be an Oregon resident, and records this information in the sales file. Company A does not complete and retain the required exemption certificate.

The sale of the yacht is subject to the retail sales tax. The exclusive authority for granting a retail sales tax exemption for this sale is provided by RCW 82.08.0266. Completion of an exemption certificate is a statutorily imposed condition for obtaining this exemption. Company A has not satisfied the conditions and requirements necessary to grant an exemption under this statute. The exemption provisions under RCW 82.08.0273 for sales to nonresidents of states having less than three percent retail sales tax can not be used for purchases of vessels which require United States Coast Guard documentation, or registration in the state of principal use. If the exemption certificate had been properly completed at the time of sale, this sale would have qualified for retail sales tax exemption.

(c) Mr. Jones, a California resident, contracts Company B to manufacture a pleasure yacht. Mr. Jones purchases a boat motor from Company Y with instructions that delivery be made to Company B for installation on the yacht. The yacht is required to be registered with the state of California, which has assumed the registration and numbering function under the Federal Boating Act of 1958. Company B examines Mr. Jones' driver's license to verify Mr. Jones is a nonresident of Washington, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington, and Mr. Jones removes the vessel from Washington waters within forty-five days of delivery.

The sale of the yacht by Company B to Mr. Jones is not subject to the retail sales tax, as the requirements and conditions for exemption have been satisfied. Retail sales tax does, however, apply to the sale of the motor by Company Y to Mr. Jones. The exemption provided by RCW 82.08.0266 does not extend to a separate seller of unattached component parts, even though the parts are installed in the watercraft prior to delivery.

(d) Mr. Smith, a resident of British Columbia, Canada, brings his yacht into Washington with the intention of temporarily using the yacht for personal enjoyment. Mr. Smith obtains the required identification document issued by the department of licensing. After four months of personal use, the yacht experiences mechanical difficulty. The yacht is taken to a repair facility and due to the extensive nature of the damage the yacht remains at the repair facility for six months. As explained in subsection (4)(c) ((~~above~~)) of this section, Mr. Smith makes a timely filing of each required "Nonresident Out-of-State Vessel Repair Affidavit." An employee of the repair facility is on board the yacht during all testing, and there is no personal use by Mr. Smith during this period. Upon completion of the repairs and testing, Mr. Smith takes delivery at the repair facility.

Mr. Smith may personally use the yacht in Washington waters for up to two months after taking delivery of the repaired yacht. He will not incur liability for use tax because the instate use of the yacht for personal enjoyment will not exceed six months in a twelve-month period. The time the yacht is at the repair facility exclusively for repair does not count against the period of time Mr. Smith is considered to be "temporarily" using the yacht in Washington for personal enjoyment. Retail sales tax is due, and must be paid, however, on all charges for repair parts and labor. The exemption from sales tax for purchases of vessels does not extend to repairs.

WSR 08-14-023
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 20, 2008, 2:54 p.m., effective July 21, 2008]

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

Purpose: The rules establish new hospital construction requirements. This is accomplished through adopting most of the 2006 edition of the Guidelines for Design and Construction of Health Care Facilities as published by the American Institute of Architects, 1735 New York Avenue N.W., Washington, D.C. 2006 [20006]. Some amendments to the guidelines were adopted in WAC 246-320-600.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-320-515, 246-320-525, 246-320-535, 246-320-545, 246-320-555, 246-320-565, 246-320-575, 246-320-585, 246-320-595, 246-320-605, 246-320-625, 246-320-635, 246-320-645, 246-320-655, 246-320-665, 246-320-675, 246-320-685, 246-320-695, 246-320-705, 246-320-715, 246-320-725, 246-320-735, 246-320-745, 246-320-755, 246-320-765, 246-320-775, 246-320-785, 246-320-795, 246-320-805, 246-320-815 and 246-320-99902; and amending WAC 246-320-010, 246-320-165, 246-320-265, 246-320-365, 246-320-405, 246-320-500, 246-320-505, and 246-320-990.

Statutory Authority for Adoption: Chapter 70.41 RCW.

Adopted under notice filed as WSR 08-05-013 on February 11, 2008.

Changes Other than Editing from Proposed to Adopted Version: Initially, the proposed rules included an amendment to the AIA capacity guidelines stating "In new construction, the maximum number of beds per room shall be two." The department considered public comments after the first public hearing September 7, 2007, and decided to withdraw this amendment. Additional comments were received at the March 25, 2008, hearing. The department concluded to return to the amendment.

In addition, the department clarified in WAC 246-320-500 (3)(a) that the amendments to the 2006 edition of the Guidelines for Design and Construction of Health Care Facilities are established in WAC 246-320-600.

A final cost-benefit analysis is available by contacting John Hilger, 310 Israel Road S.E., Tumwater, WA 98501-7852, phone (360) 236-2929, fax (360) 236-2901, e-mail john.hilger@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 1, Amended 8, Repealed 31.

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 8, Repealed 31.

Date Adopted: June 20, 2008.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 04-11-057, filed 5/17/04, effective 6/17/04)

WAC 246-320-010 Definitions. For the purposes of this chapter and chapter 70.41 RCW, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "Abuse" means injury or sexual abuse of a patient under circumstances indicating the health, welfare, and safety of the patient is harmed. Person "legally responsible" will include a parent, guardian, or an individual to whom parental or guardian responsibility is delegated (e.g., teachers, providers of residential care and treatment, and providers of day care):

(a) "Physical abuse" means damaging or potentially damaging nonaccidental acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means verbal behavior, harassment, or other actions which may result in emotional or behavioral problems, physical manifestations, disordered or delayed development.

(2) ((~~"Accredited" means approved by the joint commission on accreditation of healthcare organizations (JCAHO).~~

~~(3) "Administrative business day" means Monday, Tuesday, Wednesday, Thursday, or Friday, 8:00 a.m. to 5:00 p.m., exclusive of recognized state of Washington holidays.~~

~~(4)~~)) "Agent," when used in a reference to a medical order or a procedure for a treatment, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(((~~(5) "Airborne precaution room" means a room that is designed and equipped to care for patients known or suspected to be infected with microorganisms transmitted by airborne droplet nuclei (small-particle residue [five microns or smaller in size] of evaporated droplets containing microorganisms that remain suspended in the air and can be widely dispersed by air currents within a room or over a long distance).~~

~~(6)~~)) (3) "Alcoholism" means an illness characterized by lack of control as to the consumption of alcoholic beverages, or the consumption of alcoholic beverages to the extent an individual's health is substantially impaired or endangered, or his or her social or economic function is substantially disrupted.

(((~~(7)~~)) (4) "Alteration"((~~:~~

~~(a) "Alteration"~~)) means any change, addition, ((~~remodel~~)) or modification ((~~in construction, or occupancy~~)) to an existing hospital or a portion of an existing hospital.

(((~~(b) "Major alteration" means any physical change within an existing hospital that changes the occupancy (as defined in state building code) and scope of service within a room or area, results in reconstruction to major portions of a floor or department, or requires revisions to building systems or services.~~

~~(c)~~)) "Minor alteration" means ((~~any physical change to an existing hospital which does not affect the structural integrity of the hospital building~~)) renovation that does not require an increase in capacity to structural, mechanical or electrical systems, which does not affect fire and life safety, and which does not add beds or facilities ((~~over those for which the hospital is~~)) in addition to that for which the hospital is currently licensed.

(((~~(8) "Ambulatory" means an individual physically and mentally capable of walking or traversing a normal path to safety, including the ascent and descent of stairs, without the physical assistance of another person.~~

~~(9) "Area" means a portion of a room or building that is separated from other functions in the room or portions of the building by a physical barrier or adequate space.~~

~~(10)~~)) (5) "Assessment" means the: (a) Systematic collection and review of patient-specific data; (b) process established by a hospital for obtaining appropriate and necessary information about each individual seeking entry into a health care setting or service; and (c) information to match an individual's need with the appropriate setting and intervention.

(((~~(11)~~))) (6) "Authentication" means the process used to verify that an entry is complete, accurate, and final.

(((~~(12) "Bathing facility" means a bathtub or shower, but does not include sitz bath or other fixtures designated primarily for therapy.~~

~~(13) "Birthing room" or "labor delivery recovery (LDR) room" or "labor-delivery-recovery-postpartum (LDRP) room" means a room designed and equipped for the care of a woman, fetus, and newborn, and to accommodate her support people during the complete process of vaginal childbirth.~~

~~(14)~~)) (7) "Child" means an individual under the age of eighteen years.

(((~~(15) "Clean" when used in reference to a room, area, or facility means space or spaces and/or equipment for storage and handling of supplies and/or equipment which are in a sanitary or sterile condition.~~

~~(16) "Communication system" means telephone, intercom, nurse call or wireless devices used by patients and staff to communicate.~~

~~(17)~~)) (8) "Critical care unit or service" means the specialized medical and nursing care provided to patients facing an immediate life-threatening illness or injury. The care is provided by multidisciplinary teams of highly experienced and skilled physicians, nurses, pharmacists or other allied health professionals who have the ability to interpret complex therapeutic and diagnostic information and access to highly sophisticated equipment.

(((~~(18)~~))) (9) "Department" means the Washington state department of health.

(((~~(19) "Detoxification" means the process of ridding the body of the transitory effects of intoxication and any associated physiological withdrawal reaction.~~

~~(20) "Dialysis facility" means a separate physical and functional nursing unit of the hospital serving patients receiving renal dialysis.~~

~~(21) "Dialysis station" means an area designed, equipped, and staffed to provide dialysis services for one patient.~~

~~(22)~~)) (10) "Dietitian" means an individual meeting the eligibility requirements for active membership in the American Dietetic Association described in Directory of Dietetic Programs Accredited and Approved, American Dietetic Association, edition 100, 1980.

(((~~(23) "Direct access" means access to one room from another room or area without going through an intervening room or into a corridor.~~

~~(24)~~)) (11) "Double-checking" means verification of patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons legally qualified to administer such agent prior to administration of the agent.

(((~~(25)~~))) (12) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official U.S. pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

~~(((26) "Drug dispensing" means an act entailing the interpretation of an order for a drug or biological and, pursuant to that order, proper selection, measuring, labeling, packaging, and issuance of the drug for a patient or for a service unit of the facility.~~

~~(27) "Easily cleanable" means readily accessible and made with materials and finishes fabricated to permit complete removal of residue or dirt by accepted cleaning methods.~~

~~(28) "Electrical receptacle outlet" means an outlet where one or more electrical receptacles are installed.~~

~~(29)~~))) (13) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(((~~(30)~~))) (14) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including, but not limited to, administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

(((~~(31)~~))) (15) "Emergency triage" means the immediate patient assessment by a registered nurse, physician, or physician assistant to determine the nature and urgency of the person's medical need and the time and place care and treatment is to be given.

~~(((32) "Facilities" means a room or area and equipment serving a specific function.~~

~~(33) "Failure or major malfunction" means an essential environmental, life safety or patient care function, equipment or process ceasing operation or capability of working as intended and any back up, reserve or replacement to the function, equipment or process has not occurred or is nonexistent. Such as, but not limited to, the:~~

~~(a) Normal electrical power ceases and the emergency generator(s) do not function;~~

~~(b) Ventilation system ceases to operate or reverses air flow and causes contaminated air to circulate into areas where it was not designated or intended to flow; or~~

~~(c) Potable water in the hospital becomes contaminated so it cannot be used.~~

~~(34)~~))) (16) "Family" means individuals important to and designated by a patient who need not be relatives.

~~(((35) "Faucet controls" means wrist, knee, or foot control of the water supply:~~

~~(a) "Wrist control" means water supply is controlled by handles not less than four and one-half inches overall horizontal length designed and installed to be operated by the wrists;~~

~~(b) "Knee control" means the water supply is controlled through a mixing valve designed and installed to be operated by the knee;~~

~~(c) "Foot control" means the water supply is controlled through a mixing valve designed and installed to be operated by the foot.~~

~~(36)~~))) (17) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the hospital.

~~(((37) "Grade" means the level of the ground adjacent to the building. The ground must be level or slope downward for a distance of at least ten feet away from the wall of the building. From there the ground may slope upward not greater than an average of one foot vertical to two feet horizontal within a distance of eighteen feet from the building.~~

~~(38) "He, him, his, or himself" means an individual of either sex, male or female, and does not mean preference for nor exclude reference to either sex.~~

~~(39)~~))) (18) "High-risk infant" means an infant, regardless of gestational age or birth weight, whose extrauterine existence is compromised by a number of factors, prenatal, natal, or postnatal needing special medical or nursing care.

(((~~(40)~~))) (19) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include:

(a) Hotels, or similar places furnishing only food and lodging, or simply domiciliary care;

(b) Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more;

(c) Nursing homes, as defined and which come within the scope of chapter 18.51 RCW;

(d) Birthing centers, which come within the scope of chapter 18.46 RCW;

(e) Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

(f) Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

(g) Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(((~~(41)~~))) (20) "Individualized treatment plan" means a written statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(((~~(42)~~))) (21) "Infant" means a baby or very young child up to one year of age.

(((~~(43) "Infant station" means a space for a bassinet, incubator, or equivalent, including support equipment used for the care of an individual infant.~~

~~(44) "Inpatient" means a patient receiving services that require admission to a hospital for twenty-four hours or more.~~

~~(45) "Intermediate care nursery" means an area designed, organized, staffed, and equipped to provide constant care and treatment for mild to moderately ill infants not requiring neonatal intensive care, but requiring physical support and treatment beyond support required for a normal neonate and may include the following:~~

~~(a) Electronic cardiorespiratory monitoring;~~

~~(b) Gavage feedings;~~

~~(c) Parenteral therapy for administration of drugs; and~~

~~(d) Respiratory therapy with intermittent mechanical ventilation not to exceed a continuous period of twenty-four hours for stabilization when trained staff are available.~~

~~(46) "Interventional service facility" means a facility other than operating room (OR) where invasive procedures are performed.~~

~~(47)~~))) (22) "Invasive procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(((~~(48) "JCAHO" means joint commission on accreditation of healthcare organizations.~~

~~(49) "Labor room" means a room in which an obstetric patient is placed during the first stage of labor, prior to being taken to the delivery room.~~

~~(50) "Labor-delivery-recovery (LDR) room," "birthing room," or "labor-delivery-recovery-postpartum (LDRP) room" means a room designed and equipped for the care of a woman, fetus, and newborn and to accommodate her support people during the complete process of vaginal childbirth.~~

~~(51)~~))) (23) "Licensed practical nurse," abbreviated LPN, means an individual licensed under provisions of chapter 18.78 RCW.

(((~~(52) "Long-term care unit" means a group of beds for the accommodation of patients who, because of chronic illness or physical infirmities, require skilled nursing care and related medical services but are not acutely ill and not in need of the highly technical or specialized services ordinarily a part of hospital care.~~

~~(53) "Maintainable" means able to preserve or keep in an existing condition.~~

~~(54)~~))) (24) "Maintenance" means the work of keeping something in suitable condition.

(((~~(55) "Major permanent loss of function" means sensory, motor, physiological, or intellectual impairment not present on admission requiring continued treatment or lifestyle change. When this condition cannot be immediately determined, the designation will be made when the patient is discharged with continued major loss of function, or two weeks have elapsed with persistent major loss of function, whichever occurs first.~~

~~(56)~~))) (25) "Medical staff" means physicians and may include other practitioners appointed by the governing authority to practice within the parameters of the governing authority and medical staff bylaws.

(((~~(57)~~))) (26) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(((~~(58) "Movable equipment" means equipment not built-in, fixed, or attached to the building.~~

~~(59) "Must" means compliance is mandatory.~~

~~(60)~~))) (27) "Multidisciplinary treatment team" means a group of individuals from the various disciplines and clinical services who assess, plan, implement, and evaluate treatment for patients.

(((~~(61)~~))) (28) "Neglect" means mistreatment or maltreatment; an act or omission evincing; a serious disregard of consequences of a magnitude constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision necessary for patient level of development, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts of commission or omission which may result in emotional or behavioral problems, physical manifestations, and disordered development.

(((~~(62)~~))) (29) "Neonate" or "newborn" means a newly born infant under twenty-eight days of age.

(((~~(63) "Neonatal intensive care nursery" means an area designed, organized, equipped, and staffed for constant nursing, medical care, and treatment of high-risk infants who may require:~~

~~(a) Continuous ventilatory support, twenty-four hours per day;~~

~~(b) Intravenous fluids or parenteral nutrition;~~

~~(c) Preoperative and postoperative monitoring when anesthetic other than local is administered;~~

~~(d) Cardiopulmonary or other life support on a continuing basis.~~

~~(64)~~))) (30) "Neonatologist" means a pediatrician who is board certified in neonatal-perinatal medicine or board eligible in neonatal-perinatal medicine, provided the period of eligibility does not exceed three years, as defined and described in *Directory of Residency Training Programs* by the Accreditation Council for Graduate Medical Education, American Medical Association, 1998 or the *American Osteopathic Association Yearbook and Directory*, 1998.

(((~~(65) "Newborn nursery care" means the provision of nursing and medical services described by the hospital and appropriate for well and convalescing infants including supportive care, ongoing physical assessment, and resuscitation.~~

~~(66)~~))) (31) "New construction" means any of the following:

(a) New ((~~buildings~~)) facilities to be licensed as a hospital;

(b) ((~~Additions to an existing hospital;~~

~~(c) Conversion of an existing building or portions thereof for use as a hospital;~~

~~(d)~~)) Alterations ((~~to an existing hospital~~)).

(((~~67~~))) (32) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(((~~68) "Notify" means to provide notice of required information to the department by the following methods, unless specifically stated otherwise in this chapter:~~

~~(a) Telephone;~~

~~(b) Facsimile;~~

~~(c) Written correspondence; or~~

~~(d) In person.~~

~~(69) "Nursing unit" means a separate physical and functional unit of the hospital including a group of patient rooms, with ancillary, administrative, and service facilities necessary for nursing service to the occupants of these patient rooms.~~

~~(70) "Nutritional assessment" means an assessment of a patient's nutritional status conducted by a registered dietitian.~~

~~(71) "Nutritional risk screen" means a part of the initial assessment that can be conducted by any trained member of the multidisciplinary treatment team.~~

~~(72) "Observation room" means a room for close nursing observation and care of one or more outpatients for a period of less than twenty-four consecutive hours.~~

~~(73) "Obstetrical area" means the portions or units of the hospital designated or designed for care and treatment of women during the antepartum, intrapartum, and postpartum periods, and/or areas designed as nurseries for care of newborns.~~

~~(74)~~)) (33) "Operating room (OR)" means a room within the surgical department intended for invasive and noninvasive procedures requiring anesthesia.

(((~~75) "Outpatient" means a patient receiving services that generally do not require admission to a hospital bed for twenty-four hours or more.~~

~~(76) "Outpatient services" means services that do not require admission to a hospital for twenty-four hours or more.~~

~~(77)~~)) (34) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services at the hospital.

(((~~78) "Patient care areas" means all nursing service areas of the hospital where direct patient care is rendered and all other areas of the hospital where diagnostic or treatment procedures are performed directly upon a patient.~~

~~(79) "Patient related technology" means equipment used in a patient care environment to support patient treatment and diagnosis, such as electrical, battery and pneumatic powered technology as well as support equipment and disposables.~~

~~(80)~~)) (35) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(((~~81~~))) (36) "Pharmacist" means an individual licensed by the state board of pharmacy to engage in the practice of pharmacy under the provisions of chapter 18.64 RCW as now or hereafter amended.

(((~~82~~))) (37) "Pharmacy" means the central area in a hospital where drugs are stored and are issued to hospital departments or where prescriptions are filled.

(((~~83~~))) (38) "Physician" means an individual licensed under provisions of chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(((~~84~~))) (39) "Prescription" means an order for drugs or devices issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe drugs or devices in the course of his or her professional practice for a legitimate medical purpose.

(((~~85) "Pressure relationships" of air to adjacent areas means:~~

~~(a) Positive (P) pressure is present in a room when the:~~

~~(i) Room sustains a minimum of 0.001 inches of H_20 pressure differential with the adjacent area, the room doors are closed, and air is flowing out of the room; or~~

~~(ii) Sum of the air flow at the supply air outlets (in CFM) exceeds the sum of the air flow at the exhaust/return air outlets by at least 70 CFM with the room doors and windows closed;~~

~~(b) Negative (N) pressure is present in a room when the:~~

~~(i) Room sustains a minimum of 0.001 inches of H_20 pressure differential with the adjacent area, the room doors are closed, and air is flowing into the room; or~~

~~(ii) Sum of the air flow at the exhaust/return air outlets (in CFM) exceeds the sum of the air flow at the supply air outlets by at least 70 CFM with the room doors and windows closed;~~

~~(c) Equal (E) pressure is present in a room when the:~~

~~(i) Room sustains a pressure differential range of plus or minus 0.0002 inches of H_20 with the adjacent area, and the room doors are closed; or~~

~~(ii) Sum of the air flow at the supply air outlets (in CFM) is within ten percent of the sum of the air flow at the exhaust/return air outlets with the room doors and windows closed.~~

~~(86)~~)) (40) "Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition ((~~usually requiring specialized equipment~~)).

(((~~87) "Protective precaution room" means a room designed and equipped for care of patients with a high risk for contracting infections, such as bone marrow and organ transplant patients.~~

~~(88)~~)) (41) "Protocols" and "standing order" mean written descriptions of actions and interventions for implementation by designated hospital personnel under defined circumstances and authenticated by a legally authorized person under hospital policy and procedure.

(((~~89~~))) (42) "Psychiatric service" means the treatment of patients pertinent to the psychiatric diagnosis whether or not the hospital maintains a psychiatric unit.

(((~~90) "Psychiatric unit" means a separate area of the hospital specifically reserved for the care of psychiatric patients (a part of which may be unlocked and a part locked), as distinguished from "seclusion rooms" or "security rooms" as defined in this section.~~

~~(91) "Reassessment" means ongoing data collection comparing the most recent data with the data collected on the previous assessment(s).~~

~~(92)~~)) (43) "Recovery unit" means a special physical and functional area for the segregation, concentration, and close or continuous nursing observation and care of patients for a period of less than twenty-four hours immediately following anesthesia, obstetrical delivery, surgery, or other diagnostic or treatment procedures which may produce shock, respiratory obstruction or depression, or other serious states.

(((~~93~~))) (44) "Registered nurse" means an individual licensed under the provisions of chapter 18.79 RCW and practicing in accordance with the rules and regulations promulgated thereunder.

(((~~94) "Remodel" means the reshaping or reconstruction of a part or area of the hospital.~~

~~(95)~~)) (45) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, an apparatus, or a drug given not required to treat a patient's medical symptoms.

(((~~96~~))) (46) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(((~~97~~))) (47) "Seclusion room" means a small, secure room specifically designed and organized for temporary placement, care, and observation of one patient and for an environment with minimal sensory stimuli, maximum security and protection, and visual observation of the patient by authorized personnel and staff. Doors of seclusion rooms are provided with staff-controlled locks.

(((~~98) "Secretary" means the secretary of the department of health.~~

~~(99) "Self-administration of drugs" means a patient administering or taking his or her own drugs from properly labeled containers: Provided, That the facility maintains the responsibility for seeing the drugs are used correctly and the patient is responding appropriately.~~

~~(100) "Sensitive area" means a room used for surgery, transplant, obstetrical delivery, nursery, post-anesthesia recovery, special procedures where invasive techniques are used, emergency or critical care including, but not limited to, intensive and cardiac care or areas where immunosuppressed inpatients are located and central supply room.~~

~~(101)~~)) (48) "Sexual assault" has the same meaning as in RCW 70.125.030.

(((~~102) "Sinks":~~

~~(a) "Clinic service sink (siphon jet)" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inch diameter.~~

~~(b) "Scrub sink" means a plumbing fixture of adequate size and proper design for thorough washing of hands and arms, equipped with knee, foot, electronic, or equivalent control, and gooseneck spout without aerators including brush and handsfree soap dispenser.~~

~~(c) "Service sink" means a plumbing fixture of adequate size and proper design for filling and emptying mop buckets.~~

~~(d) "Handsfree handwash sink" means a plumbing fixture of adequate size and proper design to minimize splash and splatter and permit handwashing without touching fixtures, with adjacent soap dispenser with foot control or equivalent and single service hand drying device.~~

~~(e) "Handwash sink" means a plumbing fixture of adequate size and proper design for washing hands, with adjacent soap dispenser and single service hand drying device.~~

~~(103) "Soiled" (when used in reference to a room, area, or facility) means space and equipment for collection or cleaning of used or contaminated supplies and equipment or collection or disposal of wastes.~~

~~(104) "Special procedure" means a distinct and/or special diagnostic exam or treatment, such as, but not limited to, endoscopy, angiography, and cardiac catheterization.~~

~~(105)~~)) (49) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(((~~106) "Stretcher" means a four-wheeled cart designed to serve as a litter for the transport of an ill or injured individual in a horizontal or recumbent position.~~

~~(107)~~)) (50) "Surgical procedure" means any manual or operative procedure performed upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defect, prolonging life or relieving suffering, and involving any of the following:

(a) Incision, excision, or curettage of tissue or an organ;

(b) Suture or other repair of tissue or an organ including a closed as well as an open reduction of a fracture;

(c) Extraction of tissue including the premature extraction of the products of conception from the uterus; or

(d) An endoscopic examination with use of anesthetizing agents.

(((~~108~~))) (51) "Surrogate decision-maker" means an individual appointed to act on behalf of another. Surrogates make decisions only when an individual is without capacity or has given permission to involve others.

(((~~109) "Through traffic" means traffic for which the origin and destination are outside the room or area serving as a passageway.~~

~~(110) "Toilet" means a room containing at least one water closet.~~

~~(111)~~)) (52) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(((~~112) "Treatment room" means a hospital room for medical, surgical, dental, or psychiatric management of a patient.~~

~~(113)~~)) (53) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient.

(((~~114) "Water closet" means a plumbing fixture fitted with a seat and device for flushing the bowl of the fixture with water.~~

~~(115) "Will" means compliance is mandatory.~~

~~(116) "Window" means a glazed opening in an exterior wall.~~

~~(a) "Maximum security window" means a window that can only be opened by keys or tools under the control of per-~~

~~sonnel. The operation will be restricted to prohibit escape or suicide. Where glass fragments may create a hazard, safety glazing and other appropriate security features will be incorporated. Approved transparent materials other than glass may be used.~~

~~(b) "Relite" means a glazed opening in an interior partition between a corridor and a room or between two rooms to permit viewing.~~

~~(c) "Security window" means a window designed to inhibit exit, entry, and injury to a patient, incorporating approved, safe transparent material.~~

~~(117) "Work surface" means a flat hard horizontal surface such as a table, desk, counter, or cart surface.~~))

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-165 Management of human resources. The purpose of the management of human resources section is to ensure the hospital provides competent staff consistent with scope of services.

Hospitals will:

(1) Establish, review, and update written job descriptions for each job classification;

(2) Conduct periodic staff performance reviews;

(3) Ensure qualified and competent staff are available to operate each department;

(4) Ensure supervision of staff;

(5) Document verification of current staff licensure, certification, or registration;

(6) Complete tuberculosis screening for new and current employees consistent with the ((~~current guidelines of the Centers for Disease Control and Prevention (CDC) as defined by WAC 246-320-99902(15)~~)) *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities*, 2005. *Morbidity Mortality Weekly Report* (MMWR) Volume 54, December 30, 2005;

(7) Provide orientation to the work environment;

(8) Provide information on infection control to staff upon hire and annually which includes:

(a) Education on general infection control in accordance with WAC 296-62-08001 bloodborne pathogens exposure control; and

(b) General and department specific infection control measures related to the work of each department in which the staff works; and

(9) Establish and implement an education plan that verifies or arranges for the appropriate education and training of staff on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310.

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-265 Infection control program. The purpose of the infection control program section is to identify and reduce the risk of acquiring and transmitting nosocomial infections and communicable diseases between patients, employees, medical staff, volunteers, and visitors.

Hospitals must develop and implement an infection control program and will:

(1) Designate a member or members of the staff to:

(a) Oversee, review, evaluate, and approve the activities of the infection control program and the infection control aspects of appropriate hospital policies and procedures; and

(b) Provide consultation;

(2) Assure staff managing the infection control program have:

(a) Documented evidence of a minimum of two years experience in a health related field; and

(b) Training in the principles and practices of infection control;

(3) Adopt and implement written policies and procedures consistent with the published guidelines of the centers for disease control and prevention (CDC) regarding infection control in hospitals, to guide the staff. Where appropriate, policies and procedures are specific to the service area and address:

(a) Receipt, use, disposal, processing, or reuse of hospital and nonhospital equipment to assure prevention of disease transmission;

(b) Prevention of cross contamination between soiled and clean items during sorting, processing, transporting, and storage;

(c) Environmental management and housekeeping functions, including:

(i) The process for approval of disinfectants, sanitation procedures, and equipment;

(ii) Cleaning areas used for surgical procedures as appropriate, before, between, and after cases;

(iii) General hospital-wide daily and periodic cleaning; and

(iv) A laundry and linen system that will ensure:

(A) The supply of linen/laundry is adequate to meet the needs of the hospital and patients; and

(B) Standards used for processing linens assure that clean linen/laundry is free of toxic residues and within industry standard pH range(s)((~~; and~~

~~(C) Processing and storage in accordance with WAC 246-320-595(3)~~));

(d) Occupational health consistent with current practice;

(e) Attire;

(f) Traffic patterns;

(g) Antisepsis and handwashing;

(h) Scrub technique and surgical preparation;

(i) Biohazardous waste management in accordance with applicable federal, state, and local regulations;

(j) Barrier and transmission precautions; and

(k) Pharmacy and therapeutics; and

(4) Establish and implement a plan for:

(a) Public health coordination, including a system for reporting communicable diseases in accordance with chapter 246-100 WAC Communicable and certain other diseases; and

(b) Surveillance and investigation consistent with WAC 246-320-225 Improving organizational performance.

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-365 Specialized patient care services. The purpose of the specialized patient care services section is to guide the development of the plan for patient care. This is accomplished by ensuring availability of materials and resources and through establishing, monitoring, and enforcing policies and procedures that promote the delivery of quality health care in specialized patient care areas.

Hospitals will:

(1) Meet the requirements in Inpatient care services, WAC 246-320-345;

(2) Adopt and implement policies and procedures which address accepted standards of care for each specialty service;

(3) Assure physician oversight for each specialty service by a physician with experience in those specialized services;

(4) Assure staff for each nursing service area are supervised by a registered nurse who provides a leadership role to plan, provide, and coordinate care;

(5) If providing surgery and interventional services:

(a) Adopt and implement policies and procedures that address appropriate access:

(i) To areas where invasive procedures are performed; and

(ii) To information regarding practitioner's delineated privileges for operating room staff;

(b) Provide:

(i) Emergency equipment, supplies, and services available in a timely manner and appropriate for the scope of service; and

(ii) Separate refrigerated storage equipment with temperature alarms, when blood is stored in the surgical department;

(6) If providing a post anesthesia recovery unit (PACU), adopt and implement written policies and procedures requiring:

(a) The availability of an authorized practitioner in the facility capable of managing complications and providing cardiopulmonary resuscitation for patients when patients are in the PACU; and

(b) The immediate availability to the PACU of a registered nurse trained and current in advanced cardiac life support measures;

(7) If providing obstetrical services:

(a) Have capability to perform cesarean sections twenty-four hours per day; or

(b) Meet the following criteria when the hospital does not have twenty-four hour cesarean capability:

(i) Limit planned obstetrical admissions to "low risk" obstetrical patients as defined in WAC 246-329-010(13) childbirth centers;

(ii) Inform each obstetrical patient in writing, prior to the planned admission, of the hospital's limited obstetrical services as well as the transportation and transfer agreements;

(iii) Maintain current written agreements for adequately staffed ambulance and/or air transport services to be available twenty-four hours per day; and

(iv) Maintain current written agreements with another hospital to admit the transferred obstetrical patients;

(c) Ensure one licensed nurse trained in neonatal resuscitation is in the hospital when infants are present;

(8) If providing an intermediate care nursery, have nursing, laboratory, pharmacy, radiology, and respiratory care services appropriate for infants:

(a) Available in a timely manner; and

(b) In the hospital during assisted ventilation;

(c) Ensure one licensed nurse trained in neonatal resuscitation is in the hospital when infants are present;

(9) If providing a neonatal intensive care nursery, have:

(a) Nursing, laboratory, pharmacy, radiology, and respiratory care services appropriate for neonates available in the hospital at all times;

(b) An anesthesia practitioner, neonatologist, and a pharmacist on call and available in a timely manner twenty-four hours a day; and

(c) One licensed nurse trained in neonatal resuscitation in the hospital when infants are present;

(10) If providing a critical care unit or services, have:

(a) At least two licensed nursing personnel skilled and trained in care of critical care patients on duty in the hospital at all times when patients are present, and:

(i) Immediately available to provide care to patients admitted to the critical care area; and

(ii) Trained and current in cardiopulmonary resuscitation including at least one registered nurse with:

(A) Training in the safe and effective use of the specialized equipment and procedures employed in the particular area; and

(B) Successful completion of an advanced cardiac life support training program; and

(b) Laboratory, radiology, and respiratory care services available in a timely manner;

(11) If providing an alcoholism and/or chemical dependency unit or services:

(a) Adopt and implement policies and procedures that address development, implementation, and review of the individualized treatment plan, including the participation of the multidisciplinary treatment team, the patient, and the family, as appropriate;

(b) Ensure provision of patient privacy for interviewing, group and individual counseling, physical examinations, and social activities of patients; and

(c) Provide staff in accordance with WAC 246-324-170(3);

(12) If providing a psychiatric unit or services:

(a) Adopt and implement policies and procedures that address development, implementation, and review of the individualized treatment plan, including the participation of the multidisciplinary treatment team, the patient, and the family, as appropriate;

(b) Ensure provision of patient privacy for interviewing, group and individual counseling, physical examinations, and social activities of patients;

(c) Provide staff in accordance with WAC 246-322-170(3); and

(d) Provide:

(i) Separate patient sleeping rooms for children and adults;

(ii) Access to at least one seclusion room;

(iii) For close observation of patients;

(13) If providing a long-term care unit or services, provide an activities program designed to encourage each long-term care patient to maintain or attain normal activity and achieve an optimal level of independence;

(14) If providing an emergency care unit or services, provide basic, outpatient emergency care including:

(a) Capability to perform emergency triage and medical screening exam twenty-four hours per day;

(b) At least one registered nurse skilled and trained in care of emergency department patients on duty in the hospital at all times, and:

(i) Immediately available to provide care; and

(ii) Trained and current in advanced cardiac life support;

(c) Names and telephone numbers of medical and other staff on call must be posted; and

(d) Communication with agencies as indicated by patient condition;

(15) If providing renal dialysis service:

(a) Meet ((~~WAC 246-320-99902(2) for~~)) the *Association for the Advancement of Medical Instrumentation (AAMI) Standards, Dialysis Edition, 2005*:

(i) The cleaning and sterilization procedures if dialyzers are reused;

(ii) Water treatment, if necessary to ensure water quality; and

(iii) Water testing for bacterial contamination and chemical purity;

(b) Test dialysis machine for bacterial contamination monthly or demonstrate a quality assurance program establishing effectiveness of disinfection methods and intervals;

(c) Take appropriate measures to prevent contamination, including backflow prevention in accordance with ((~~WAC 246-320-525 (4)(a)~~)) the state plumbing code;

(d) Provide for the availability of any special dialyzing solutions required by a patient; and

(e) Through a contract provider, that provider must meet the requirements in this section.

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-405 Management of environment for care. The purpose of the management of environment for care section is to ((~~reduce and control~~)) manage the environmental hazards and risks, prevent accidents and injuries, and maintain safe conditions for patients, visitors, and staff.

(1) The hospital will designate a person or persons responsible to develop, implement, monitor, and follow-up on safety, security, hazardous materials, emergency preparedness, life safety, patient related technology, utility system, and physical plant elements of the management plan.

(2) Safety. The hospital will:

(a) Establish and implement a plan to:

(i) Maintain a physical environment free of hazards; and

(ii) Reduce the risk of injury to patients, staff, and visitors;

(b) Report and investigate safety related incidents and when appropriate correct and/or take steps to avoid reoccurrence in the future; and

(c) Educate and review periodically with staff, policies and procedures relating to safety and job-related hazards.

(3) Security. The hospital will:

(a) Establish and implement a plan to maintain a secure environment for patients, visitors, and staff, including a plan to prevent abduction of patients;

(b) Educate staff on security procedures; and

(c) If they have a designated security staff, assure security staff have a minimum level of training and competency commensurate with their assigned responsibility, as defined by the hospital.

(4) Hazardous materials and waste. The hospital will:

(a) Establish and maintain a program to safely control hazardous materials and waste in accordance with applicable federal, state, and local regulations;

(b) Provide space and equipment for safe handling and storage of hazardous materials and waste;

(c) Investigate all hazardous materials or waste spills, exposures, and other incidents, and report as required to appropriate agency(s);

(d) Educate staff on policies and procedures relating to safe control of hazardous materials and waste.

(5) Emergency preparedness. The hospital will:

(a) Establish and implement a disaster plan designed to meet both internal and external disasters. The plan is:

(i) Specific to the hospital;

(ii) Relevant to the area;

(iii) Internally implementable, twenty-four hours a day, seven days a week; and

(iv) Reviewed and revised periodically;

(b) Ensure the disaster plan identifies:

(i) Who is responsible for each aspect of the plan; and

(ii) Essential and key personnel who would respond to a disaster;

(c) Include in the plan:

(i) Provision for staff education and training; and

(ii) A debriefing and evaluation after each disaster incident or drill.

(6) Life safety. The hospital will:

(a) Establish and implement a plan to maintain a fire-safe environment of care that meets fire protection requirements established by the Washington state patrol, fire protection bureau;

(b) Investigate fire protection deficiencies, failures, and user errors; and

(c) Orient, educate, and drill staff on policies and procedures relating to life safety management and emergencies.

(7) Patient related technologies. The hospital will:

(a) Establish and implement a plan to:

(i) Complete a technical and an engineering review to ensure that patient related technology will function safely and with appropriate building support systems;

(ii) Inventory all patient related technologies that require preventive maintenance;

(iii) Address and document preventive maintenance (PM); and

(iv) Assure quality delivery of service, independent of service vendor or methodology;

(b) Investigate, report, and evaluate procedures in response to system failures; and

(c) Educate staff regarding relevant patient related medical technology.

(8) Utility systems. The hospital will:

(a) Establish and implement a plan to:

(i) Maintain a safe, controlled, comfortable environment;

(ii) Assess and minimize risks of utility system failures, and ensure operational reliability of utility systems;

(iii) Investigate utility systems management problems, failures, or user errors and report incidents and corrective actions; and

(iv) Address and document preventive maintenance (PM);

(b) Educate staff on utility management policies and procedures.

(9) Physical plant. The hospital will provide:

(a) Storage;

(b) Plumbing with:

(i) A water supply providing hot and cold water under pressure which conforms to the quality standards of the department;

(ii) Hot water supplied for bathing and handwashing purposes not exceeding 120°F; and

(iii) The cross connection controls meeting requirements ((~~in WAC 246-320-525 (4)(a); and~~

~~(iv) Medical gas piping meeting requirements in WAC 246-320-99902 (6) and (10)~~)) of the state plumbing code;

(c) Ventilation:

(i) To prevent objectionable odors and/or excessive condensation; and

(ii) With air pressure relationships ((~~meeting the requirements in WAC 246-320-525 (Table 525-3)~~)) as designed and approved by the department when constructed and maintained within industry standard tolerances;

(d) ((~~Interior finishes suitable to the function in accordance with WAC 246-320-525(6);~~)) Clean interior surfaces and finishes;

(e) ((~~Electrical with:~~

~~(i)~~)) Functional patient call system((~~s in accordance with WAC 246-320-525 (Table 525-1); and~~

~~(ii) Tamper resistant receptacles in waiting areas and where noted in Table 525-5 and WAC 246-320-99902(3)~~)).

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-500 Applicability of WAC 246-320-500 through ((~~246-320-99902~~)) 246-320-600. The purpose of ((~~the new~~)) construction regulations is to provide ((~~minimum standards~~)) for a safe and effective patient care environment ((~~consistent with other applicable rules and regulations without redundancy and contradictory requirements. Rules allow flexibility in achieving desired outcomes and enable hospitals to respond to changes in technologies and health care innovations~~)). These rules are not retroactive and are intended to be applied as outlined below.

(1) These regulations apply to ((~~a~~)) hospitals ((~~as defined in RCW 70.41.020~~)) including:

(a) ((~~Including:~~

~~(i)~~)) New buildings to be licensed as a hospital;

((~~(ii)~~)) (b) Conversion of an existing building or portion ((~~thereof~~)) of an existing building for use as a hospital;

((~~(iii)~~)) (c) Additions to an existing hospital;

((~~(iv)~~)) (d) Alterations to an existing hospital; and

((~~(v)~~)) (e) Buildings or portions of buildings licensed as a hospital and used for ((~~outpatient care facilities~~)) hospital services;

((~~(b)~~)) (f) Excluding nonpatient care ((~~areas~~)) buildings used exclusively for administration functions.

(2) The requirements of chapter 246-320 WAC in effect at the time the application((~~,~~)) and fee((~~, and construction documents~~)) are submitted to the department ((~~for review will~~)), and project number is assigned by the department, apply for the duration of the construction project.

(3) Standards for design and construction.

Facilities constructed and intended for use under this chapter shall comply with:

(a) The following chapters of the 2006 edition of the *Guidelines for Design and Construction of Health Care Facilities* as published by the American Institute of Architects, 1735 New York Avenue, N.W., Washington D.C. 20006, as amended in WAC 246-320-600:

(i) 1.1 Introduction

(ii) 1.2 Environment of Care

(iii) 1.3 Site

(iv) 1.4 Equipment

(v) 1.5 Planning, Design and Construction

(vi) 1.6 Common Requirements

(vii) 2.1 General Hospital

(viii) 2.2 Small Inpatient Primary Care Hospitals

(ix) 2.3 Psychiatric Hospital

(x) 2.4 Rehabilitation Facilities

(xi) 3.1 Outpatient Facilities

(xii) 3.2 Primary Care Outpatient Centers

(xiii) 3.3 Small Primary (Neighborhood) Outpatient Facilities

(xiv) 3.4 Freestanding Outpatient Diagnostic and Treatment Facilities

(xv) 3.5 Freestanding Urgent Care Facilities

(xvi) 3.6 Freestanding Birthing Centers

(xvii) 3.7 Outpatient Surgical Facilities

(xviii) 3.8 Office Surgical Facilities

(xix) 3.9 Gastrointestinal Endoscopy Facilities

(xx) 3.10 Renal Dialysis Centers

(xxi) 3.11 Psychiatric Outpatient Centers

(xxii) 3.12 Mobile, Transportable, and Relocatable Units

(xxiii) 4.2 Hospice Facility

(b) *The National Fire Protection Association, Life Safety Code*, NFPA 101, 2000.

(c) *The State Building Code* as adopted by the state building code council under the authority of chapter 19.27 RCW.

(d) Accepted procedure and practice in cross-contamination control, *Pacific Northwest Edition, 6th Edition, December 1995, American Waterworks Association*.

AMENDATORY SECTION (Amending WSR 99-04-052, filed 1/28/99, effective 3/10/99)

WAC 246-320-505 Design, construction review, and approval of plans. (1) Drawings and specifications for new construction, excluding minor alterations, must be prepared by((,)) or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW must be used for the various branches of ((the)) work where appropriate. The services of a registered ((professional)) engineer may be used in lieu of the services of an architect if work involves engineering only.

(2) A hospital ((must submit construction documents for proposed new construction to the department for review and approval prior to occupying the new construction, as specified in this subsection, with the exception of administration areas that do not affect fire and life safety, mechanical and electrical for patient care areas. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes. The construction documents must include:

(a))) will meet the following requirements:

(a) Request and attend a presubmission conference for projects with a construction value of two hundred fifty thousand dollars or more. The presubmission conference shall be scheduled to occur for the review of construction documents that are no less than fifty percent complete.

(b) Submit construction documents for proposed new construction to the department for review within ten days of submission to the local authorities. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes.

(c) The construction documents must include:

(i) A written program containing, ((at a minimum)) but not limited to the following:

(((i))) (A) Information concerning services to be provided and operational methods to be used; ((and

(ii) A plan to show how they will ensure the health and safety of occupants during construction and installation of finishes. This includes taking appropriate infection control measures, keeping the surrounding area free of dust and fumes, and assuring rooms or areas are well-ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors;

(b))) (B) An interim life safety measures plan to ensure the health and safety of occupants during construction and installation of finishes.

(C) An infection control risk assessment indicating appropriate infection control measures, keeping the surrounding area free of dust and fumes, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors;

(ii) Drawings and specifications to include coordinated architectural, mechanical, and electrical work. Each room, area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided; and

(((c))) (iii) Floor plan of the existing building showing the alterations and additions, and indicating((:

(i))) location of any service or support areas; and

(((ii))) (iv) Required paths of exit serving the alterations or additions.

(((3) A hospital will:

(a))) (d) The hospital will respond in writing when the department requests additional or corrected construction documents;

(((b))) (e) Notify the department in writing when construction has commenced;

(((c) Submit to the department for review any addenda or modifications to the construction documents;

(d) Assure construction is completed in compliance with the final "department approved" documents; and

(e) Notify the department in writing when construction is completed and include a copy of the local jurisdiction's approval for occupancy.

(4) A hospital will not use any new or remodeled areas until:

(a) The construction documents are approved by the department; and

(b) The local jurisdictions have issued an approval to occupy)) (f) Provide the department with a signed form acknowledging the risks if starting construction before the plan review has been completed. The acknowledgment of risks form shall be signed by the:

(i) Architect; and

(ii) Hospital CEO, COO or designee; and

(iii) Hospital facilities director.

(g) Submit to the department for review any addenda or modifications to the construction documents;

(h) Assure construction is completed in compliance with the final "department approved" documents. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes. Where differences in interpretations occur, the hospital will follow the most stringent requirement.

(i) The hospital will allow any necessary inspections for the verification of compliance with the construction document, addenda, and modifications.

(j) Notify the department in writing when construction is completed and include a copy of the local jurisdiction's approval for occupancy.

(3) The hospital will not begin construction or use any new or remodeled areas until:

(a) The infection control risk assessment has been approved by the department;

(b) The interim life safety plan has been approved by the department;

(c) An acknowledgment of risk form has been submitted to the department as required by subsection (2)(f) of this section;

(d) The department has approved construction documents or granted authorization to begin construction; and

(e) The local jurisdictions have issued a building permit, when applicable or given approval to occupy.

(4) The department will issue an "authorization to begin construction" when subsection (3)(a), (b), and (c) are approved and the presubmission conference is concluded.

NEW SECTION

WAC 246-320-600 Washington state amendments. This section contains the Washington state amendments to the 2006 edition of the *Guidelines for Design and Construction of Health Care Facilities* as published by the American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006.

CHAPTER 1.2 ENVIRONMENT OF CARE

2.1.3.4 This section is not adopted.

CHAPTER 1.3 SITE

2.2 Availability of Transportation

This section is not adopted.

3.3 Parking

This section is not adopted.

CHAPTER 1.4 EQUIPMENT

A1.3.1 Design should consider the placement of cables from portable equipment so that personnel circulation and safety are maintained.

CHAPTER 1.5 PLANNING, DESIGN AND CONSTRUCTION

2.1 General

2.1.1 ICRA Panel

The ICRA shall be conducted by a panel with expertise in the areas affected by the project; at a minimum this would include infection control, epidemiology and facility representation.

CHAPTER 1.6 COMMON REQUIREMENTS

2.1.1 General

Unless otherwise specified herein, all plumbing systems shall be designed and installed in accordance with the plumbing code as adopted by the state building code council.

2.1.3.2 Handwashing Stations

General handwashing stations used by medical and nursing staff, patients, and food handlers shall be trimmed with valves that can be operated without hands. Single-lever or wrist blade devices shall be permitted. Blade handles used for this purpose shall be at least 4 inches (10.2 centimeters) in length.

2.2.2 HVAC Air Distribution

2.2.2.1 HVAC Ductwork

(2) Humidifiers.

(a) If humidifiers are located within a ventilation system upstream of the final filters, they shall be at least 15 feet (4.57 meters) upstream of the final filters.

(b) Ductwork with duct-mounted humidifiers shall have a means of water removal.

(c) An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential for condensation inside the duct.

(d) Humidifiers shall be connected to airflow proving switches that prevent humidification unless the required volume of airflow is present or high-limit humidistats are provided.

(e) All duct takeoffs shall be sufficiently downstream of the humidifier to ensure complete moisture absorption.

(f) Steam humidifiers shall be used. Reservoir type water spray or evaporative pan humidifiers shall not be used.

A2.2.2.1(2) It is recognized that some facilities may not require humidity control within the ranges in table 2.1-2 and that the final determination of a facility's ability to control humidity will be made by that facility.

CHAPTER 2.1 GENERAL HOSPITALS

1.2.2 Swing Beds

When the concept of swing beds is part of the functional program, care shall be taken to include requirements for all intended categories. Nursing homes and long-term care units must be distinct and separate from swing beds.

A1.2.2 Swing Beds

Every bed must be able to provide both acute care and skilled nursing care. The concept is that the patient would not have to be moved, rather their status would change from "acute" to "swing bed" status.

2.2.1 Toilet Rooms

2.2.1.3 Toilet room doors shall swing outward or be double acting. Where local requirements permit, surface mounted sliding doors may be used, provided adequate provisions are made for acoustical and visual privacy.

2.3.5 Nourishment Area

2.3.5.1 A nourishment area shall have a sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishment between scheduled meals. This area shall include space for trays and dishes used for nonscheduled meal service. This function may be combined with a clean utility without duplication of sinks and work counters.

2.3.10 Housekeeping Room

2.3.10.1 Housekeeping rooms shall be directly accessible from the unit or floor they serve and may serve more than one nursing unit on a floor. Housekeeping and soiled rooms may be combined.

3.1.1.1 Capacity

(1) In new construction, the maximum number of beds per room shall be two.

(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no more than the present capacity with a maximum of four patients.

3.1.1.5 Handwashing Stations. These shall be provided to serve each patient room.

(1) A handwashing station shall be provided in the toilet room.

(2) Or, in private rooms, a handwashing station shall be provided in the patient room provided alcohol-based hand sanitizers are provided in the toilet room. The handwashing station shall be located outside the patient's cubicle curtain and convenient to staff entering and leaving the room.

(3) A hand sanitation station in patient rooms utilizing waterless cleaners shall be permitted in renovations of existing facilities where existing conditions prohibit an additional handwashing station.

3.1.2 Patient/Family Centered Care Rooms

This section is not adopted.

3.1.5 Support Areas for Medical/Surgical Nursing Units

3.1.5.5 Handwashing Stations

(1) Handwashing stations or waterless cleansing stations shall be conveniently accessible to the nurse station, medication station, and nourishment station. "Convenient" is

defined as not requiring staff to access more than two spaces separated by a door.

(2) One handwashing station may serve several areas if convenient to each.

4.3.1 Labor Rooms

4.3.1.1 General

(2) Access. Labor rooms shall have controlled access with doors.

5.1.3 Definitive Emergency Care

5.1.3.7(5) Decontamination Area

(a) Location. In new construction, a decontamination room shall be provided with an outside entry door as far as practical from the closest other entrance. The internal door of this room shall open into a corridor of the emergency department, swing into the room and be lockable against ingress from the corridor.

(b) Space requirements. The room shall provide a minimum of 80 square feet (7.43 square meters) clear floor area.

(c) Facility requirements.

(i) The room shall be equipped with two hand-held shower heads with temperature controls.

(ii) Portable or hard-piped oxygen shall be provided. Portable suction shall also be available.

(d) Construction requirements. The room shall have all smooth, nonporous, scrubbable, nonabsorptive, nonperforated surfaces. Fixtures shall be acid resistant. The floor of the decontamination room shall be self-coving to a height of 6 inches (15.24 centimeters).

(e) This section does not preclude decontamination capability at other locations or entrances immediately adjacent to the emergency department.

5.3.3 Pre- and Postoperative Holding Areas

5.3.3.2 Post-anesthetic Care Units (PACUs)

(4) Facility requirements. Each PACU shall contain a medication station; handwashing stations; nurse station with charting facilities; clinical sink; provisions for bedpan cleaning; and storage space for stretchers, supplies, and equipment.

(a) Handwashing station(s). At least one handwashing station with hands-free or wrist blade-operable controls shall be available for every six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

(b) Staff toilet. A staff toilet shall be located within the working area to maintain staff availability to patients.

5.3.5 Support Areas for the Surgical Suite

5.3.5.4 Scrub Facilities. Two scrub positions shall be provided near the entrance to each operating room.

5.9.3 Examination Room

This section is not adopted.

6.1. Pharmacy

Until final adoption of USP 797 by either federal or other state programs, facilities may request plan review for conformance to USP 797 with their initial submission to the Department of Health, Construction Review Services. The most current edition of USP 797 at the time of the application will be used for plan review service.

8.2.2.3 Doors

(2) Door Size.

(a) General. Where used in these Guidelines, door width and height shall be the nominal dimension of the door leaf, ignoring projections of frame and stops. Note: While these standards are intended for access by patients and patient equipment, size of office furniture, etc., shall also be considered.

(b) Inpatient bedrooms.

(i) New construction. The minimum door size for inpatient bedrooms in new work areas shall be 4 feet (1.22 meters) wide and 7 feet (2.13 meters) high to provide clearance for movement of beds and other equipment.

(ii) Renovation. Existing doors of not less than 2 feet 10 inches (86.36 centimeters) wide may be considered for acceptance where function is not adversely affected and replacement is impractical.

(c) Rooms for stretchers/wheelchairs. Doors to other rooms used for stretchers (including hospital wheeled-bed stretchers) and/or wheelchairs shall have a minimum width of 2 feet 10 inches (86.36 centimeters).

10.1.2 Plumbing and Other Piping Systems

10.1.2.5 Drainage Systems

(1) Piping.

(a) Drain lines from sinks used for acid waste disposal shall be made of acid resistant material.

(b) Drain lines serving some types of automatic blood-cell counters shall be of carefully selected material that will eliminate potential for undesirable chemical reactions (and/or explosions) between sodium azide wastes and copper, lead, brass, solder, etc.

(c) Reasonable effort shall be made to avoid installing drainage piping within the ceiling or exposed in operating and delivery rooms, nurseries, food preparation centers, food-serving facilities, food storage areas, central services, electronic data processing areas, electric closets, and other sensitive areas. Where exposed overhead drain piping in these areas is unavoidable, special provision shall be made to protect the space below from leakage, condensation or dust particles.

10.2.1 General

10.2.1.1 Mechanical System Design

(2) Air-handling systems.

(a) These shall be designed with an economizer cycle where appropriate to use outside air. (Use of mechanically circulated air does not reduce need for filtration.)

(b) VAV systems. The energy-saving potential of variable-air-volume systems is recognized and the standards herein are intended to maximize appropriate use of those systems. Any system used for occupied areas shall include provisions to avoid air stagnation in interior spaces where thermostat demands are met by temperatures of surrounding areas and air movement relationship changes if constant volume and variable volume are supplied by one air-handling system with a common pressure dependent return system.

(c) Noncentral air-handling systems (i.e., individual room units used for heating and cooling purposes, such as fan-coil units, heat pump units, etc.). These units may be used as recirculating units only. All outdoor air requirements shall be met by a separate central air-handling system with proper filtration, as noted in Table 2.1-3.

10.2.1.2 Ventilation and Space Conditioning Requirements. All rooms and areas used for patient care shall have provisions for ventilation.

(2) Air change rates. Air supply and exhaust in rooms for which no minimum total air change rate is noted may vary down to zero in response to room load. For rooms listed in Table 2.1-2, where VAV systems are used, minimum total air change shall be within limits noted, the minimum required by the Washington State Ventilation and Indoor Air Quality Code (chapter 51-13 WAC).

(3) Temperature. Space temperature shall be as indicated in Table 2.1-2.

10.2.4 HVAC Air Distribution

10.2.4.3 Exhaust Systems

(1) General.

(a) Exhaust systems may be combined.

(b) Local exhaust systems shall be used whenever possible in place of dilution ventilation to reduce exposure to hazardous gases, vapors, fumes, or mists.

(c) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable.

(d) Airborne infection isolation rooms shall not be served by exhaust systems incorporating a heat wheel.

10.2.5 HVAC Filters

10.2.5.2 Filter Bed Location. Where two filter beds are required, filter bed no. 1 shall be located upstream of the air conditioning equipment and filter bed no. 2 shall be downstream of the last component of any central air-handling unit and plenum/duct liner except: Steam injection-type humidifiers; terminal heating coils; and mixed boxes and acoustical traps that have special covering over the lining. Terminal cooling coils and linings are permitted downstream of filter bed no. 2 with additional filtration downstream of coil meeting requirements of filter bed no. 2.

10.2.5.5 Filter Manometers. A manometer shall be installed across each filter bed having a required efficiency of 75 percent or more, including hoods requiring HEPA filters. Manometers may be omitted at HEPA-filtered ceiling diffusers if pressure-independent terminal units provide the operator a means to verify the actual airflow to the HEPA-filtered diffusers in each room. Provisions shall be made to allow access for field testing. A recognized air flow measuring device would be acceptable, in lieu of terminal units.

Table 2.1-2 Ventilation Requirements for Areas Affecting Patient Care in Hospitals and Outpatient Facilities

Footnote 8 The ranges listed are the minimum and maximum limits where control is specifically needed. The maximum and minimum limits are not intended to be independent of a space's associated temperature. See figure 2.1-1 for a graphic representation of the indicated changes on a psychometric chart. Shaded area is acceptable range.

CHAPTER 2.2 SMALL INPATIENT PRIMARY CARE HOSPITALS

1.3.2 Parking

This section not adopted.

CHAPTER 2.3 PSYCHIATRIC HOSPITALS

1.6.1 Parking

This section is not adopted.

CHAPTER 3.1 OUTPATIENT FACILITIES

1.7.2 Parking

This section is not adopted.

7.1.2 Plumbing and Other Piping Systems

7.1.2.1 General Piping and Valves

(3) To prevent food contamination, no plumbing lines shall be exposed overhead or on walls where possible accumulation of dust or soil may create a cleaning problem or where leaks would create a potential for food contamination.

CHAPTER 3.2 PRIMARY CARE OUTPATIENT CENTERS

1.3.1 Parking

This section is not being adopted.

CHAPTER 3.3 SMALL PRIMARY (NEIGHBORHOOD) OUTPATIENT FACILITIES

1.3.2 Parking

This section is not adopted.

CHAPTER 3.5 FREESTANDING URGENT CARE FACILITIES

1.2.2 Parking

This section is not adopted.

CHAPTER 3.6 FREESTANDING BIRTHING CENTERS

1.2.1 Parking

This section is not adopted.

CHAPTER 3.7 OUTPATIENT SURGICAL FACILITIES

1.6.1 Parking

This section is not adopted.

CHAPTER 3.9 GASTROINTESTINAL ENDOSCOPY FACILITIES

1.6.1 Parking

This section is not adopted.

CHAPTER 3.11 PSYCHIATRIC OUTPATIENT CENTERS

1.3.1 Parking

This section is not adopted.

AMENDATORY SECTION (Amending WSR 07-17-174, filed 8/22/07, effective 9/22/07)

WAC 246-320-990 Fees. This section establishes the licensure fee for hospitals licensed under chapter 70.41 RCW.

(1) Applicants and licensees shall:

(a) Submit an annual license fee of one hundred thirteen dollars and zero cents for each bed space within the licensed bed capacity of the hospital to the department;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(c) Include neonatal intensive care bassinet spaces;

(d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department;

(e) Exclude all normal infant bassinets;

(f) Limit licensed bed spaces as required under chapter 70.38 RCW;

(g) Submit an application for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the hospital licensed bed capacity;

(h) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not performed an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because the applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

(3) Construction review applicants shall submit the appropriate fee per chapter 246-314 WAC at the time of application to construction review services.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-320-515	Site and site development.
WAC 246-320-525	General design.
WAC 246-320-535	Support facilities.
WAC 246-320-545	Maintenance, engineering, mechanical, and electrical facilities.
WAC 246-320-555	Admitting, lobby, and medical records facilities.
WAC 246-320-565	Receiving, storage, and distribution facilities.
WAC 246-320-575	Central processing service facilities.
WAC 246-320-585	Environmental services facilities.
WAC 246-320-595	Laundry and/or linen handling facilities.
WAC 246-320-605	Food and nutrition facilities.
WAC 246-320-625	Laboratory and pathology facilities.
WAC 246-320-635	Surgery facilities.
WAC 246-320-645	Recovery/post anesthesia care unit (PACU).
WAC 246-320-655	Obstetrical delivery facilities.
WAC 246-320-665	Birthing/delivery rooms, labor, delivery, recovery (LDR) and labor, delivery, recovery, postpartum (LDRP).
WAC 246-320-675	Interventional service facilities.
WAC 246-320-685	Nursing unit.
WAC 246-320-695	Pediatric nursing unit.
WAC 246-320-705	Newborn nursery facilities.
WAC 246-320-715	Intermediate care nursery and neonatal intensive care nursery.
WAC 246-320-725	Critical care facilities.
WAC 246-320-735	Alcoholism and chemical dependency nursing unit.
WAC 246-320-745	Psychiatric facilities.
WAC 246-320-755	Rehabilitation facilities.
WAC 246-320-765	Long-term care and hospice unit.
WAC 246-320-775	Dialysis facilities.
WAC 246-320-785	Imaging facilities.
WAC 246-320-795	Nuclear medicine facilities.
WAC 246-320-805	Emergency facilities.
WAC 246-320-815	Outpatient care facilities.
WAC 246-320-99902	Appendix B—Dates of documents adopted by reference in chapter 246-320 WAC.

WSR 08-14-024
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 20, 2008, 2:55 p.m., effective July 21, 2008]

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

Purpose: WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment, explains the sales and use tax exemption to manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or a research and development operation, as well as to third parties engaged in testing for manufacturers or processors for hire of M&E used directly in a testing operation. This rule

was revised to recognize that effective July 1, 2008, a blanket exemption certificate continues as long as the seller has a recurring business relationship with the buyer, which is defined by law as making at least one purchase from the vendor within a period of twelve consecutive months.

In addition, the subsection identifying legislative changes that occurred prior to July 25, 1999, was removed as the information is no longer needed in the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.08.02565 and 82.12.02565.

Adopted under notice filed as WSR 08-06-096 on March 5, 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 1, 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 20, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 00-11-096, filed 5/17/00, effective 6/17/00)

WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment. (1) **Introduction.** This ((~~rule~~)) section explains the retail sales and use tax exemption provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or research and development operation. This ((~~rule~~)) section explains the requirements that must be met to substantiate a claim of exemption. For information regarding the distressed area sales and use tax deferral refer to WAC 458-20-24001 and chapter 82.60 RCW. For the high technology business sales and use tax deferral refer to chapter 82.63 RCW.

((~~On and after July 25, 1999, a person engaged in testing for manufacturers or processors for hire is eligible to take the exemption, subject to the requirements explained below.~~

(2) **Legislative history.** The manufacturing machinery and equipment exemption, codified as RCW 82.08.02565 and 82.12.02565, became effective July 1, 1995. The exemption has since been the subject of a number of changes: See 1995 1st sp.s. c 3, 1996 c 173, 1996 c 247, 1998 c 330, and 1999 c 211. The 1995 legislation covered installation charges for qualifying machinery and equipment as well as replacement parts that increased the productivity, improved efficiency, or extended the useful life of the machinery and equipment.

(a) In 1996, the exemption was extended to include charges for repairing, cleaning, altering, or improving the machinery and equipment. The same act also revised the definition of "machinery and equipment" to include tangible personal property that becomes an ingredient or component of the machinery and equipment, including repair and replacement parts. A second act extended the exemption to research and development engaged in by manufacturers or processors for hire. Both acts took effect June 6, 1996.

(b) In 1998, the duplicate certificate and annual reporting requirements were eliminated, effective June 11, 1998.

(c) In 1999, the 1995 legislation was clarified retroactively by ESHB 1887, chapter 211, Laws of 1999, to include certain logging and mining activities, segmented manufacturing, and off-site testing by manufacturers, and to explain that hand-powered tools were excluded. On July 25, 1999, the exemption was extended on a prospective basis to persons who perform third-party testing for manufacturers or processors for hire.

(3)~~))~~ (2) **Definitions.** For purposes of the manufacturing machinery and equipment tax exemption the following definitions will apply.

(a) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel. See RCW 82.08.02565.

(b) "Device" means an item that is not attached to the building or site. Examples of devices are: Forklifts, chainsaws, air compressors, clamps, free standing shelving, software, ladders, wheelbarrows, and pulleys.

(c) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(d) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation. "M&E" means "machinery and equipment."

(e) "Manufacturer" has the same meaning as provided in chapter 82.04 RCW.

(f) "Manufacturing" has the same meaning as "to manufacture" in chapter 82.04 RCW.

(g) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site

and ends at the point where the processed material leaves the manufacturing site. The operation includes storage of raw materials at the site, the storage of in-process materials at the site, and the storage of the processed material at the site. The manufacturing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the manufacturing operation, unless specifically ((~~excepted~~)) exempted by law. Storage of raw material or other tangible personal property, packaging of tangible personal property, and other activities that potentially qualify under the "used directly" criteria, and that do not constitute manufacturing in and of themselves, are not within the scope of the exemption unless they take place at a manufacturing site. The statute specifically allows testing to occur away from the site.

The term "manufacturing operation" also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(i) Neither duration or temporary nature of the manufacturing activity nor mobility of the equipment determine whether a manufacturing operation exists. For example, operations using portable saw mills or rock crushing equipment are considered "manufacturing operations" if the activity in which the person is engaged is manufacturing. Rock crushing equipment that deposits material onto a roadway is not used in a manufacturing operation because this is a part of the constructing activity, not a manufacturing activity. Likewise, a concrete mixer used at a construction site is not used in a manufacturing operation because the activity is constructing, not manufacturing. Other portable equipment used in nonmanufacturing activities, such as continuous gutter trucks or trucks designed to deliver and combine aggregate, or specialized carpentry tools, do not qualify for the same reasons.

(ii) Manufacturing tangible personal property for sale can occur in stages, taking place at more than one manufacturing site. For example, if a taxpayer processes pulp from wood at one site, and transfers the resulting pulp to another site that further manufactures the product into paper, two separate manufacturing operations exist. The end product of the manufacturing activity must result in an article, substance, or commodity for sale.

(h) "Processor for hire" has the same meaning as used in chapter 82.04 RCW and as explained in WAC 458-20-136 Manufacturing, processing for hire, fabricating.

(i) "Qualifying operation" means a manufacturing operation, a research and development operation, or((~~, as of July 25, 1999,~~)) a testing operation.

(j) "Research and development operation" means engaging in research and development as defined in RCW 82.63.-010 by a manufacturer or processor for hire. RCW 82.63.010 defines "research and development" to mean: Activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(k) "Sale" has the same meaning as "sale" in chapter 82.08 RCW, which includes by reference RCW 82.04.040. RCW 82.04.040 includes by reference the definition of "retail sale" in RCW 82.04.050. "Sale" includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.

(l) "Site" means the location at which the manufacturing or testing takes place.

(m) "Support facility" means a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under a microchip clean room, is a support facility. Without the slab, the delicate instruments in the clean room would not function properly. The ceiling and walls of the clean room are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.

(n) "Tangible personal property" has its ordinary meaning.

(o) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(p) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. The testing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the testing operation, unless specifically excepted by law.

((~~(4)~~)) (3) **Sales and use tax exemption.** The M&E exemption provides a retail sales and use tax exemption for machinery and equipment used directly in a manufacturing

operation or research and development operation. Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying machinery and equipment are also exempt from sales tax. However, because the exemption is limited to items with a useful life of one year or more, some charges for repair, labor, services, and replacement parts may not be eligible for the exemption. In the case of labor and service charges that cover both qualifying and nonqualifying repair and replacement parts, the labor and services charges are presumed to be exempt. If all of the parts are nonqualifying, the labor and service charge is not exempt, unless the parts are incidental to the service being performed, such as cleaning, calibrating, and adjusting qualifying machinery and equipment.

((~~On and after July 25, 1999,~~)) The exemption may be taken for qualifying machinery and equipment used directly in a testing operation by a person engaged in testing for a manufacturer or processor for hire.

Sellers remain subject to the retailing B&O tax on all sales of machinery and equipment to consumers if delivery is made within the state of Washington, notwithstanding that the sale may qualify for an exemption from the retail sales tax.

(a) Sales tax. The purchaser must provide the seller with an exemption certificate. The exemption certificate must be completed in its entirety. The seller must retain a copy of the certificate as a part of its records. This certificate may be issued for each purchase or in blanket form certifying all future purchases as being exempt from sales tax. ((~~Blanket forms must be renewed every four years.~~)) Blanket certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c).

The form must contain the following information:

(i) Name, address, and registration number of the buyer;

(ii) Name of the seller;

(iii) Name and title of the authorized agent of the buyer/user;

(iv) Authorized signature;

(v) Date; and

(vi) Whether the form is a single use or blanket-use form.

A copy of a M&E certificate form may be obtained from the department of revenue (department) on the internet at http://www.dor.wa.gov/, ((~~under "Other forms and schedules"~~)) or by contacting the department's taxpayer services division at:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

(b) Use tax. The use tax complements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. (See also chapter 82.12 RCW and WAC 458-20-178 Use tax.) If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or the use tax directly to the department unless the purchase and/or use is exempt from the retail sales and/or use tax. A qualifying person using eligible machinery and equipment in Washington in a qualifying manner is exempt from the use tax. If an item of machinery and equipment that was eligible for use tax or sales tax exemption fails to overcome the majority use threshold or is totally put to use in a nonqualifying manner, use tax is due on the fair market value at the time the item was put to nonqualifying use. See subsection ((~~(10)~~)) (9) of this ((~~rule~~)) section for an explanation of the majority use threshold.

((~~(5)~~)) (4) **Who may take the exemption.** The exemption may be taken by a manufacturer or processor for hire who manufactures articles, substances, or commodities for sale as tangible personal property, and who, for the item in question, meets the used directly test and overcomes the majority use threshold. (See subsection ((~~(9)~~)) (8) of this ((~~rule~~)) section for a discussion of the "used directly" criteria and see subsection ((~~(10)~~)) (9) of this ((~~rule~~)) section for an explanation of the majority use threshold.) However, for research and development operations, there is no requirement that the operation produce tangible personal property for sale. A processor for hire who does not sell tangible personal property is eligible for the exemption if the processor for hire manufactures articles, substances, or commodities that will be sold by the manufacturer. For example, a person who is a processor for hire but who is manufacturing with regard to tangible personal property that will be used by the manufacturer, rather than sold by the manufacturer, is not eligible. See WAC 458-20-136 and RCW 82.04.110 for more information. ((~~On and after July 25, 1999,~~)) Persons who engage in testing for manufacturers or processors for hire are eligible for the exemption. To be eligible for the exemption, the taxpayer need not be a manufacturer or processor for hire in the state of Washington, but must meet the Washington definition of manufacturer.

((~~(6)~~)) (5) **What is eligible for the exemption.** Machinery and equipment used directly in a qualifying operation by a qualifying person is eligible for the exemption, subject to overcoming the majority use threshold.

There are three classes of eligible machinery and equipment: Industrial fixtures, devices, and support facilities. Also eligible is tangible personal property that becomes an ingredient or component of the machinery and equipment, including repair parts and replacement parts. "Machinery and equipment" also includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

((~~(7)~~)) (6) **What is not eligible for the exemption.** In addition to items that are not eligible because they do not meet the used directly test or fail to overcome the majority use threshold, there are four categories of items that are statutorily excluded from eligibility. The following property is not eligible for the M&E exemption:

(a) Hand-powered tools. Screw drivers, hammers, clamps, tape measures, and wrenches are examples of hand-powered tools. Electric powered, including cordless tools,

are not hand-powered tools, nor are calipers, plugs used in measuring, or calculators.

(b) Property with a useful life of less than one year. All eligible machinery and equipment must satisfy the useful life criteria, including repair parts and replacement parts. For example, items such as blades and bits are generally not eligible for the exemption because, while they may become component parts of eligible machinery and equipment, they generally have a useful life of less than one year. Blades generally having a useful life of one year or more, such as certain sawmill blades, are eligible. See subsection ((~~(8)~~)) (7) of this ((~~rule~~)) section for thresholds to determine useful life.

(c) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building. Buildings provide work space for people or shelter machinery and equipment or tangible personal property. The building itself is not eligible, however some of its components might be eligible for the exemption. The industrial fixtures and support facilities that become affixed to or part of the building might be eligible. The subsequent real property status of industrial fixtures and support facilities does not affect eligibility for the exemption.

(d) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical. Examples of nonqualifying fixtures are: Fire sprinklers, building electrical systems, or washroom fixtures. Fixtures that are integral to the manufacturing operation might be eligible, depending on whether the item meets the other requirements for eligibility, such as the used directly test.

((~~(8)~~)) (7) **The "useful life" threshold.** RCW 82.08.02565 has a per se exception for "property with a useful life of less than one year." Property that meets this description is not eligible for the M&E exemption. The useful life threshold identifies items that do not qualify for the exemption, such as supplies, consumables, and other classes of items that are not expected or intended to last a year or more. For example, tangible personal property that is acquired for a one-time use and is discarded upon use, such as a mold or a form, has a useful life of less than one year and is not eligible. If it is clear from taxpayer records or practice that an item is used for at least one year, the item is eligible, regardless of the answers to the four threshold questions. A taxpayer may work directly with the department to establish recordkeeping methods that are tailored to the specific circumstances of the taxpayer. The following steps should be used in making a determination whether an item meets the "useful life" threshold. The series of questions progress from simple documentation to complex documentation. In order to substantiate qualification under any step, a taxpayer must maintain adequate records or be able to establish by demonstrating through practice or routine that the threshold is overcome. Catastrophic loss, damage, or destruction of an item does not affect eligibility of machinery and equipment that otherwise qualifies. Assuming the machinery and equipment meets all of the other M&E requirements and does not have a single one-time use or is not discarded during the first year, useful life can be determined by answering the following questions for an individual piece of machinery and equipment:

(a) Is the machinery and equipment capitalized for either federal tax purposes or accounting purposes?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(b) Is the machinery and equipment warranted by the manufacturer to last at least one year?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(c) Is the machinery and equipment normally replaced at intervals of one year or more, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(d) Is the machinery and equipment expected at the time of purchase to last at least one year, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no," it does not qualify for the exemption.

((~~(9)~~)) (8) The "used directly" criteria. Items that are not used directly in a qualifying operation are not eligible for the exemption. The statute provides eight descriptions of the phrase "used directly." The manner in which a person uses an item of machinery and equipment must match one of these descriptions. If M&E is not "used directly" it is not eligible for the exemption. Examples of items that are not used directly in a qualifying operation are cafeteria furniture, safety equipment not part of qualifying M&E, packaging materials, shipping materials, or administrative equipment. Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation, if the machinery and equipment meets any one of the following criteria:

(a) Acts upon or interacts with an item of tangible personal property. Examples of this are drill presses, concrete mixers (agitators), ready-mix concrete trucks, hot steel rolling machines, rock crushers, and band saws. Also included is machinery and equipment used to repair, maintain, or install tangible personal property. Computers qualify under this criteria if:

(i) They direct or control machinery or equipment that acts upon or interacts with tangible personal property; or

(ii) If they act upon or interact with an item of tangible personal property.

(b) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or the testing site. Examples of this are wheelbarrows, handcarts, storage racks, forklifts, tanks, vats, robotic arms, piping, and concrete storage pads. Floor space in buildings does not qualify under this criteria. Not eligible under this criteria are items that are used to ship the product or in which the product is packaged, as well as materials used to brace or support an item during transport.

(c) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site. Examples of "away from the site" are road test-

ing of trucks, air testing of planes, or water testing of boats, with the machinery and equipment used off site in the testing eligible under this criteria. Machinery and equipment used to take readings or measurements is eligible under this criteria.

(d) Provides physical support for or access to tangible personal property. Examples of this are catwalks adjacent to production equipment, scaffolding around tanks, braces under vats, and ladders near controls. Machinery and equipment used for access to the building or to provide a work space for people or a space for tangible personal property or machinery and equipment, such as stairways or doors, is not eligible under this criteria.

(e) Produces power for or lubricates machinery and equipment. A generator providing power to a sander is an example of machinery and equipment that produces power for machinery and equipment. An electrical generating plant that provides power for a building is not eligible under this criteria. Lubricating devices, such as hoses, oil guns, pumps, and meters, whether or not attached to machinery and equipment, are eligible under this criteria.

(f) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation. Machinery and equipment that makes dies, jigs, or molds, and printers that produce camera-ready images are examples of this.

(g) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.

(h) Is integral to research and development as defined in RCW 82.63.010.

(((~~(10)~~))) (9) **The majority use threshold.**

(a) Machinery and equipment both used directly in a qualifying operation and used in a nonqualifying manner is eligible for the exemption only if the qualifying use satisfies the majority use requirement. Examples of situations in which an item of machinery and equipment is used for qualifying and nonqualifying purposes include: The use of machinery and equipment in manufacturing and repair activities, such as using a power saw to make cabinets in a shop versus using it to make cabinets at a customer location; the use of machinery and equipment in manufacturing and constructing activities, such as using a forklift to move finished sheet rock at the manufacturing site versus using it to unload sheet rock at a customer location; and the use of machinery and equipment in manufacturing and transportation activities, such as using a mixer truck to make concrete at a manufacturing site versus using it to deliver concrete to a customer. Majority use can be expressed as a percentage, with the minimum required amount of qualifying use being greater than fifty percent compared to overall use. To determine whether the majority use requirement has been satisfied, the person claiming the exemption must retain records documenting the measurement used to substantiate a claim for exemption or, if time, value, or volume is not the basis for measurement, be able to establish by demonstrating through practice or routine that the requirement is satisfied. Majority use is measured by looking at the use of an item during a calendar year using any of the following:

(i) Time. Time is measured using hours, days, or other unit of time, with qualifying use of the M&E the numerator, and total time used the denominator. Suitable records for time measurement include employee time sheets or equipment time use logs.

(ii) Value. Value means the value to the person, measured by revenue if the qualifying and nonqualifying uses both produce revenue. Value is measured using gross revenue, with revenue from qualifying use of the M&E the numerator, and total revenue from use of the M&E the denominator. If there is no revenue associated with the use of the M&E, such as in-house accounting use of a computer system, the value basis may not be used. Suitable records for value measurement include taxpayer sales journals, ledgers, account books, invoices, and other summary records.

(iii) Volume. Volume is measured using amount of product, with volume from qualifying use of the M&E the numerator and total volume from use of the M&E the denominator. Suitable records for volume measurement include production numbers, tonnage, and dimensions.

(iv) Other comparable measurement for comparison. The department may agree to allow a taxpayer to use another measure for comparison, provided that the method results in a comparison between qualifying and nonqualifying uses. For example, if work patterns or routines demonstrate typical behavior, the taxpayer can satisfy the majority use test using work site surveys as proof.

(b) Each piece of M&E does not require a separate record if the taxpayer can establish that it is reasonable to bundle M&E into classes. Classes may be created only from similar pieces of machinery and equipment and only if the uses of the pieces are the same. For example, forklifts of various sizes and models can be bundled together if the forklifts are doing the same work, as in moving wrapped product from the assembly line to a storage area. An example of when not to bundle classes of M&E for purposes of the majority use threshold is the use of a computer that controls a machine through numerical control versus use of a computer that creates a camera ready page for printing.

(c) Typically, whether the majority use threshold is met is decided on a case-by-case basis, looking at the specific manufacturing operation in which the item is being used. However, for purposes of applying the majority use threshold, the department may develop industry-wide standards. For instance, the aggregate industry uses concrete mixer trucks in a consistent manner across the industry. Based on a comparison of selling prices of the processed product picked up by the customer at the manufacturing site and delivery prices to a customer location, and taking into consideration the qualifying activity (interacting with tangible personal property) of the machinery and equipment compared to the nonqualifying activity (delivering the product) of the machinery and equipment, the department has determined that concrete trucks qualify under the majority use threshold. Only in those limited instances where it is apparent that the use of the concrete truck is atypical for the industry would the taxpayer be required to provide recordkeeping on the use of the truck in order to support the exemption.

WSR 08-14-025
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 20, 2008, 2:56 p.m., effective July 21, 2008]

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

Purpose: WAC 458-20-250 Solid waste collection tax, explains how the solid waste collection tax applies, who is required to collect the tax; and the B&O, retail sales, and use tax obligations of persons providing solid waste collection services. Effective July 1, 2008, a "blanket exemption certificate" used for retail sales tax purposes continues as long as the seller has a recurring business relationship with the buyer, which is defined as making at least one purchase from the vendor within a period of twelve consecutive months. While not required, the department is revising Rule 250 to apply this standard to the solid waste collector's exemption certificate for consistency purposes.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-250 Solid waste collection tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapter 82.18 RCW.

Adopted under notice filed as WSR 08-06-098 on March 5, 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 1, 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 20, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 06-12-017, filed 5/26/06, effective 6/26/06)

WAC 458-20-250 Solid waste collection tax. (1) **Introduction.** This section explains how the solid waste collection tax imposed under chapter 82.18 RCW applies; who is required to collect the tax; and the B&O, sales, and use tax obligations of persons providing solid waste collection services. The tax imposed under chapter 82.18 RCW was previously known as the "refuse collection tax." For the purposes of this section, the tax is referred to by its statutory name, the "solid waste collection tax."

(2)(a) **What is "solid waste"?** "Solid waste" or "waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(b) **Who is the taxpayer for purposes of the solid waste collection tax?** "Taxpayer" means that person upon whom the solid waste collection tax is imposed, that is, the private or commercial consumer.

(c) **Who is required to collect the solid waste collection tax?** Every person who receives waste for transfer, storage, or disposal including, but not limited to, all collection services, public or private dumps, transfer stations, and similar operations, must collect the solid waste collection tax from the private or commercial consumer.

(d) **What is the measure of the tax?** The solid waste collection tax applies to the consideration charged for solid waste collection services.

"Consideration charged for the services" is the total amount billed as compensation for solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued. The term does not include:

(i) Any amount included in the charges for materials collected primarily for recycling;

(ii) The solid waste collection tax itself, whether separately itemized or not:

(iii) Any utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer and separately itemized on the taxpayer's billing; or

(iv) Late charges or penalties which may be imposed for nontimely payment.

(3) **Reporting and collection obligations.** The person who collects the charges for solid waste collection services from the taxpayer is responsible for collecting the solid waste collection tax and remitting it to the state.

(a) **Failure to collect tax.** If any person charged with collecting the tax fails to bill the taxpayer for it, or to notify the taxpayer in writing that the tax is due, then that person shall be personally liable for the tax. Thus, unlike the retail sales tax, the solid waste collection tax may be included within the gross fee or charge billed to taxpayers and need not be separately itemized on such billings, but only if such taxpayers are notified in writing that the tax has been imposed and is being collected. Nothing prevents any solid waste collection business from separately itemizing the tax on customer billings, at its option.

(b) **Failure to remit collected tax.** If any person collects the tax and fails to pay it to the department in the manner provided in this section, for any reason whatsoever, the person shall be personally liable for the tax.

(4) **Due date.** The solid waste collection tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed for the solid waste collection services. The solid waste collection tax must be separately reported upon lines provided on the excise tax return.

The tax is due to be remitted to the department by the person collecting it at the end of the tax reporting period in which the tax is received by that person.

(5) **Partial payments.** If a taxpayer makes only a partial payment of the amount billed for the services and tax, the

amount paid must first be used to remit the solid waste collection tax to the department. The tax has first priority over all other claims against the amount paid by the taxpayer.

(6) **Sales to the federal government, Indians and Indian tribes.** The federal government, its agencies and instrumentalities, and all solid waste collection service contracts with such federal entities are not subject to the solid waste collection tax. Similarly, Indians and Indian tribes may be exempt from the tax. Refer to WAC 458-20-190 and 458-20-192 for more information about tax reporting and recordkeeping obligations relating to sales to the federal government and Indians or Indian tribes.

(7) **Transactions with multiple collection businesses.** To prevent pyramiding or multiple taxation of single transactions, the solid waste collection tax does not apply to any person other than the ultimate consumer of the solid waste service.

(a) **Exemption certificate.** Persons engaged in the solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the solid waste collection tax on such charges. However, persons who collect the solid waste collection tax and who, themselves, utilize the further services of others for the transfer, storage, or disposal of the waste collected are not required to again pay the tax to such other service providers. In order to be exempt from such tax payment a solid waste collection business must provide other solid waste service providers with a solid waste collector's exemption certificate in the following form:

We hereby certify that we are engaged in the solid waste collection business and are registered with the state department of revenue to collect and report the solid waste collection tax imposed under chapter 82.18 RCW. We certify further that the solid waste collection tax due with respect to the solid waste collection business being performed under this certificate has been or will be collected and paid and that we are exempt from further payment of such tax on charges for any solid waste collection services being procured by us.

Business Name . . . . . Authorized Signature . . . . .

Business Address . . . . . Date . . . . . .

Revenue Registration No. . . . . .

U.T.C. Certificate of Public Necessity No. . . . . .

If not regulated by U.T.C., please check here . . . . . .

(b) **Blanket exemption certificates.** Blanket certificates may be provided in advance by solid waste collectors or other persons who collect the customer charges for solid waste collection and who are liable for collecting and remitting the solid waste collection tax. ((~~A blanket certificate must be renewed every four years.~~)) Blanket certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c).

(c) ((~~**Good faith acceptance of certificates.** Solid waste collection businesses which provide services for the transfer, storage, or disposal of waste, and who accept completed certifications in good faith are not required to collect and remit the solid waste collection tax and will not be held personally liable for it.~~

~~(d)~~)) **Examples.** Examples of taxable and tax exempt transactions are:

(i) A private person or commercial customer hauls its own waste to a dump site for disposal and pays a fee - the fee is subject to the solid waste collection tax.

(ii) A solid waste collection company picks up and hauls residential or commercial waste to a dump for disposal - this company bills the customer for the tax and need not pay the tax upon any further charge made by the dump site operator, by providing an exemption certificate.

(iii) A city provides solid waste collection services to its residents through an independent hauler under a negotiated contract, and uses a county operated land fill. The city bills the residents on their utility bills. The tax applies to the solid waste portion of the utility bill adjusted as provided in this section. These taxes do not apply to any charge paid by the city to the hauling company, nor to any charge made by the county to the city for dumping services. The city must provide the hauler and the county with an exemption certificate.

(8) **Business and occupation tax.** A solid waste collection business is subject to service and other activities B&O tax on the gross income from solid waste collection activities. There is no deduction for any cost of doing business or any amounts paid over to other solid waste collection businesses. Late charges or penalties are subject to the service and other activities B&O tax.

Solid waste collection is an "enterprise activity," when funded over fifty percent by user fees. Amounts derived from this activity by a local governmental entity are subject to service and other activities B&O tax. See RCW 82.04.419, 82.04.4291, and WAC 458-20-189.

(9) **Sales of containers.** Solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property taxable separate and apart from the solid waste collection business. Charges for such rentals, however designated, are subject to retailing B&O and retail sales taxes when they are billed separately or are line itemized on customer billings.

(10) **Sales and use tax obligations for the use of property.** Solid waste collection businesses are themselves the consumers of all tangible personal property purchased for their own use in conducting such business, other than items for resale or renting to customers, e.g., rented receptacles. Retail sales tax must be paid to materials suppliers and providers of such tangible consumables. (See RCW 82.04.050.) If the seller does not collect retail sales tax, the solid waste collection business must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).

WSR 08-14-026
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 20, 2008, 2:57 p.m., effective July 21, 2008]

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

Purpose: WAC 458-20-110 (Rule 110) Delivery charges, explains the manner in which delivery charges are subject to the business and occupation, retail sales, and use taxes. Rule 110 has been revised to incorporate statutory provisions of chapter 6, Laws of 2007 (SSB 5089) on apportioning delivery charges included in the sales price when a shipment includes both product subject to retail sales tax and product not subject to sales tax.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-110 Delivery charges.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapters 82.04, 82.08 and 82.12 RCW, as they apply to delivery charges.

Adopted under notice filed as WSR 08-06-095 on March 5, 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 1, 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 20, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 05-02-039, filed 12/30/04, effective 1/30/05)

WAC 458-20-110 Delivery charges. (1) **Introduction.** This ((~~rule~~)) section explains the manner in which delivery charges are considered for purposes of business and occupation (B&O), retail sales, and use taxes. For information about delivery charges with regard to promotional materials, see WAC 458-20-17803 (Use tax on promotional materials).

(2) **What are delivery charges?** "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. RCW 82.08.010 and chapter 168, Laws of 2003, adopted the national Streamlined Sales and Use Tax Agreement definition of "delivery charges."

(3) **Do the business and occupation (B&O) and retail sales taxes apply to delivery charges?** The measure of the tax is "gross proceeds of sales" for B&O tax (RCW 82.04.070) and "selling price" for retail sales tax (RCW 82.08.010). Gross proceeds of sales and selling price include all consideration paid by the buyer, without any deduction for costs of doing business such as material, labor, and transportation costs, including delivery charges. Thus, delivery charges by the seller are a component of these tax measures.

(a) **What if delivery charges are separately itemized on the sales invoice?** Amounts received by a seller from a buyer for delivery charges are included in the measure of tax regardless of whether charges for such costs are billed separately, itemized, or whether the seller is also the carrier. Limiting delivery charges to the actual cost of delivery to the seller does not affect taxability.

(b) **Does retail sales tax apply to all delivery charges by the seller?** Delivery charges by the seller making a retail sale are a component of the selling price. If the sale of the tangible personal property or service is exempt from retail sales tax, such as certain "food and food ingredients," retail sales tax does not apply to the selling price, including delivery charges, associated with that sale. Similarly, if the product is sold at wholesale, retail sales tax does not apply to the delivery charges of that sale.

If a retail sale consists of both taxable and nontaxable tangible personal property, and delivery charges are a component of the selling price, retail sales tax applies to the percentage of delivery charges allocated to the taxable tangible personal property. Retail sales tax is not due on delivery charges allocated to exempt tangible personal property.

The seller may use either of the following percentages to determine the taxable portion of the delivery charges:

(i) A percentage based on the total sales price of the taxable tangible personal property compared to the total sales price of all tangible personal property in the shipment; or

(ii) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment.

(c) **Are there any situations in which delivery charges by the seller may be excluded from the measure of tax?** There is no specific exclusion from the measure of tax for delivery charges by the seller. Actual delivery costs, regardless of whether separately charged, may be excluded from the measure of the manufacturing and extracting B&O taxes when the products are delivered outside the state. For further discussion, refer to WAC 458-20-112 (Value of products). WAC 458-20-13501 (Timber harvest operations) provides guidance regarding this issue for persons engaged in activities associated with timber harvesting.

(d) **Delivery charges in cases of payments to third parties.** Delivery charges incurred after the buyer takes delivery of the goods are not part of the selling price when the seller is not liable for payment of the delivery charges. To be excluded from the gross proceeds of sales for B&O tax and selling price for retail sales tax, the seller must document that the buyer alone is responsible to pay the carrier for the delivery charges.

(e) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples

should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In these examples, if the seller had been required to collect use tax (RCW 82.12.040) instead of retail sales tax (RCW 82.08.050), the use tax collection responsibility remains the same as for retail sales tax. This is because, in this context, the "value of article used" has the same meaning as the "purchase price" or "selling price."

(i) **Example 1.** Jane Doe orders a life vest from Marine Sales and requests that the vest be mailed by the United States Postal Service to her home. Marine Sales places the correct postage on the package using its postage meter and separately itemizes a charge on the sales invoice to Jane at the exact amount of the postage cost. Marine Sales is subject to the retailing B&O tax on the gross proceeds of the sale and must collect retail sales tax on the selling price, both of which measures of tax include the charge for postage.

(ii) **Example 2.** XYZ Corporation orders equipment from ABC Distributors and provides ABC with a properly completed resale certificate. ABC ships the equipment using overnight air delivery and itemizes the actual amount of its shipping costs on the sales invoice. ABC must remit wholesaling B&O tax on the gross proceeds of sale, which includes the amount billed as shipping charges. Since the equipment is purchased for resale, ABC does not collect or report retail sales tax.

(iii) **Example 3.** The facts in this example are the same as those in (ii) of this subsection except that XYZ provides ABC with a properly completed exemption certificate. Retail sales tax does not apply to the delivery charge because the selling price, of which the delivery charge is a component, is exempt from retail sales tax. However, the delivery charge is included in the gross proceeds of the sale, and thus, is subject to retailing B&O tax.

(iv) **Example 4.** Jones Computer Supply, a distributor, makes retail sales of computer products primarily by mail order. It is the practice of Jones Computer Supply to add a ten-dollar handling charge for each order. No separate charge is made for actual transportation. The handling charge is part of the measure of tax for the retailing B&O and retail sales taxes.

(v) **Example 5.** ABC Construction in Seattle purchased a new saw from XYZ, Inc. The sales contract specifies that ABC will contract with MNO, Inc. for shipping to Seattle and that MNO, Inc. will pick up the saw in Spokane. ABC does contract with MNO for the shipping and is shown as the consignor on the bill of lading. The transportation charge is not included in the measure of tax for purposes of the retailing B&O and retail sales taxes because ABC, the buyer, is liable for payment to MNO, for shipping the new saw.

(4) **Delivery charges and use tax.** Beginning June 1, 2002, "value of article used," which is the measure of the use tax for tangible personal property, includes the amount of any delivery charge paid or given to the seller or on behalf of the seller with respect to the purchase of such article. Beginning July 1, 2004, both the "value of the article used" and the "value of the service used" will be the "purchase price" in instances where the seller is required under RCW 82.12.040 to collect use tax from the purchaser. RCW 82.12.010. "Purchase price" has the same meaning as "selling price" as described in subsection (3) of this ((~~rule~~)) section. Consumers responsible for remitting use tax directly to the department should refer to WAC 458-20-178 (Use tax).

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. Presume that all transactions in the following examples occur July 1, 2004, or later.

(a) **Example 1.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. XYZ contracted with MNO Freight to ship the parts from Chicago. ABC is subject to use tax on the value of the article used (presumed to be the purchase price of the parts) including the cost of the transportation, regardless of whether the transportation costs are itemized.

(b) **Example 2.** The facts in this example are the same as those in (a) of this subsection except that instead of ordering a replacement part, ABC Construction sends a broken part to XYZ, Inc. in Chicago for repair. ABC is subject to use tax on the repair service. The cost of transportation is included in the value of the service used, regardless of whether the transportation costs are itemized.

(c) **Example 3.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. ABC hired MNO Freight to ship the parts from Chicago and was responsible for payment. ABC may exclude the cost of the transportation from the value on which use tax is due. The transportation costs ABC pays MNO are not a component of the value of the article used because the cost is not part of the consideration paid to XYZ for the replacement parts. ABC is subject to use tax on the value of the parts, which is presumed to be their purchase price.

WSR 08-14-034
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed June 23, 2008, 9:18 a.m., effective July 24, 2008]

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

Purpose: Clarify procedures and notify responsible broker and salesperson/associate broker of a requested discontinued affiliation with the real estate firm.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124A-130.

Statutory Authority for Adoption: RCW 18.85.040(1) Director general prowers [powers] and duties.

Adopted under notice filed as WSR 08-02-080 on December 31, 2007.

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 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 1, Repealed 0.

Date Adopted: June 13, 2008.

Ralph Osgood

Assistant Director

AMENDATORY SECTION (Amending Order PM 711, filed 3/1/88)

WAC 308-124A-130 Salesperson, associate brokers—Termination of services. (1) A person licensed as salesperson or associate broker may perform duties and activities as licensed only under the direction and supervision of a licensed individual broker or designated broker and as a representative of such broker. This relationship may be terminated unilaterally by either the broker or salesperson or associate broker. ((~~Notice of such~~))

(a) All terminations shall be by written notice by the salesperson or associate broker to the designated broker or the broker's authorized representative; or by the designated broker to the salesperson or associate broker.

(b) All notices of termination shall be given by the broker to the director without delay and such notice shall be accompanied by and include the surrender of the salesperson's or associate broker's license.

(c) The broker may not condition his or her surrender of license to the director upon performance of any act by the salesperson or associate broker.

(d) Notice of termination shall be provided by signature of the broker, or a person authorized by the broker to sign for the broker, on the surrendered license of the salesperson or associate broker or surrender of the license by the licensee to the department.

(e) The termination date shall be the postmark date or date the license is hand delivered to the department.

(2) If the license cannot be surrendered to the department because the license has been lost, the salesperson or associate broker and the broker shall complete an affidavit of lost license on a form provided by the department.

(a) No license transfers shall be permitted unless the license is surrendered or the affidavit of lost license is completed and filed with the department.

(b) If the license cannot be surrendered because the broker is conditioning the surrender of the license, the associate broker or salesperson shall so advise the department in writing and cooperate in full with the investigation of the broker's failure to comply with this rule.

(c) Upon receipt of the salesperson or associate broker's written statement about broker conditioning the release of the license, the department shall process the license transfer.

WSR 08-14-038
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 23, 2008, 10:20 a.m., effective July 24, 2008]

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

Purpose: WAC 458-20-229 (Rule 229) explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes how to calculate the four year period and clarifies the: Nonclaim statute and its consequences; definition of what constitutes a valid claim; description of required substantiation with timelines for compliance; representative's requirement for providing a confidential information waiver; allowable sampling procedures; and how interest is calculated.

The department has amended Rule 229 to make one change, which occurs at two locations. This change occurs at subsection (8)(a)(i) and (ii). This correction is to merely change two references from "subsection (7)(b) of this section" to instead read: "(b) of this subsection."

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-229 Refunds.

Statutory Authority for Adoption: RCW 82.01.060(2) and 82.32.300.

Adopted under notice filed as WSR 08-06-093 on March 5, 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 23, 2008.

Janis P. Bianchi

Assistant Director

Interpretations and

Technical Advice Division

AMENDATORY SECTION (Amending WSR 07-17-065, filed 8/13/07, effective 9/13/07)

WAC 458-20-229 Refunds. (1) **Introduction.** This section explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes the statutory time limits for refunds and the interest rates that apply to those refunds.

References to a "refund application" in this section include a request for a credit against future tax liability as well as a refund to the taxpayer.

Examples provided in this section should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What are the time limits for a tax refund or credit?**

(a) **Time limits.** No refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made or examination of records by the department is completed. See RCW 82.32.060. This is a nonclaim statute rather than a statute of limitations. This means a valid application must be filed within the statutory period, which may not be extended or tolled, unless a waiver extending the time for assessment has been entered into as described in (c) of this subsection.

For example, a refund or credit may be granted for any overpayment made in a shaded year in the following chart:

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
					Refund application is filed no later than December 31st

(b) **Relation back to date paid.** Because the time limits relate to the date the taxes, penalties, or interest is paid, a refund application can be timely even though the payment concerned liabilities for a tax year normally outside the time limits. For example, Taxpayer P owes $1,000 in B&O tax for activity undertaken in December 2000. In January 2001, Taxpayer P makes an arithmetic error and submits a payment of $1,500 with its December 2000 tax return. In December 2005, Taxpayer P requests a refund of $500 for the overpayment of taxes for the December 2000 period. This request is timely because the overpayment occurred within the time limits, even though the payment concerned tax liabilities incurred (December 2000) outside the time limits.

Fact situations can be complicated. For example, Taxpayer P pays B&O taxes in Years 1 through 4. The department subsequently conducts an audit of Taxpayer P that includes Years 1-4. The audit is completed in Year 5. As a result of the audit, the department issues an assessment in Year 5 for $50,000 in additional retail sales taxes that were due from Years 1-4. Taxpayer P pays the assessment in full in Year 6. In Year 10, Taxpayer P files an application requesting a refund of B&O taxes. Taxpayer P's application is timely because it relates to a payment (payment of the assessment in Year 6) made no more than four years before the year in which the application is filed. It does not matter that the taxes relate to years outside the time limits; the actual payment occurred within four years before the refund application. Nor does it matter that the refund is based on an overpayment of B&O taxes while the assessment involved retail sales taxes, because both taxes relate to the same tax years. However, the amount of any refund is limited to $50,000 - the amount of the payment that occurred within the time limits.

Assume the same facts as described above. When the department reviews Taxpayer P's refund application, it determines that the refund is valid. After reviewing the new information, however, the department also determines that Taxpayer P should have paid $20,000 in additional B&O taxes during Years 1-4. Because Taxpayer P paid $30,000 more than the amount properly due ($50,000 overpayment less $20,000 underpayment), the amount of the refund will be $30,000.

(c) **Waiver.** Under RCW 82.32.050 or 82.32.100, a taxpayer may agree to waive the time limits and extend the time for the assessment of taxes, penalties and interest. If the taxpayer executes such a waiver, the time limits for a refund or credit are extended for the same period.

(3) **How do I get a refund or credit?**

(a) **Departmental examination of returns.** If the department performs an examination of the taxpayer's records and determines that the taxpayer has overpaid taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. In this situation, the taxpayer does not need to apply for a refund.

(b) **Taxpayer application.**

(i) If a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may apply for a refund or credit. Refund application forms are available from the following sources:

• The department's internet web site at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

The application form should be submitted to the department at the following location:

Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476.

Taxpayers are encouraged to use the department's refund application form to ensure that all necessary information is provided for a timely valid application. However, while use of the department's application form is encouraged, it is not mandatory and any written request for refund or credit meeting the requirements of this section shall constitute a valid

application. Filing an amended return showing an overpayment will also constitute an application for refund or credit, provided that the taxpayer also specifically identifies the basis for the refund or credit.

(ii) A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this section. An application must contain the following five elements:

(A) The taxpayer's name and UBI/TRA number must be on the application.

(B) The amount of the claim must be stated. Where the exact amount of the claim cannot be specifically ascertained at time of filing, the taxpayer may submit an application containing an estimated claim amount. Taxpayers must explain why the amount of the claim cannot be stated with specificity and how the estimated amount of the claim was determined.

(C) The tax type and taxable period must be on the application.

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this section expire.

(E) The signature of the taxpayer or the taxpayer's representative must be on the application. If the taxpayer is represented, the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an entity, every member or employee of that entity is authorized to represent the taxpayer. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an individual, only that individual is authorized to represent the taxpayer.

(iii) If the nonclaim statute has run prior to the filing of the application, the department will deny the application and notify the taxpayer.

(iv) If the department determines that the taxpayer is not entitled to a refund as a matter of law, the application may be denied without requiring substantiation. The taxpayer shall be responsible for maintaining substantiation as may eventually be needed should taxpayer appeal.

(v) The taxpayer is encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must submit sufficient substantiation to support the claim for refund or credit before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within ninety days after such notice is sent, unless the documentation is under the control of a third party, not affiliated with or under the control of the taxpayer, in which case the taxpayer will have one hundred eighty days to provide the documentation. The department may request any other books, records, invoices or electronic equivalents and, where appropriate, federal and state tax returns to determine whether to accept or deny the claimed refund and to assess an existing deficiency.

(vi) In its discretion and upon good cause shown, the department may extend the period for providing substantiation upon its own or the taxpayer's request, which may not be unreasonably denied.

(vii) If the department does not receive the necessary substantiation within the applicable time period, the department shall deny the claim for lack of adequate substantiation and shall so notify the taxpayer. Any application denied for lack of adequate substantiation may be filed again with additional substantiation at any time before the time limits in subsection (2) of this section expire. Once the department determines that substantiation is sufficient, the department shall process the refund claim within ninety days, except that the department may extend the time of processing such claim upon notice to the taxpayer and explanation of why the claim cannot be completed within such time.

(viii) The following examples illustrate the refund application process:

(A) A taxpayer discovers in January 2005 that its June 2004 excise tax return was prepared using incorrect figures that overstated its sales, resulting in an overpayment of tax. The taxpayer files an amended June 2004 tax return with the department's taxpayer account administration division. The department will treat the taxpayer's amended June 2004 tax return as an application for a refund or credit of the amounts overpaid during that tax period, except that the taxpayer must also specifically identify the basis for the refund or credit and provide sufficient substantiation to support the claim for refund or credit. The taxpayer may satisfy this obligation by submitting a completed refund application form with its amended return or providing the additional required substantiation by other means.

(B) On December 31, 2005, a taxpayer files an amended return for the 2001 calendar year. The return includes changed figures indicating that an overpayment occurred, but does not provide any supporting substantiation. No written waiver of the time limits, under subsection (2)(c) of this section, for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ninety days or the application will be denied. If the taxpayer does not provide the necessary substantiation by the stated date, the claim will be denied and, if refiled, will not be granted because it is then past the nonclaim limit of the statute.

(C) Taxpayer submits a refund application on December 31, 2004, claiming that taxpayer overpaid use tax in 2000 on certain machinery and equipment obtained by the taxpayer at that time. No substantiation is provided with the application and no written waiver of the time limit, under subsection (2)(c) of this section, for this taxable period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ninety days or the application will be denied. The taxpayer does not respond by the stated date. The claim will be denied and, if refiled, will not be granted since it is then past the nonclaim limit of the statute.

(D) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that within ninety days from the date the department sent the letter the taxpayer submits substantiation, which the department deems sufficient. The taxpayer's

claim is valid, notwithstanding that the substantiation was provided after the nonclaim limit expired.

(E) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that before the ninety-day period expires, the taxpayer requests an additional fifteen days in which to respond, explaining why the substantiation will require the additional time to assemble. The department agrees to the extended deadline. If the taxpayer submits the requested substantiation within the resulting one hundred five-day period, the department will not deny the claim for failure to provide timely substantiation.

(F) Assume the same facts as in (b)(iii)(B) and (C) of this subsection, except that the taxpayer submits substantiation within ninety days. The department reviews the substantiation and finds that it is still insufficient. The department, in its discretion, may extend the deadline and request additional substantiation from the taxpayer or may deny the refund claim as not substantiated.

(4) **May I get a refund of retail sales tax paid in error?**

(a) **Refund from seller.** Except as provided for in RCW 82.08.130 regarding deductions for tax paid at source, if a buyer pays retail sales tax on a transaction that the buyer later believes was not taxable, the buyer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the buyer, the seller may seek its own refund from the department. It is better for a buyer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the buyer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the buyer concerning the product, and may already be aware of the circumstances as to why a refund of sales tax is or is not appropriate. If a seller questions whether he or she should refund sales tax to a buyer, the seller may request advice from the department's telephone information center at 1-800-647-7706.

(b) **Refund from department.** In certain situations where the buyer has not received a refund from the seller, the department will refund retail sales tax directly to a buyer. The buyer must file a complete refund application as described in subsection (3)(b) of this section and either a seller's declaration or a buyer's declaration, under penalty of perjury, must be provided for each seller.

(i) If the buyer is able to obtain a waiver from the seller of the seller's right to claim the refund, the buyer should file a seller's declaration, under penalty of perjury, with the refund application. A seller's declaration substantiates that:

(A) Retail sales tax was collected and paid to the department on the purchase for which a refund is sought;

(B) The seller has not refunded the retail sales tax to the buyer or claimed a refund from the department; and

(C) The seller will not seek a refund of the sales tax from the department.

(ii) If the seller no longer exists, the seller refuses to sign the declaration, under penalty of perjury, or the buyer is unable to locate the seller, the buyer should file a buyer's declaration, under penalty of perjury, with the refund application. The buyer's declaration explains why the buyer is unable to obtain a seller's declaration and provides information about the seller and declares that the buyer has not obtained and will not in the future seek a refund from the seller for that claim.

(iii) Seller's declaration, under penalty of perjury, and buyer's declaration, under penalty of perjury, forms are available from the following sources:

• The department's internet web site at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(5) **May I use statistical sampling to substantiate a refund?** Sampling will only be used when a detailed audit is not possible. However, if your applications for refund or credit involve voluminous documents, the preferred method for substantiating your application is the use of statistical sampling. Alternative methods of sampling, including but not limited to, random sampling, time period sampling, transaction sampling, and block sampling, may be used when the department agrees that such methods are appropriate.

When using statistical sampling or an alternative method to substantiate an application for refund or credit, the applicant must contact the department prior to preparing the sampling to obtain the department's approval of the sampling plan. The sampling plan will describe the following:

• Population and sampling frame;

• Sampling unit;

• Source of the random numbers;

• Who will physically locate the sample units and how and where they will be presented for review;

• Any special instructions to those who were involved in reviewing the sample units;

• Special valuation guidelines to any of the sample units selected in the sample;

• How the sample will be evaluated, including the precision and confidence levels; and

• The applicant must obtain a seller's declaration from those sellers identified in the sample and separately certify, under penalty of perjury, that applicant will not otherwise request or accept a refund or credit for sales or deferred sales tax paid to any seller or any use tax remitted during the taxable period covered by the audit.

Failure to contact the department before preparing the sampling may result in the department rejecting the application on the grounds that the results are not statistically valid.

Contact the department prior to performing a statistical sampling at these locations:

• The department's internet web site at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(6) **Is my refund final?** The department may review a refund or credit provided on the basis of a taxpayer application without an examination by audit. If the refund or credit is granted and the department subsequently determines that the refund or credit exceeded the amount properly due the taxpayer, the department may issue an assessment to recover the excess amount. This assessment must be made within the time limits of RCW 82.32.050.

(7) **Refunds made as a result of a court decision.** The department will grant refunds or credits required by a court or Board of Tax Appeals decision, if the decision is not under appeal.

If the court action requires the refund or credit of retail sales taxes, the department will not require that buyers attempt to obtain a refund directly from the seller if it would be unreasonable and an undue burden on the buyer. In such a case, the department may refund the retail sales tax directly to the buyer and may use the public media to notify persons that they may be entitled to refunds or credits. The department will make available special refund application forms that buyers must use for these situations. The application will request the appropriate information needed to identify the buyer, item purchased, amount of sales tax to be refunded, and the seller. The department may, at its discretion, request additional documentation that the buyer could reasonably be expected to retain, based on the particular circumstances and value of the transaction. The department will approve or deny such refund requests within ninety days after the buyer has submitted all documentation.

(8) **What interest is due on my refund?** Interest is due on a refund or credit granted to a taxpayer as provided in this subsection.

(a) **Rate for overpayments made between 1992 through 1998.** For amounts overpaid by a taxpayer between January 31, 1991 and December 31, 1998, the rate of interest on refunds and credits is:

(i) Computed the same way as the rate provided under ((~~subsection (7)~~))(b) of this ((~~section~~)) subsection minus one percent, for interest allowed through December 31, 1998; and

(ii) Computed the same way as the rate provided under ((~~subsection (7)~~))(b) of this ((~~section~~)) subsection, for interest allowed after December 31, 1998.

(b) **Rate for overpayments after 1998.** For amounts overpaid by a taxpayer after December 31, 1998, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate is adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April and July of the immediately preceding calendar year and October of the previous preceding year, as published by the United States Secretary of Treasury.

(c) **Start date for the calculation of interest.** If the taxpayer made all overpayments for each calendar year and all reporting periods ending with the final month included in a credit notice or refund on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund, interest is computed from either:

(i) January 31st following each calendar year included in a notice or refund; or

(ii) The last day of the month following the final month included in a notice or refund.

If the taxpayer did not make all overpayments for each calendar year and all reporting periods ending with the final month included in the notice or refund, interest is computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(d) **Calculation of interest on credits.** The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return. If a taxpayer requests that a credit notice be converted to a refund, interest is recomputed to the date the refund (warrant) is issued, but not to exceed the interest that would have been granted through the credit notice.

(9) **May the department apply my refund against other taxes I owe?** The department may apply overpayments against existing deficiencies and/or future assessments for the same legal entity. However, if preliminary schedules have not been issued regarding existing deficiencies or future assessments and the taxpayer is not presently under audit, the refund of an overpayment may not be delayed when the department determines a refund is due. The following examples illustrate the application of overpayments against existing deficiencies:

(a) The taxpayer's records are audited for the period Year 1 through Year 4. The audit disclosed underpayments in Year 2 and overpayments in Year 4. The department will apply the overpayments in Year 4 to the deficiencies in Year 2. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional tax.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the refund of the real estate excise tax while it schedules and performs an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The audit disclosed underpayments of B&O tax and overpayments of timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may apply the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

(10) **How do I appeal the department's decision?** The taxpayer may appeal the denial of: A refund claim (or any part thereof, including tax, penalties, or interest overpayments), a request for an extension for providing substantiation, or a request to use a specific sampling technique. Taxpayer may appeal to either:

(a) The department as provided in WAC 458-20-100, Appeals, small claims and settlements; or

(b) Directly to Thurston County superior court.

(11) **Application.** This section applies to refund applications or amended returns showing overpayments, where the taxpayer has also specifically identified the basis for the refund or credit, that are received by the department on or after the effective date of this section.

WSR 08-14-047
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 24, 2008, 11:25 a.m., effective July 25, 2008]

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

Purpose: The department is amending the following rule: WAC 388-412-0040 Can I get my benefits replaced?

This rule change is needed to correct a typographical error in WAC 388-412-0040(4). The amendment changes the word "shoes" to "those."

Citation of Existing Rules Affected by this Order: Amending WAC 388-412-0040.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510.

Adopted under notice filed as WSR 08-09-043 on April 10, 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 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 1, Repealed 0.

Date Adopted: June 20, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-22-038, filed 10/28/03, effective 12/1/03)

WAC 388-412-0040 Can I get my benefits replaced? Under certain conditions, we may replace your benefits.

(1) You may get your EBT benefits replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) Both your EBT card and personal identification number (PIN) are stolen from the mail; you never had the ability to use the benefits; and you lost benefits;

(c) You left a drug or alcohol treatment on or before the fifteenth of the month and the facility does not have enough Basic Food benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake along with your state benefits; or

(e) Your food that was purchased with Basic Food benefits was destroyed in a disaster.

(2) If you want a replacement, you must:

(a) Report the loss to your local office within ten days from the date of the loss; and

(b) Sign a department affidavit form stating you had a loss of benefits.

(3) For Basic Food, we replace the loss up to a one-month benefit amount.

(4) We will not replace your benefits if your loss is for a reason other than ((~~shoes [those]~~)) those listed in subsection (1) above or:

(a) We decided that your request is fraudulent;

(b) Your Basic Food benefits were lost, stolen or misplaced after you received them;

(c) You already got two countable replacements of Basic Food benefits within the last five months; or

(d) You got disaster food stamp benefits for the same month you requested a replacement for Basic Food.

(5) Your replacement does not count if:

(a) Your benefits are returned to us; or

(b) We replaced your benefits because we made an error.

WSR 08-14-048
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed June 24, 2008, 11:34 a.m., effective July 25, 2008]

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

Purpose: DSHS is updating this WAC to comply with federal rules which govern how the department considers retroactive lump sum payments from any Title II or Title XVI payment, and to clarify that these resources are now excluded for nine months, not six. DSHS is also correcting WAC references which are no longer correct.

Citation of Existing Rules Affected by this Order: Amending WAC 388-475-0300.

Statutory Authority for Adoption: RCW 74.04.057, 74.08.090.

Other Authority: RCW 74.04.050, 74.09.500.

Adopted under notice filed as WSR 08-09-111 on April 21, 2008.

Changes Other than Editing from Proposed to Adopted Version: Subsection (6) The transfer of a resource without adequate consideration does not affect medical program eligibility except for LTC ((~~and waiver services programs~~)) services described in chapters 388-531 and 388-515 WAC. In those programs, the transfer may make a client ineligible for medical benefits for a period of time. See WAC ((~~388-513-1364~~)) 388-513-1363 through 388-513-1366 for LTC rules.

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 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 1, Repealed 0.

Date Adopted: June 19, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-09-002, filed 4/7/04, effective 6/1/04)

WAC 388-475-0300 SSI-related medical—Resources eligibility. (1) ((~~A client must be resource eligible on the first moment of the first day of the month, and is then eligible for the entire month~~)) At 12:00 a.m. on the first day of the month a client's countable resources must be at or below the resource standard to be eligible for noninstitutional medical benefits for that month. If the total of the client's countable resources is above the resource standard at 12:00 a.m. on the first ((~~moment of the first~~)) day of the month, the client is ineligible for noninstitutional medical benefits for that entire month regardless of resource status at the time of application during that month. For resource eligibility relating to long-term care eligibility see chapter 388-513 WAC.

(2) An excluded resource converted to another excluded resource remains excluded.

(3) Cash received from the sale of an excluded resource becomes a countable resource the first of the month following conversion unless the cash is;

(a) Used to replace the excluded resource; or

(b) Invested in another excluded resource in the same month or within the longer time allowed for home sales under WAC 388-475-0350; or

(c) Spent.

(4) The unspent portion of a nonrecurring lump sum payment is counted as a resource on the first of the month following its receipt with the following exception: The unspent portion of any Title II (SSA) or Title XVI (SSI) retroactive payment is excluded as a resource for ((~~six~~)) nine months following the month of receipt. These exclusions apply to lump sums received by the client, client's spouse or other any other person who is financially responsible for the client.

(5) Clients applying for SSI-related medical coverage for long-term care (LTC) services must meet different resource rules. See chapter 388-513 WAC for LTC resource rules.

(6) The transfer of a resource without adequate consideration does not affect medical program eligibility except for LTC ((~~and waiver services programs~~)) services described in chapters 388-531 and 388-515 WAC. In those programs, the transfer may make a client ineligible for medical benefits for a period of time. See WAC ((~~388-513-1364~~)) 388-513-1363 through 388-513-1366 for LTC rules.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 08-14-052
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed June 24, 2008, 2:17 p.m., effective July 25, 2008]

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

Purpose: The department is reestablishing a noncovered services, eyeglasses, and contact lenses section (WAC 388-544-0575) which was previously repealed due to a lack of sufficient notice to stakeholders as required by the Administrative Procedure Act (APA). In addition to this, the department is relocating sections, updating cross references, adding the children's health program back in under eligibility, clarifying authorization requirements, including orthoptics and vision training therapy under covered services, requiring that all eyeglass lenses be placed into frames purchased by the department, limiting frequency of incidental repairs to eyeglass frames, and lowering the spherical requirement for high index lenses. When effective, this permanent rule replaces the emergency rule filed as WSR 08-11-048 filed on May 15, 2008.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-544-0450; and amending WAC 388-544-0010, 388-544-0050, 388-544-0100, 388-544-0150, 388-544-0250, 388-544-0300, 388-544-0350, 388-544-0400, 388-544-0500, 388-544-0550, and 388-544-0600.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: RCW 74.09.510, 74.09.520.

Adopted under notice filed as WSR 08-09-110 on April 21, 2008.

A final cost-benefit analysis is available by contacting Marlene Black, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1577, fax (360) 586-9727, e-mail blackml@dshs.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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 11, Repealed 1.

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 3, Amended 11, Repealed 1.

Date Adopted: June 24, 2008.

Robin Arnold-Williams
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-15 issue of the Register.

WSR 08-14-054
PERMANENT RULES
HOP COMMISSION

[Filed June 25, 2008, 7:11 a.m., effective July 26, 2008]

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

Purpose: Amendments were made to WAC 16-532-120 Labeling, to remove the letter "G" from the lettering/numbering sequence when labeling hop bales.

Citation of Existing Rules Affected by this Order: Amending WAC 16-532-120.

Statutory Authority for Adoption: Chapters 15.65 and 34.05 RCW.

Adopted under notice filed as WSR 08-03-105 on January 22, 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 1, 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 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 1, Repealed 0.

Date Adopted: June 25, 2008.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending WSR 06-15-135, filed 7/19/06, effective 8/19/06)

WAC 16-532-120 Labeling. Each lot of hops must be identified by the crop year produced, grower number and lot designation, and variety stenciled on each bale.

(1) A three-digit grower number will be assigned by the Washington hop commodity board (commission) prior to the annual harvest.

(2) The first marking will consist of the last digit of the crop year((~~, the letter "G"~~)) and a hyphen, followed by the three-digit grower number and lot designation (example: ((~~8G-000-01~~)) 8-000-001).

(3) The first marking shall be affixed on the head or top of the bale and shall be in characters approximately two inches high.

(4) The second marking will consist of the hop variety, utilizing a two-letter abbreviation. A list of approved two-letter abbreviations will be approved annually by the Washington state hop commodity board.

(5) The second marking shall be affixed immediately below the first marking on the head or top of the bale, and shall be in characters approximately two inches high.

WSR 08-14-057
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed June 25, 2008, 8:37 a.m., effective July 26, 2008]

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

Purpose: Amendments were made to chapter 16-54 WAC to clarify entry, health, and testing requirements for animals entering Washington state. 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.

Citation of Existing Rules Affected by this Order: Amending WAC 16-54-010, 16-54-030, 16-54-032, 16-54-071, 16-54-082, 16-54-083, 16-54-085, 16-54-111, 16-54-145, and 16-54-160.

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

Adopted under notice filed as WSR 08-10-086 on May 6, 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 1, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, 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 25, 2008.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited free state" means a state that has been determined by United States Department of Agriculture (USDA)

Animal and Plant Health Inspection Service (APHIS) to have a zero prevalence of cattle and bison herds affected with bovine tuberculosis as listed in Title 9 CFR Part 77.79 (January 1, 2006).

"Approved veterinary laboratory" means a laboratory that has been approved by National Veterinary Services Laboratories.

"Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from APHIS, USDA executed by a licensed and accredited veterinarian or a veterinarian approved by APHIS, USDA. The certificate of veterinary inspection is also known as an "official health certificate."

"Class free and Class A, B, and C states" means states that are classified for brucellosis by USDA, APHIS in Title 9 CFR Part 78.41 (January 1, 2006).

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

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

"Domestic bovine" means domesticated cattle, including bison.

"Domestic equine" means horses, donkeys, mules, ponies, and other animals in the *Equidae* family.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Exotic animal" means species of animals that are not native to Washington state but exist elsewhere in the world in the wild state.

"Immediate slaughter" means livestock will be delivered to a federally inspected slaughter plant within three days of entry into Washington state.

"Mature vaccinate" means a female bovine over the age of twelve months that has been vaccinated, under directions issued by the state of origin, with a mature dose of brucellosis vaccine.

"Modified accredited state" means a state that has been determined by USDA, APHIS to have a prevalence of bovine tuberculosis of less than 0.1 percent of the total number of herds of cattle and bison as listed in Title 9 CFR Part 77.11 (January 1, 2006).

"Movement permit" means an entry permit that is valid for six months and permits the entry of domestic equine into Washington state.

"NPIP" means the National Poultry Improvement Plan.

"Official brucellosis test" means the official test defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Official brucellosis vaccinate" means an official adult vaccinate or official calfhood vaccinate as defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Official identification" means identifying an animal or group of animals using USDA-approved or WSDA-approved devices or methods, including, but not limited to, official tags, unique breed registry tattoos, and registered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director.

"Poultry" means chickens, turkeys, ratites, waterfowl, game birds, pigeons, doves, and other domestic fowl designated by statute. Poultry does not mean free ranging birds defined as wildlife in RCW 77.08.010(16).

"Restricted feedlot" means a feedlot holding a permit issued under chapter 16-30 WAC.

"Stage I, II, III, IV, or V pseudorabies state" means states as classified by the Pseudorabies Eradication State-Federal-Industry Program Standards (November 1, 2003).

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Virgin bull" means a sexually active male bovine less than twelve months of age or a sexually intact male bovine between twelve and twenty-four months of age that is certified by the owner or the owner's designee as having had no breeding contact with female cattle.

"Wild animals" is defined in RCW 77.08.010(17).

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-030 Certificate of veterinary inspection, and entry permit requirements. (1) **Certificate of veterinary inspection:**

(a) A certificate of veterinary inspection must accompany all animals entering Washington state, except where specifically exempted in this chapter. Certificates of veterinary inspection expire thirty days from the date of issuance.

(b) The certificate of veterinary inspection must show that all livestock listed have been examined and found in compliance with vaccination, testing, and Washington animal identification requirements found in chapter 16-610 WAC.

(c) Any exemption to the requirement for a certificate of veterinary inspection may be suspended during an emergency disease condition declared by the director.

(2) **Entry permit:** An entry permit is required on:

(a) All domestic bovine (including Mexican cattle, Canadian cattle, and bison);

(b) Swine;

(c) Rams;

(d) Equine identified on a certificate similar to the Washington Equine Certificate of Veterinary Inspection and Movement Permit (form AGR-3027);

(e) Equine from states or countries where the diseases listed in WAC 16-54-071 have been diagnosed;

(f) Intact male equine that test positive to equine viral arteritis; and

(g) Equine reproductive products from donors that test positive to equine viral arteritis.

(3) Entry permits are granted at the discretion of the director and may be obtained from:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577
360-902-1878.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-032 Certificate of veterinary inspection—Required information. (1) A certificate of veterinary inspection must contain the following information:

(a) An entry permit, when required, that includes the physical addresses of the premises of origin and destination;

(b) Date of inspection;

(c) Names and addresses of the consignor and consignee;

(d) Shipment information, including:

(i) Origin of shipment;

(ii) Anticipated shipment date; and

(iii) Number of animals in the shipment;

(e) Certification that the animals are free from clinical signs or known exposure to any infectious or communicable disease;

(f) Test or vaccination status, when required;

(g) Description of each animal by:

(i) Identifying species;

(ii) Breed;

(iii) Age;

(iv) Sex of the animal;

(v) Color; and

(vi) Tag, tattoo, microchip, USDA-approved RFID (radio frequency identification device) ear tag, or other official method of identification, including ownership brands.

(2) All certificates of veterinary inspection must be reviewed by the animal health official of the state of origin and a copy must be immediately forwarded to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements. Import health requirements.

(1)(a) In addition to the other requirements of this chapter, all horses, donkeys, mules, and other domestic equine and equine reproductive products entering Washington state must be accompanied by a certificate of veterinary inspection.

(b) Equine vaccinated against equine viral arteritis (EVA) must be accompanied by a vaccination certificate.

(c) Reproductive products from donors that test positive for EVA must be accompanied by an application and entry permit.

(d) Domestic equine from the western states of Oregon, Idaho, California, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico may enter Washington state for shows, rides, or other events either with a certificate of veterinary inspection or with a document similar to the Equine Certificate of Veterinary Inspection and Movement Permit. Individual trips cannot exceed ninety days.

(e) An itinerary of interstate travel must be filed with the department within fourteen days of the expiration of the movement permit.

(2) All certificates and forms may be obtained from and sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577

Exemptions to import health requirements.

(3) Horses traveling into Washington state with their Oregon or Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

Import test requirements.

Equine infectious anemia (EIA).

(4) All domestic equine, except foals under six months of age accompanying their negative tested dams, must have a negative test for equine infectious anemia (EIA) within ((~~six~~)) twelve months before entering Washington state.

Exemptions to EIA test requirements.

(5) Domestic equine moving to Washington from Oregon are excluded from EIA test requirements.

Equine viral arteritis (EVA).

(6) Intact males over six months of age must test antibody negative for EVA within thirty days before entry into Washington state or have proof of vaccination.

(7) Vaccinated equine that test antibody positive for EVA must be accompanied by a certificate of veterinary inspection that provides proof of:

(a) A prevaccination negative antibody blood test;

(b) Vaccination within ten days of the prevaccination blood test; and

(c) Approved method of animal identification. Approved methods of identification are:

(i) Photograph or clearly drawn picture of the animal (both sides and front);

(ii) Brand (hot iron or freeze brand);

(iii) Microchip; and/or

(iv) Lip tattoo.

(8) Intact males over six months of age and equine reproductive products from donors that test positive for EVA may enter Washington state only if accompanied by an entry permit and a statement on the certificate of veterinary inspection verifying that the consignee:

(a) Has been advised of the positive antibody test results and the associated risks of EVA infection;

(b) Agrees to follow the recommendations of the Office International des Epizooties of the World Organization of Animal Health regarding EVA and USDA recommendations found in the *Equine Viral Arteritis Uniform Methods and Rules*, effective April 19, 2004; and

(c) Consents to the shipment.

(9) Intact males that test antibody positive for EVA are required to have an entry permit and may be subject to quarantine.

(10) Equine semen and embryos must originate from donors that have proof of vaccination or a negative antibody test for EVA during the current breeding season.

(11) Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

(12) Additional testing for EVA may be required during emergency disease conditions declared by the director.

Piroplasmosis.

(13) Any equine that has ever tested positive for piroplasmosis may not enter Washington state.

(14) Any equine that has originated from a country or state where piroplasmosis is endemic must be negative to a C-ELISA test within thirty days before entry into Washington state, and must be quarantined upon arrival and retested within sixty to ninety days. Horses that test positive on the post-arrival C-ELISA test are not permitted to remain in the state and must be removed.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-082 Domestic bovine animals—Importation requirements. Import health requirements.

(1) Domestic bovine entering Washington state must have a certificate of veterinary inspection and an entry permit issued by the office of the state veterinarian prior to entry. Entry permits are required on all feeder cattle entering restricted feedlots and are to be obtained by the brand inspector of the state of origin and recorded on the brand document.

(2) Before entering Washington state, Canadian cattle, including calves, must be identified on the right hip by a "CAN" brand (C open-A N).

Exemptions to import health requirements.

((~~(2)~~)) (3) A certificate of veterinary inspection is not required for domestic bovine that are:

(a) Consigned to federally inspected slaughter plants for immediate slaughter; or

(b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or

(c) Consigned to specifically approved livestock markets or restricted holding facilities where import requirements can be met; or

(d) Consigned to a restricted feedlot.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-083 Domestic and foreign bovine brucellosis requirements. (1) Female cattle, domestic and foreign, must have an official calfhood brucellosis vaccination and legible vaccination tattoo before entry into Washington state.

(a) Cattle vaccinated with strain 19 vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by a number indicating the quarter of the year in which they were vaccinated, followed by the last digit of the year of vaccination.

(b) Cattle vaccinated with RB-51 strain of vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by the letter R followed by the last digit of the year of vaccination.

(c) Brucellosis vaccinated cattle from foreign countries must present original vaccination certificates. On arrival, the cattle must be tattooed with the USDA V shield and the year indicated on the vaccination certificate.

(2) Mature vaccinated domestic bovine that are identified by a legible vaccination tattoo and USDA vaccination and USDA identification tags will be allowed entry into Washington state if the state of origin allows mature vaccination and is of the same brucellosis class or higher.

(3)(a) Test eligible dairy cattle from all states and all cattle from Class A states must be tested negative for bovine brucellosis within thirty days before entry.

(b) Beef cattle from selected brucellosis free states designated by the director may be required to have a negative test thirty days before entry.

(c) Test eligible bovine are bulls over six months of age, brucellosis vaccinated dairy females over twenty months of age, and brucellosis vaccinated beef breed females over twenty-four months of age.

(4) All animals must be identified by USDA approved official identification.

Exemptions to domestic bovine brucellosis test and vaccination requirements.

(5) Domestic bovine that are exempt from brucellosis testing and vaccination requirements are:

(a) Those cattle from a class free state consigned to restricted feedlots;

(b) Those consigned to federally inspected slaughter plants for immediate slaughter;

(c) Heifer calves less than four months of age;

(d) Slaughter only dairy breed cattle from Oregon, Idaho, and Montana that are consigned to a state-federal approved livestock market;

(e) Bull calves less than six months of age;

(f) Steers and spayed heifers;

(g) Official brucellosis vaccinated dairy cattle less than twenty months of age;

(h) Official brucellosis vaccinated beef cattle less than twenty-four months of age;

(i) Cattle from a certified brucellosis free herd, as defined by Title 9 CFR Part 78.1; and

(j) Test eligible beef breed cattle and dairy cattle that are consigned to a state or federally approved livestock market to meet entry testing requirements. Heifer calves between four and twelve months of age may be consigned to a state-federal approved sale yard where they will remain until meeting vaccination requirements.

(6) Cattle that have not met the department's brucellosis requirements may enter, with approval from the director, a restricted holding facility in Washington state until testing and vaccination requirements have been met. The restricted holding facility must be approved by the director and operated in accordance with a written agreement between the facility owner and the director. The restricted holding facility must be maintained and all inspections, testing, and vaccination done at the owner's expense.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-085 Domestic bovine tuberculosis requirements. (1) All domestic bovine from a modified accredited advanced or lower state must have a negative TB test within sixty days before entry into Washington state. Domestic bovine from a modified accredited or lower state shall be held separate and apart from native cattle for sixty days and retested negative at least sixty days after entry into Washington state.

(2) **Dairy cattle six months of age or older** must:

(a) Test negative for bovine tuberculosis within sixty days before entering Washington state; and

(b) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

(3) **Dairy heifers and bull calves less than six months of age** must:

(a) Be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility;

(b) Be held separate and apart from all other domestic bovine until they test negative for bovine tuberculosis after six months of age; and

(c) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

(4) **Cattle used for rodeo or timed events.**

(a) All cattle used for rodeo or timed events, except those imported directly from Mexico, must be accompanied by proof recorded on a certificate of veterinary inspection of a negative bovine tuberculosis test within twelve months before entry into Washington state.

(b) Calves under six months old that were born and have continuously resided in the state of Washington are excluded from this requirement.

(5) **Mexican cattle -** All cattle imported from Mexico that enter Washington, including those imported for rodeo or recreation purposes, must be sexually neutered and must bear official Mexican identification and brand before entry.

(a) All Mexican cattle must be accompanied by proof of two negative bovine tuberculosis tests conducted in the United States after entry from Mexico. The second negative test must be a minimum of sixty days after the first test and within thirty days before entry into Washington state.

(b) All Mexican cattle that remain in the state of Washington shall be tested annually for tuberculosis.

(c) If Mexican cattle entering Washington state are not accompanied by proof of two negative bovine tuberculosis tests prior to entry, they will be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility and kept separate and apart from Washington cattle until the completion of required tests.

(d) Sexually intact Mexican beef cattle may enter only with a prior entry permit and at the discretion of the director.

Exemptions to domestic bovine tuberculosis test requirements.

((~~(5)~~)) (6) **Dairy cattle** are exempt from bovine tuberculosis testing requirements if they:

(a) Originate from an accredited bovine tuberculosis-free herd, as defined by USDA, APHIS in Title 9 CFR Chapter 1 Part 77 (January 1, 2006), and if an accredited herd number and the date of the last bovine tuberculosis test are shown on the certificate of veterinary inspection;

(b) Are consigned to federally inspected slaughter plants for immediate slaughter; or

(c) Are consigned to slaughter through state and federally approved sale yards and remain in slaughter channels.

((~~(6) **Adult dairy cows from Oregon and Idaho**~~)) (7)(a) Cattle that have not met the department's ((~~brucellosis and~~)) tuberculosis requirements may enter, with approval from the director, a ((~~WSDA approved brucellosis/tuberculosis~~)) restricted holding facility in Washington state until testing requirements have been met.

((~~(7)~~)) (b) The restricted holding facility must be approved by the director and operated in accordance with a written agreement between the facility owner and the director.

(c) The restricted holding facility must be maintained and all inspections and testing done at the owner's expense.

(8) **Dairy steers and spayed heifers** are exempt from bovine tuberculosis testing requirements before entry into Washington state if they are entering restricted feedlots to be fed for slaughter.

((~~(8)~~)) (9) **Mexican cattle** are exempt from the second bovine tuberculosis test and isolation requirements if their official Mexican identification remains intact and they are consigned to a federally inspected slaughter plant for immediate slaughter.

NEW SECTION

WAC 16-54-086 Bovine trichomoniasis requirements. (1) **Breeding bulls** may be imported into the state of Washington if they meet the following requirements:

(a) The bulls originate from a herd wherein all bulls have tested negative for bovine trichomoniasis since they were removed from female cattle; and

(b) The bulls have tested negative to a bovine trichomoniasis culture test within thirty days before import and have had no contact with female cattle from the time of the test to the time of import; or

(c) If the bulls originate from a herd where one or more bulls or cows have been found infected with bovine trichomoniasis **within the past twelve months,** the bulls must have three consecutive negative bovine trichomoniasis culture tests one week apart or one negative polymerase chain reaction (PCR) test. The samples for each test must be collected within thirty days before cattle are imported into Washington state, and an import permit must be obtained from the director and include a certifying statement that the bulls originated from an infected herd.

(2) Before arrival at their destination in Washington state, all imported bulls must be identified with official identification or an official trichomoniasis bangle tag.

(3) Bulls that enter Washington state without meeting the bovine trichomoniasis requirements of this section will be quarantined at the owner's expense until they have had three

consecutive negative bovine trichomoniasis culture tests one week apart or one negative PCR test.

(4)(a) Any bull or cow that is positive to a trichomoniasis culture test, and any herd in which one or more bulls or cows are found infected with trichomoniasis is considered infected.

(b) In the case of bulls testing positive to trichomoniasis, the herd shall be quarantined pending an epidemiological investigation to determine the source of the infection, and as long as infection persists in the herd.

(c) Infected bulls will be quarantined and will not be used for breeding. They must be slaughtered, sold for slaughter, or sent to a restricted feedlot to remain in slaughter channels.

(5) **Certification and proficiency testing and types of tests.** The state veterinarian will determine trichomoniasis training for veterinarians and laboratories, and the types of tests used to determine trichomoniasis infection.

(a) Only veterinarians registered with WSDA shall collect samples for official tests for trichomoniasis. Prior to being granted registered status, all veterinarians who will collect samples for trichomoniasis testing shall attend an educational seminar conducted by the animal services division on trichomoniasis and proper sample collection techniques.

(b) Registered veterinarians shall only utilize official laboratories recognized by the state veterinarian for culture of trichomoniasis samples.

(c) Registered veterinarians shall submit results of all trichomoniasis tests and all official identification on official trichomoniasis test and report forms to the animal services division within five business days of receiving test results from an official laboratory or identifying virgin bulls with official trichomoniasis bangle tags.

(d)(i) Polymerase chain reaction is accepted as an official test when completed by a qualified laboratory approved by the director and when the sample is received by the laboratory within forty-eight hours of collection.

(ii) Other tests for trichomoniasis may be approved as official tests by the state veterinarian after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

(iii) An official test is one in which the sample is received in the official laboratory in good condition within forty-eight hours of collection. Samples in transit for more than forty-eight hours will not be accepted for official testing and must be discarded. Samples that have been frozen or exposed to high temperatures must also be discarded.

Exemptions to bovine trichomoniasis test requirements.

(6) **Virgin bulls** are exempt from bovine trichomoniasis test requirements. If sold, virgin bulls must be accompanied by a certificate signed by the owner or the owner's designee that they have had no breeding contact with female cattle.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-111 Swine—Importation and testing requirements. Import health requirements.

(1) All swine entering Washington state must be accompanied by an entry permit, a certificate of veterinary inspection, and official USDA approved identification.

(2) Feral swine are prohibited in Washington state.

Import test requirements.

((~~(2)~~)) (3) **Brucellosis.** All intact male and intact female swine more than six months of age must be tested negative for brucellosis within thirty days before entering Washington state or must originate from a USDA validated brucellosis free herd or state (Swine Brucellosis Control/Eradication State-Federal-Industry Uniform Methods and Rules, April, 1998).

((~~(3)~~)) (4) **Pseudorabies.** No test is required from states recognized as Stage IV or Stage V by Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003.

((~~(4)~~)) (5) A negative pseudorabies test within thirty days before entry is required for swine from any state or area that loses Stage IV or Stage V status.

Exemptions to import test requirements.

((~~(5)~~)) (6) Swine shipped directly to a federally inspected slaughter plant for immediate slaughter are exempt from testing requirements.

Swine semen and embryos.

((~~(6)~~)) (7)(a) Swine semen and swine embryos entering Washington state for insemination of swine or implantation into swine shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian stating that the donor swine are not known to be infected with or exposed to pseudorabies, were negative to an official pseudorabies serologic test within thirty days prior to the collection of the semen or embryos or were members of a qualified pseudorabies negative herd, and had not been exposed to pseudorabies within thirty days prior to the collection of the semen or embryos.

(b) Brucellosis testing is not required on donor swine from brucellosis validated free states.

(c) Pseudorabies testing is not required on donor swine from pseudorabies Stage IV or Stage V states.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-145 Poultry and game birds, including ratites—Importation and testing requirements. Import health requirements.

(1) All poultry and game birds, including ratites, imported into Washington state must be accompanied by a certificate of veterinary inspection.

(a) USDA VS form 17-6 (Certificate for Poultry or Hatching Eggs for Export) will be accepted in lieu of the certificate of veterinary inspection.

(b) For hatching eggs and baby poultry, a USDA NPIP VS form 9-3 (Report of Sales of Hatching Eggs, Chicks, and Poults) may be used in lieu of the certificate of veterinary inspection.

(c) The certificate of veterinary inspection must include either the NPIP number or negative results of the required tests.

(2) Poultry or hatching eggs must originate from flocks or areas not under state or federal restriction.

(3) Each ratite entering Washington state must be permanently identified with USDA approved identification. The type of identification must be listed on the certificate of veterinary inspection.

Import test requirements.

(4) Poultry and game birds must:

(a) Originate from an NPIP participant flock that has met classification requirements for pullorum-typhoid, *Salmonella* enteriditis, and avian influenza; or

(b) Test negative within thirty days before entering Washington for pullorum-typhoid, *S.* enteriditis, and avian influenza. Serum testing or NPIP member status is also required for the following species:

(i) Bobwhite quail (*Colinus virgianus*).

(ii) Coturnix quail (*Coturnix coturnix*).

(iii) Pure or hybrid Ring-necked pheasant (*Phasianus colchicus*).

(iv) Chukar (*Alectoris chukar*).

(v) Hungarian partridge (*Perdix perdix*).

(5) Hatching eggs must originate from an NPIP participant flock that has met classification requirements for the diseases listed in subsection (4)(a) of this section. If the parent breeder flock is not an NPIP participant, the parent birds must be tested for the above diseases within thirty days before entry.

(6) Turkeys and wild turkeys, their poults, and eggs must originate from a producer who is participating in the mycoplasmosis control phase of the NPIP or must have been tested serologically negative for *M. gallisepticum* and *M. synoviae* within thirty days of entry.

Exemptions to import health requirements.

(7) Doves, pigeons, and poultry destined for immediate slaughter are exempt from the certificate of veterinary inspection and testing requirements.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-160 Birds other than poultry—Importation and testing requirements. Import health requirements.

(1) All birds other than poultry entering Washington state require a certificate of veterinary inspection that contains the following statement:

"To the best of my knowledge, the birds listed on this certificate are not infected with exotic Newcastle disease, psittacosis, or avian influenza and have been free from clinical signs of or known exposure to infectious or communicable disease during the past thirty days."

(2) All birds must be individually identified with a numbered leg band or in a manner appropriate to the species.

Exemptions to import health requirements.

(3) Family pet birds are exempt from the certificate of veterinary inspection if they:

(a) Are two or less in number; and

(b) Have not been purchased within thirty days of entry into Washington state; and

(c) Are traveling by private conveyance with their owners.

WSR 08-14-062
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed June 25, 2008, 9:42 a.m., effective July 26, 2008]

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

Purpose: To implement 2008 legislation (2SHB 1273) adding a surcharge to filing fees. An earlier effective date is required.

Citation of Existing Rules Affected by this Order: Amending WAC 308-390-105.

Statutory Authority for Adoption: RCW 62A.9A-526, 2SHB 1273.

Other Authority: Chapters 60.11, 60.13, 60.68 RCW, RCW 43.24.086.

Adopted under notice filed as WSR 08-09-033 on April 9, 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 1, 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 0, Repealed 0.

Date Adopted: June 25, 2008.

Nancy Skewis
Administrator

AMENDATORY SECTION (Amending WSR 07-23-030, filed 11/9/07, effective 2/11/08)

WAC 308-390-105 Fees. (1) The fee for filing and indexing a UCC record ((~~of one or two pages communicated on paper is $15.00. If there are additional pages, the fee is $1.00 for each additional page. The fee for filing and indexing a UCC record communicated by a medium authorized by these rules which is other than on paper is $8.00.~~)) is:

FILINGS	DELIVERY MODE	FEE INCLUDING SURCHARGE
Financing Statement	electronic	$11.00
Financing Statement Amendment	electronic	$11.00
Correction Statement	electronic	$11.00
UCC1 Financing Statement (1 or 2 pages)	mail	$23.00

FILINGS	DELIVERY MODE	FEE INCLUDING SURCHARGE
UCC3 Financing Statement Amendment (1 or 2 pages)	mail	$23.00
UCC5 Correction Statement (1 or 2 pages)	mail	$23.00
Attachment (third and subsequent pages)	mail	$1.00 each page

(2) UCC search fee. The fee for processing a UCC search request ((~~communicated on paper is $10.00. The fee for processing a UCC search request communicated by a medium authorized by these rules which is other than on paper is $0.00.~~

~~(3) UCC search with copies. The fee for a UCC search and copies of all relevant records is $15.00.~~)) is:

SEARCHES	DELIVERY MODE	FEE
Search by debtor name	electronic	No charge
Search by file number	electronic	No charge
Debtor name search with copies	electronic	$15.00
Search held to reflect the filing	electronic	$10.00/debtor name
UCC11 Search response	mail	$10.00
UCC11 Search response with copies	mail	$15.00
Search held to reflect the filing (UCC1 box 7)	mail	$10.00/debtor name

WSR 08-14-063
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed June 25, 2008, 9:44 a.m., effective July 26, 2008]

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

Purpose: WAC 308-33-110, 308-33-120 and 308-33-130, relating to brief adjudicative proceedings and the Employment Agency Act.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-33-110, 308-33-120, and 308-33-130.

Statutory Authority for Adoption: RCW 19.31.070.

Adopted under notice filed as WSR 08-09-058 on April 15, 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 3.

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 25, 2008.

Nancy Skewis
Administrator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-33-110	Application of brief adjudicative proceedings.
WAC 308-33-120	Preliminary record in brief adjudicative proceedings.
WAC 308-33-130	Conduct of brief adjudicative proceedings.

WSR 08-14-064
PERMANENT RULES
ENERGY FACILITY SITE EVALUATION COUNCIL
[Filed June 25, 2008, 9:43 a.m., effective July 26, 2008]

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

Purpose: The purpose of adopting chapters 463-80 and 463-85 WAC is to adopt, as directed in chapters 80.70 and 80.80 RCW, carbon dioxide mitigation and greenhouse gases emissions performance standard for baseload electric generation and establish criteria to implement and enforce the emissions performance standard.

Statutory Authority for Adoption: Chapters 80.70 and 80.80 RCW.

Other Authority: RCW 80.50.040.

Adopted under notice filed as WSR 08-06-033 on February 26, 2008.

Changes Other than Editing from Proposed to Adopted Version: Chapter 463-85 WAC includes clarifying changes within several sections in response to public comments. Examples include adding modifying text throughout the document to ensure consistent and correct usage of "baseload electric generation facility or unit" and "baseload electric cogeneration facility or unit."

The Administrative Procedure Act (chapter 34.05 RCW) requires the energy facility site evaluation council (EFSEC) to provide reasons for changing language in the rules

between the proposed rule text published in the Washington state register with the CR-102 and the text of the rules as adopted. This section of the concise explanatory statement fulfills this requirement.

The changes are listed in the order that they appear within the rule text. Deletions appear as strike-through text and additions appear as underlined text. The reason for each change, as well as the source of the change, is provided. Minor editing changes (i.e. punctuation or grammatical corrections) are not included.

Chapter 463-80 WAC
Carbon Dioxide Mitigation Program, for Thermal Electric Generating Facilities

1. WAC 463-80-030 Carbon dioxide mitigation program applicability.

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

(b) The station-generating capability is 350 MWe or greater; or

(c) The facility is a fossil-fueled floating thermal electric generation facility subject to regulation by EFSEC.

Reason: The change is for clarification.

2. WAC 463-80-100 Independent qualified organization use of funds.

(4) An organization found by EFSEC to have violated subsections (~~2~~1) or (~~3~~2) of this section and removed from EFSEC's list of independent qualified organizations may not apply or request listing on EFSEC's list for a period of four years after removal from the list.

Reason: These changes were made to correct the citation.

Chapter 463-85 WAC
Greenhouse Gases Emissions Performance Standard and Sequestration Plans and Programs for Thermal Electric Generating Facilities

3. WAC 463-85-110 Definitions.

The following definitions ~~are applicable~~ apply when these terms are used in the provisions of ~~for~~ this chapter.

Reason: The change is for clarification.

4. WAC 463-85-110 Definitions.

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent. For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale. For purposes of this rule, designed means originally specified by the design engineers for the power plant or generating units (such as simple cycle combustion turbines) installed at a power plant; and intended means allowed for by the current permits for the power plant, recognizing the capability of the installed equipment or intent of the owner or operator of the power plant.

Reason: The additional text related to design and intent is added in response to a request by commenter W-23 to clarify the meaning of this phrase. The clarification is in line with EFSEC's and ecology's understanding of the language as used in the law and as we have used it within the proposed rule.

5. WAC 463-85-110 Definitions.

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

Reason: This definition was added to conform to the ecology rule in response to a request by commenter W-20.

6. WAC 463-85-110 Definitions.

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

Examples:

(a) For an integrated gasification combined cycle combustion turbine plant, the EGU consists ~~it is comprised~~ of all equipment ~~from~~ involved in fuel delivery to the unit, as well as all equipment used in the fuel conversion and ~~through the~~ combustion processes, any installed emission control equipment, and all equipment used for ~~ending with~~ the generation of electricity.

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

(c) An EGU also includes ~~F~~fuel cells fueled by hydrogen produced (1) in a reformer utilizing nonrenewable fuels or (2) by a gasifier producing hydrogen from nonrenewable fuels.

Reason: Clarification by EFSEC and ecology staff. The meaning and intent of the section is not changed.

7. WAC 463-85-110 Definitions.

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

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy; or

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

Reason: Clarification by ecology staff. The meaning and intent of the section is not changed.

8. WAC 463-85-110 Definitions.

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

(a) Routine or necessary maintenance;

(b) Installation of emission control equipment;

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

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

Reason: Clarification. The text is deleted in response to a suggestion by commenters W-8 and W-9 that the sentence is confusing and is not needed. Based on comments received, the definition was modified to have a structure more like that of the law. This change does not change the determination that a change that increases fuel input would trigger the need to comply with the emission performance standard.

9. WAC 463-85-120 Facilities subject to the G~~g~~reenhouse gases emissions performance standard ~~applicability~~.

(1) This rule is applicable to all baseload electric generation facilities and units and baseload electric cogeneration facilities and units that:

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

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

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

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

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

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

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

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

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

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

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

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

Reason: The word "new" is added to WAC 463-85-120(5) as suggested by commenter W-9 to increase clarity of when an existing facility is required to meet the GHG EPS.

Commenter W-9 also noted that "cogeneration facilities and units" was used interchangeably with "baseload cogeneration facility or unit." We have edited this section, as well as the remaining sections in the rule, to consistently use "baseload electric generation facility" and "baseload electric cogeneration facility." We also edited the rule to ensure consistent use of "facility" and "unit."

10. WAC 463-85-130 Emissions performance standard.

(1) Beginning July 1, 2008, all baseload electric generation facilities and units and baseload electric cogeneration facilities and units subject to WAC 463-85-120 are not allowed to emit to the atmosphere ~~total~~ regulated greenhouse gases at a rate greater than one thousand one hundred pounds per megawatt-hour, annual average.

Reason: Commenter W-9 recommended adding "subject to WAC 463-85-120["] to ensure that certain regulatory requirements in WAC 463-85-130 to 463-85-240 apply to "all baseload electric generation and cogeneration facilities and units." Commenter W-9 recommended changing "total" to "regulated" to be consistent with the definition of regulated greenhouse gases. EFSEC and ecology agreed with these clarifications.

11. WAC 463-85-130 Emissions performance standard.

(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded. For purposes of WAC 463-85-130, exclusive use of renewable fuel shall mean at least ninety percent of total annual heat input by a renewable fuel.

Reason: In response to commenter W-7, new text in subsection (3) clarifies that the reference to operating exclusively on renewable fuels in WAC 463-85-130(3) is intended to be consistent with WAC 463-85-120(2).

12. WAC 463-85-140 Calculating greenhouse gases emissions and determining compliance for baseload electric generation facilities.

(1) The owner or operator of a baseload electric generation facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall ~~demonstrate compliance annually, using the data identified below~~ collect the following data:

(a) Fuels and fuel feed stocks.

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

(ii) Fuel usage and heat content, which are ~~is~~ to be monitored, and reported as directed by WAC 463-85-230.

(b) Electrical output in MWh as measured and recorded per WAC 463-85-230.

(c) Regulated greenhouse gases emissions from the baseload electric generation facility or unit as monitored, reported and calculated in WAC 463-85-230.

(d) Adjustments for use of renewable resources. ~~The owner or operator of a baseload electric generation facility or unit may adjust its greenhouse gases emissions to account for~~

~~the usage of renewable resources.~~ If the owner or operator of a baseload electric generation facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(2) By January 31 of each year, the owner or operator of each baseload electric generation facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Use the data collected under subsection (1) above to c~~C~~alculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the total MWh produced in that year; and

(b) Submit that calculation and all supporting information to EFSEC ~~or ecology as appropriate~~.

Reason: Clarification by EFSEC and ecology staff. The meaning and intent of the section is not changed. To be consistent, similar changes were made to WAC 463-85-150 Calculating greenhouse gases emissions and determining compliance for baseload electric cogeneration facilities, but are not listed in the responsiveness summary.

13. WAC 463-85-200 Requirement for and timing of sequestration plan or sequestration program submittals.

(2) A sequestration program for a source that begins sequestration on or before the start of commercial operation is required to be submitted when:

Reason: Clarification by EFSEC and ecology staff. This text was added to clarify when this section is applicable and to be consistent with the wording in the introduction in subsection (1) of WAC 463-85-200.

14. WAC 463-85-210 ~~Requirements for geologic~~ Types of permanent sequestration plans.

Reason: Change of section title to be consistent with ecology rules.

15. WAC 463-85-220 Requirements for nongeologic permanent sequestration plans and sequestration programs.

In order to meet the emissions performance standard, all baseload electric generation facilities or individual units that are subject to this rule, and must use nongeologic sequestration of ~~sequester~~ greenhouse gases to meet the emissions performance standard, will submit sequestration plans or sequestration programs for approval to EFSEC or ecology, as appropriate.

(1) Sequestration plans and sequestration programs must include:

(a) Financial requirements. As a condition of plant operation, e~~E~~ach owner or operator of a baseload electric generation facility or unit or baseload electric cogeneration facility or unit utilizing ~~other~~ nongeologic sequestration as a method to comply with the emissions performance standard in WAC 173-407-130 is required to provide a letter of credit ~~as a condition of plant operation~~ sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan or sequestration program, including construction and operation of necessary equipment, and any other significant costs.

…

(1)(a)(ii) Closure and post-closure financial assurances. The owner or operator shall establish a closure and a post-closure letter of credit to cover all closure and post-closure expenses respectively. The owner or operator must designate EFSEC as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure accounts shall cover all costs of closure and post-closure care identified in the closure and post-closure plan. The closure and post-closure cost estimates shall be revised annually to include any changes in the sequestration project and to include cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure accounts is enforceable regardless of whether the requirement is a specific condition of the permit.

(1)(b) The application for approval of a sequestration plan or sequestration program shall include (but is not limited to) the following:

…

(1)(c) In order to monitor the effectiveness of the implementation of the sequestration plan or sequestration program, the owner or operator shall submit a detailed monitoring plan that will ensure detection of ~~be able to detect~~ failure of the sequestration method to place the greenhouse gases into a sequestered state. The monitoring plan will be sufficient ~~to detect losses of sequestered greenhouse gases at a level of no greater than twenty percent of the leakage rate allowed in~~ to provide reasonable assurance that the project meets the definition of permanent sequestration. The monitoring shall continue for the longer of twenty years beyond ~~either~~ the end of placement of the greenhouse gases into a sequestration containment system, or twenty years beyond the date upon which it is determined that all of the greenhouse gases ~~has~~ have achieved a state at which ~~it is~~ they are now stably sequestered in that environment.

(1)(d) If the sequestration plan or sequestration program fails to sequester greenhouse gases as provided in the plan or program, the owner or operator of the baseload electric generation facility or unit or baseload electric cogeneration facility or unit is no longer in compliance with the emissions performance standard.

(2) **Public notice and comment**. EFSEC must provide public notice and a public comment period before approving or denying any sequestration plan or sequestration program ~~plan~~.

(a) Public notice. Public notice shall be made only after all information required by the permitting authority has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include analyses of the effects on the local, state and global environment in the case of failure of the sequestration plan or sequestration program ~~plan~~. The sequestration plan or sequestration program must be available for public inspection in at least one location near the proposed project.

(2)(b)(i) The public comment period must be at least thirty days long or may be longer as specified in the public notice.

Reasons: Changes in the first paragraph of WAC 463-85-220 and in subsection (1)(a) were made by EFSEC and ecology staff to clarify that this section applies only to non-geologic sequestration, as described in the section title. "Baseload electric" is added in response to commenter W-9.

Clarifying changes in subsection (1)(a)(ii) are made in response to suggestions from commenter W-25.

Several commenters expressed concern about the use of "twenty percent" in WAC 463-85-220 (1)(c). EFSEC and ecology agree that this leak detection rate should be determined at the time of the permit issuance and is deleting the reference to twenty percent and adding the "reasonable assurance" text. The other text changes are made to clarify poorly written text in the proposed rule.

Clarification by EFSEC and ecology staff in subsection (2)(b)(i) are to make it clear that the minimum length of a comment period is thirty days but that a longer comment period may be specified in the public notice.

EFSEC and ecology staff added references to sequestration plan and/or sequestration program throughout this section, as appropriate, to clarify that this section applies to both sequestration plans and sequestration programs.

16. WAC 463-85-230 Emissions and electrical production monitoring, recordkeeping and reporting requirements.

(1)(b) Useful thermal energy output: ~~Determine q~~Quantity of energy supplied to nonelectrical production uses ~~through~~ determined by monitoring ~~of~~ both the energy supplied and the unused energy returned by the thermal energy user or uses. The required monitoring ~~This~~ can be accomplished through:

(i) Measurement of the mass, pressure, and temperature of the supply and return streams ~~of the mass pressure and temperature~~ of the steam or thermal fluid~~.~~; or

(c) Regulated greenhouse gases emissions.

(i) The regulated greenhouse gases emissions are the emissions of regulated greenhouse gases from the main plant exhaust stack and any bypass stacks or flares. For baseload electric generation facilities or units and baseload electric cogeneration facilities or units utilizing CO_2 controls and sequestration to comply with the greenhouse gases emissions performance standard, direct and fugitive CO_2 emissions from the CO_2 separation and compression process are included.

(ii) Carbon dioxide (CO_2).

(A) For baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 463-85-120, producing 350 MW or more of electricity, CO_2 emissions will be monitored by a continuous emission monitoring system meeting the requirements of 40 CFR ~~Part~~Sections 75.10~~,~~ and 75.13 and 40 CFR Part 75 Appendix F. If allowed by the requirements of 40 CFR Part 72, a facility may estimate CO_2 emissions through fuel carbon content monitoring and methods meeting the requirements of 40 CFR ~~Part~~ Sections 75.10 and 75.13 and 40 CFR Part 75 Appendix G.

(B) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 CFR Part 75, the baseload electric generation facility operator or operator will substitute data according to the process in 40 CFR Part 75.

(D) Continuous emission monitors for CO_2 will be installed at a location meeting the requirements of 40 CFR Part 75, Appendix A. The CO_2 and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 CFR Part 75, Appendix B.

(iii) Nitrous oxide (N_2O).

(A) For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing 25 MW or more of electricity, N_2O emissions shall be determined as follows:~~.~~

(I) For the first year of operation, N_2O emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(II) For succeeding years, N_2O emissions will be estimated through use of generating unit specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing N_2O emissions from the stack at varying loads and through at least four separate test periods spaced evenly throughout the first year of commercial operation.

(2)(a) Facilities or units subject to the reporting requirements of 40 CFR Part 75. Annual emissions of CO_2, N_2O and CH_4 will be reported to ecology EFSEC ~~and the air quality permitting authority with jurisdiction over the facility~~ by January 31 of each calendar year for emissions that occurred in the previous calendar year. The report may be an Excel™ or CSV format copy of the report submitted to EPA per 40 CFR Part 75 with the emissions for N_2O and CH_4 appended to the report.

Reason: Clarification by EFSEC and ecology staff. The meaning and intent of these sections were not changed. Similar edits were made to subsection (1)(c)(iv) and (v), but are not repeated here.

A final cost-benefit analysis is available by contacting Cathy Carruthers, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail catc461@ecy.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 27, 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.

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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 24, 2008.

Allen J. Fiksdal
Manager

Chapter 463-80 WAC

CARBON DIOXIDE MITIGATION PROGRAM FOR THERMAL ELECTRIC GENERATING FACILITIES

NEW SECTION

WAC 463-80-005 Work in unison. The requirements of this chapter, are based upon chapter 80.70 RCW and are separate and distinct from the requirements found in chapter 463-85 WAC - greenhouse gases performance standard that are based upon chapter 80.80 RCW. These two requirements are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard under chapters 80.80 RCW and 463-85 WAC. Once that standard is met, the requirements of chapters 80.70 RCW and 463-80 WAC are applied.

NEW SECTION

WAC 463-80-010 Policy and purpose. It is the policy of the state to require mitigation of the emissions of carbon dioxide (CO_2) from all new and certain modified fossil-fueled thermal electric generating facilities with station-generating capability of greater than 25 megawatts of electricity (MWe). This chapter applies to fossil-fueled thermal electric generating facilities with station-generating capability of greater than 350 MWe.

NEW SECTION

WAC 463-80-020 Definitions. The definitions in this section are found in RCW 80.70.010 and apply throughout this chapter unless clearly stated otherwise. The definitions are reprinted below.

"Applicant" has the meaning provided in RCW 80.50.020 and is subject to RCW 80.70.020 (1)(a).

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

"Carbon dioxide equivalents" means a metric measure used to compare the emissions of various greenhouse gases based upon their global warming potential.

"Certificate holder" means the company that holds a site certification agreement and is authorized to construct and operate an energy facility under chapter 80.50 RCW.

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

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

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

"Department" means the department of ecology.

"EFSEC" or "council" means the energy facility site evaluation council created by RCW 80.50.030.

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

"Independent qualified organization" means a third-party company or organization that is independent of any energy facility that emits CO_2 and is recognized by the council to receive payment for selection, monitoring, and evaluation of CO_2 emissions mitigation activities.

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

"Mitigation project" means one or more of the following:

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

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

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

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

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

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

"Site certification agreement" means the document as recommended by EFSEC and approved by the governor that lists the requirements and conditions for construction and operation of an energy facility, including any attached or associated permits or authorizations, for example a prevention of deterioration permit or notice of construction.

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

"Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1)(a) and (b), the amount

of carbon dioxide emitted over a thirty-year period based on the manufacturer's or designer's guaranteed total net station generating capability, new equipment heat rate, an assumed sixty percent capacity factor for facilities under EFSEC's jurisdiction and taking into account any enforceable limitations on operational hours or fuel types and use; and

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

NEW SECTION

WAC 463-80-030 Carbon dioxide mitigation program applicability. (1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under RCW 80.50.020 (15)(a), for which an application for site certification is made to EFSEC after July 1, 2004; and

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

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

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

(b) The station-generating capability is 350 MWe or greater; or

(c) The facility is a fossil-fueled floating thermal electric generation facility subject to regulation by the energy facility site evaluation council.

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

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

(b) The unmodified station generating capability is 350 MWe or greater;

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

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

(ii) An increase in CO_2 emissions output by fifteen percent or more.

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

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

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

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

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

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

NEW SECTION

WAC 463-80-040 Carbon dioxide mitigation program costs. Reasonable and necessary costs for EFSEC's carbon dioxide mitigation program shall be charged to applicants and certificate holders as authorized by RCW 80.70.060 and 80.50.071.

NEW SECTION

WAC 463-80-050 Calculating total carbon dioxide emissions to be mitigated. (1) Step 1 is to calculate the total quantity of CO_2. The total quantity of CO_2 is referred to as the maximum potential emissions of CO_2. The maximum potential emissions of CO_2 is defined as the annual CO_2 emission rate. The annual CO_2 emission rate is derived by the following formula unless a differing analysis is necessary or appropriate for the electric generating process and type of equipment:

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

where:

CO_{2rate}	=	Maximum potential emissions in metric tons per year
F_{1-n}	=	Maximum design fuel firing rate in MMBtu/hour calculated as manufacturer or designer's guaranteed total net station generating capability in MWe times the new equipment heat rate in Btu/MWe. Determined based on higher heating values of fuel
K_{1-n}	=	Conversion factor for the fuel(s) being evaluated in lb CO_2/MMBtu for fuel F_n
T_{1-n}	=	Hours per year fuel F_n is allowed to be used. The default is 8760 hours unless there is a limitation on hours in a site certification agreement
F_s	=	Maximum design supplemental fuel firing rate in MMBtu/hour, at higher heating value of the fuel
K_s	=	Conversion factor for the supplemental fuel being evaluated in lb CO_2/MMBtu for fuel F_n given fuel
T_s	=	Hours per year supplemental fuel F_n is allowed. The default is 8760 hours unless there is a limitation on hours in a site certification agreement

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

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

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

(d) When the annual operating hours are restricted for any reason, the total of all T_{1-n} hours equals the annual allowable hours of operation in the site certification agreement.

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

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

(2) **Step 2 - Insert the annual CO_2 rate to determine the total carbon dioxide emissions to be mitigated.** The formula below includes specifications that are part of the total carbon dioxide definition:

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

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

$$CO_{2credit} = \frac{H_s}{2204.6} \times (K_a) \div n$$

where:

$CO_{2credit}$	=	The annual CO_2 credit for cogeneration in metric tons/year.
H_s	=	Annual heat energy supplied by the cogeneration plant to the "steam host" per the contract or other binding obligation/agreement between the parties in MMBtu/yr as substantiated by an engineering analysis.
K_a	=	The time weighted average CO_2 emission rate constant for the cogeneration plant in lb CO_2/MMBtu supplied. The time-weighted average is calculated similarly to the above method described in subsection (1) of this section.
n	=	Efficiency of new boiler that would provide the same quantity of thermal energy. Assume n = 0.85 unless applicant provides information supporting a different value.

Calculate the metric tons of the cogeneration credit over the 30 year period.

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

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

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

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

Mitigation Quantity = Total CO_2 Emissions x 0.2 - Cogeneration Credit

where:

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

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

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

(b) An increase in operating hours or other operational limitations established in a site certification agreement is not an exempt modification under this regulation. However, only increased CO_2 emissions related to the increase in operating hours or changes to any other operational restriction are subject to the CO_2 mitigation program requirements;

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

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

NEW SECTION

WAC 463-80-060 Carbon dioxide mitigation plan requirements and options. (1) **Once the total carbon dioxide emissions mitigation quantity is calculated, what is next?** The facility must mitigate that level of carbon dioxide emissions. A CO_2 mitigation plan is required and must be approved as part of a site certification agreement. A mitigation plan is a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits (RCW 80.70.010).

The approved mitigation plan must be fully implemented and operational in accordance with the schedule in the site certification agreement. The applicant may request an extension of the mitigation project implementation deadline. The request must be submitted in writing to EFSEC before the implementation deadline. The request must fully document the reason(s) more time is needed to implement the mitigation project and propose a revised schedule.

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

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

(b) Direct purchase of permanent carbon credits; or

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

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

The initial mitigation rate is **$1.60 per metric ton** of carbon dioxide to be mitigated. If there is a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the cogeneration credit. The mitigation rate will change when EFSEC adjusts it through the process described in RCW 80.70.020 (5)(a) and (b). The total payment amount = mitigation rate x mitigation quantity.

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

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

(4) **What are the requirements of the permanent carbon credits option?** RCW 80.70.030 identifies the criteria and specifies that these credits cannot be resold without approval from EFSEC. The permanent carbon credit criteria of RCW 80.70.030(1) are as follows:

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

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

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

(5) **What are the requirements for the applicant-controlled mitigation projects option?** RCW 80.70.040 identifies the requirements for applicant controlled mitigation projects. Subsections (1) through (5) specify the criteria. The direct investment cost of the applicant controlled mitigation project including funds used for selection, monitoring, and evaluation of mitigation projects cannot be required by

EFSEC to exceed the cost of making a lump sum payment to a third party per subsection (3) of this section.

The applicant controlled mitigation project must be:

(a) Implemented through mitigation projects conducted directly by, or under the control of the site certification agreement holder;

(b) Approved by EFSEC and incorporated as a condition of the site certification agreement; and

(c) Operational within one year after the start of commercial operation. Failure to implement an approved mitigation plan is subject to enforcement under chapter 80.50 RCW.

(d) The certificate holder may not use more than twenty percent of the total funds for the selection, monitoring, and evaluation of mitigation projects, and the management and enforcement of contracts.

NEW SECTION

WAC 463-80-070 Carbon dioxide mitigation option statement and mitigation plan submittal and approval. (1) Applicants must provide EFSEC with a statement selecting the mitigation option(s) in:

(a) Applications for site certification; or

(b) Requests to amend site certification agreements under chapter 463-66 WAC where changes to the facility will increase CO_2 emissions by fifteen percent or more.

(2) Applicants choosing to use the payment to a third party or the permanent carbon credit option must provide EFSEC with the documentation to show how the requirements will be satisfied before a recommendation to the governor is issued or an amendment to a site certification agreement is approved.

(3) Applicants seeking to use the applicant controlled mitigation projects option must submit the entire mitigation plan to EFSEC. EFSEC will review the plan for consistency with the requirements of chapter 80.70 RCW.

(4) Approval of the mitigation plan will be by:

(a) The governor for approval of the application for site certification, or an amendment to the site certification agreement under WAC 463-66-080; or

(b) EFSEC for approval of an amendment to the site certification agreement under WAC 463-66-070.

NEW SECTION

WAC 463-80-080 Enforcement. Applicants or facilities violating the carbon dioxide mitigation program requirements are subject to the enforcement provisions of chapter 80.50 RCW.

NEW SECTION

WAC 463-80-090 Independent qualified organizations list. (1) EFSEC shall develop and maintain a list of independent qualified organizations as required by RCW 80.70.050.

(2) To develop or update the independent qualified organization list EFSEC shall issue a request for qualifications through use of a mailing list maintained by EFSEC and publication in a regional newspaper in both eastern and western Washington, and other appropriate forums.

(3) Proposals from independent qualified organizations shall, at a minimum, contain the following information:

(a) A demonstration of how the company or organization has successfully developed and managed programs to implement:

- Energy efficiency;
- Renewable energy projects;
- Clean and efficient transportation measures;
- Demand side management of electricity consumption; and
- Carbon sequestration programs.

(b) A complete description of the company or organization's specific expertise in the science and economics of greenhouse gas emissions mitigation, including proven ability to:

- Specify preferred offset types;
- Develop and issue requests for proposals;
- Evaluate and recommend projects;
- Assemble diverse portfolios;
- Negotiate offset contracts;
- Design monitoring and verification protocols, manage the implementation of offset contracts; and
- Maintain an offset registry and retired tons.

(c) Proven experience and demonstrated ability should include staff or organization experience. A new organization made up of experienced employees, or an existing organization with demonstrated accomplishments, should both be able to qualify. However, proven experience and demonstrated ability should be in the specific areas listed in this subsection.

(4) Using best professional judgment, EFSEC staff shall review each proposal and make recommendations to EFSEC whether a company or organization should be placed on the independent qualified organization list.

(5) After reviewing the EFSEC staff recommendations, and prior to making a decision to add a company or an organization to its list of independent qualified organizations, EFSEC may request the organization to testify at a public meeting or hearing to gain additional information and knowledge regarding the organization's experience and qualifications.

(6) Based on the EFSEC staff recommendation and information from public meeting(s) or hearing(s) (if held) EFSEC shall approve or deny companies' or organizations' placement on the list of independent qualified organizations.

(7) EFSEC may remove a company or organization from the independent qualified organization list at the request of the organization, or if EFSEC determines the organization is no longer capable or qualified to carry out CO_2 mitigation programs or activities.

(8) EFSEC shall update its list as it deems appropriate using the process described in this section.

NEW SECTION

WAC 463-80-100 Independent qualified organization use of funds. (1) An independent qualified organization shall not use more than twenty percent of the total funds it

receives for CO_2 mitigation for any of its activities in the selection, monitoring, or evaluation of a project.

(2) No independent qualified organization shall use any funds received for CO_2 mitigation to lobby federal, state or local agencies, their elected officials, officers, or employees.

(3) If EFSEC finds that an independent qualified organization has violated subsections (1) or (2) of this section, EFSEC may:

(a) Require the independent qualified organization to refund to the applicant or certificate holder the amount EFSEC determines was wrongfully spent; and

(b) Remove the organization from its list of independent qualified organizations.

(4) An organization found by EFSEC to have violated subsections (1) or (2) of this section and removed from EFSEC's list of independent qualified organizations may not apply or request listing on EFSEC's list for a period of four years after removal from the list.

NEW SECTION

WAC 463-80-110 Independent qualified organization oversight. (1) EFSEC may appoint up to three persons to inspect and audit independent qualified organization mitigation plans, performance measures, compliance activities, and financial records of projects funded by certificate holders.

(2) Persons that EFSEC appoints should have expertise in energy issues, carbon dioxide mitigation, or other areas that would benefit EFSEC's understanding of the independent qualified organization's or company's carbon dioxide mitigation activities, operations, and performance.

(3) EFSEC may remove a member of an oversight board for "due cause."

NEW SECTION

WAC 463-80-120 Biennial reports. (1) Each independent qualified organization on the list maintained by EFSEC shall file a biennial report with EFSEC.

(2) The biennial report shall include but not be limited to:

(a) A report on the performance of each carbon dioxide project listing the amount of carbon dioxide reduction the project has achieved;

(b) An estimate of the carbon dioxide mitigation projected for each mitigation project for the next biennium; and

(c) A statement of the cost for each mitigation project including the cost for each metric ton of carbon dioxide mitigated.

NEW SECTION

WAC 463-80-130 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.

Chapter 463-85 WAC

GREENHOUSE GASES EMISSIONS PERFORMANCE STANDARD AND SEQUESTRATION PLANS AND PROGRAMS FOR BASELOAD ELECTRIC GENERATING FACILITIES

NEW SECTION

WAC 463-85-005 Work in unison. The requirements of this chapter are based upon chapter 80.80 RCW and are separate and distinct from the requirements found in chapter 463-80 WAC carbon dioxide mitigation that are based upon chapter 80.70 RCW. These two requirements are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard under this chapter. Once that standard is met, the requirements of chapters 80.70 RCW and 463-80 WAC are applied.

NEW SECTION

WAC 463-85-100 Policy and purpose. It is the intent of the legislature, under chapter 80.80 RCW, to establish statutory goals for the statewide reduction of greenhouse gases emissions. The legislature further intends by chapter 80.80 RCW to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions.

NEW SECTION

WAC 463-85-110 Definitions. The following definitions apply when these terms are used in the provisions of this chapter.

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

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent. For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale. For purposes of this rule, designed means originally specified by the design engineers for the power plant or generating units (such as simple cycle combustion turbines) installed at a power plant; and intended means allowed for by the current permits for the power plant, recognizing the capability of the installed equipment or intent of the owner or operator of the power plant.

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

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

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

"Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first

applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for electrical power production.

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

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

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

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

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

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

"Electric generating unit (EGU)" is the equipment required to convert the thermal energy in a fuel into electricity. In the case of a steam electric generation unit, the EGU consists of all equipment involved in fuel delivery to the plant site, as well as individual boilers, any installed emission control equipment, and any steam turbine/generators dedicated to generating electricity. Where a steam turbine/generator is supplied by two or more boiler units, all boilers contributing to that steam turbine/generator comprise a single electric generating unit. All combustion units/boilers/combined-cycle turbines that produce steam for use in a single steam turbine/generator unit are part of the same electric generating unit.

Examples:

(a) For an integrated gasification combined-cycle combustion turbine plant, the EGU consists of all equipment involved in fuel delivery to the unit, as well as all equipment used in the fuel conversion and combustion processes, any installed emission control equipment, and all equipment used for the generation of electricity.

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

(c) An EGU also concludes fuel cells fueled by hydrogen produced:

(i) In a reformer utilizing nonrenewable fuels; or

(ii) By a gasifier producing hydrogen from nonrenewable fuels.

"EFSEC" or "council" means the energy facility site evaluation council.

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

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

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

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

"Long-term financial commitment" means:

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

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

"MWh" = megawatt-hour electricity.

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

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

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

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

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

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

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

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

"Regulated greenhouse gases emissions" is the mass of carbon dioxide emitted plus the mass of nitrous oxide emitted

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

"Renewable fuel" means:

(a) Landfill gas;

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

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

(d) Gas from sewage treatment facilities.

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

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy; or

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

"Sequential use of energy" means:

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

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

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

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

"Supplementary firing" means an energy input to:

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

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

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

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

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

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

"Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade does not include:

(a) Routine or necessary maintenance;

(b) Installation of emission control equipment;

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

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

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

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

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

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

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

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

NEW SECTION

WAC 463-85-120 Greenhouse gases emissions performance standard applicability. (1) This rule is applicable to all baseload electric generation facilities and units and baseload electric cogeneration facilities and units that:

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

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

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

(3) A baseload electric generation facility or an individual electric generating unit at a baseload electric generation

facility is required to meet the emissions performance standard in effect when:

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

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

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

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

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

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

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

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

NEW SECTION

WAC 463-85-130 Emissions performance standard. (1) Beginning July 1, 2008, all baseload electric generation facilities or units and baseload electric cogeneration facilities and units subject to WAC 463-85-120 are not allowed to emit to the atmosphere regulated greenhouse gases at a rate greater than 1100 pounds per megawatt-hour, annual average.

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

(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded. For purposes of WAC 463-85-130, exclusive use of renewable fuel shall mean at least ninety percent of total annual heat input by a renewable fuel.

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

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

(b) Use of greenhouse gases emission controls and greenhouse gases sequestration methods meeting the requirements of WAC 463-85-220 or 173-218-115 as appropriate.

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

NEW SECTION

WAC 463-85-140 Calculating greenhouse gases emissions and determining compliance for baseload electric generation facilities. (1) The owner or operator of a baseload electric generation facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall collect the following data:

(a) Fuels and fuel feed stocks.

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

(ii) Fuel usage and heat content, which are to be monitored, and reported as directed by WAC 463-85-230.

(b) Electrical output in MWh as measured and recorded per WAC 463-85-230.

(c) Regulated greenhouse gases emissions from the baseload electric generation facility or unit as monitored, reported and calculated in WAC 463-85-230.

(d) Adjustments for use of renewable resources. If the owner or operator of a baseload electric generation facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by EFSEC or ecology as appropriate.

(2) By January 31 of each year, the owner or operator of each baseload electric generation facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Use the data collected under subsection (1) of this section to calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the total MWh produced in that year; and

(b) Submit that calculation and all supporting information to EFSEC.

NEW SECTION

WAC 463-85-150 Calculating greenhouse gases emissions and determining compliance for baseload cogeneration facilities. (1) To use this section for determining compliance with the greenhouse gases emissions performance standard, a facility must have certified to the Federal Energy Regulatory Commission (FERC) under the provisions of 18 CFR 292 Subpart B as a qualifying cogeneration facility.

(2) The owner or operator of a baseload electric cogeneration facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall collect the following data:

(a) Fuels and fuel feed stocks.

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

(ii) Fuel and fuel feed stocks usage and heat content, which are to be monitored, and reported as directed by WAC 463-85-230.

(b) Electrical output in MWh as measured and recorded per WAC 463-85-230.

(c) All useful thermal energy and useful energy used for nonelectrical generation uses converted to units of megawatts energy equivalent (MW_{eq}) using the conversion factor of 3.413 million British thermal units per megawatt hour (MMBtu/MWh).

(d) Regulated greenhouse gases emissions from the baseload electric cogeneration facility or unit as monitored, reported and calculated in WAC 463-85-230.

(e) Adjustments for use of renewable resources. If the owner or operator of a baseload electric cogeneration facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, the greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(3) Bottoming-cycle cogeneration facilities. The formula to determine compliance of a bottoming-cycle cogeneration facility or unit with the emissions performance standard will be jointly developed by ecology and the facility. To the extent possible, the facility-specific formula must be based on the one for topping-cycle facilities identifying the amount of energy converted to electricity, thermal losses, and energy from the original fuel(s) used to provide useful thermal energy in the industrial process. The formula should be specific to the installed equipment, other thermal energy uses in the facility, and specific operating conditions of the facility.

(4) Topping-cycle cogeneration facilities. To demonstrate compliance with the emissions performance standard, a topping-cycle facility or unit must:

(a) Determine annual electricity produced in MWh.

(b) Determine the annual electrical energy equivalent of the useful thermal energy output in MWh_{eq}.

(c) Determine the annual regulated greenhouse gases emissions produced in pounds.

(5) By January 31 of each year, the owner or operator of each baseload electric cogeneration facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the sum of the MWh and MWh_{eq} produced in that year; and

(b) Submit that calculation and all supporting information to EFSEC or ecology as appropriate.

NEW SECTION

WAC 463-85-200 Requirement for and timing of plan or program plan submittals. (1) A sequestration plan for a source that begins sequestration after the start of commercial operation shall be submitted when:

(a) A site certification application is submitted to EFSEC for a new baseload electric generation facility or baseload electric cogeneration facility or new unit at an existing baseload electric generation or baseload electric cogeneration facility;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(c) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit enters a new long-term financial commitment with an electric utility to provide baseload power and the facility or unit does not comply with the emissions performance standard in effect at the time the new long-term financial commitment occurs; or

(d) A qualifying ownership interest change occurs and the facility or unit does not comply with the emissions performance standard in effect at the time the change in ownership occurs.

(2) A sequestration program for a source that begins sequestration on or before the start of commercial operation is required to be submitted when:

(a) A site certification application is submitted to EFSEC for new baseload electric generation facility or unit or baseload electric cogeneration facility or unit;

(b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;

(c) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit enters a new long-term financial commitment with an electric utility to provide baseload power if the facility or unit does not comply with the emissions performance standard in effect at the time the new long-term financial commitment occurs; or

(d) A qualifying ownership interest change occurs and the facility does not comply with the emissions performance standard in effect at the time the change in ownership occurs.

NEW SECTION

WAC 463-85-210 Types of permanent sequestration. Specific requirements for permanent geologic sequestration of greenhouse gases can be found in WAC 173-218-115. Requirements for approval of sequestration plans or sequestration programs for other (nongeologic) types of permanent sequestration containment systems are found in WAC 463-85-220.

NEW SECTION

WAC 463-85-220 Requirements for nongeologic permanent sequestration plans and sequestration programs. In order to meet the emissions performance standard, all baseload electric generation facilities or individual units that are subject to this rule, and must use nongeologic sequestration of greenhouse gases to meet the emissions performance standard, will submit sequestration plans or sequestration programs for approval to EFSEC or ecology, as appropriate.

(1) Sequestration plans and sequestration programs must include:

(a) Financial requirements. As a condition of plant operation, each owner or operator of a baseload electric generation facility or unit or baseload electric cogeneration facility

or unit utilizing nongeologic sequestration as a method to comply with the emission performance standard in WAC 463-85-130 is required to provide a letter of credit sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan and sequestration program, including construction and operation of necessary equipment, and any other significant costs.

(i) The owner or operator of a proposed sequestration project shall establish a letter of credit to cover all expenses for construction and operation of necessary equipment, and any other significant costs. The cost estimate for the sequestration project shall be revised annually to include any changes in the project and to include cost changes due to inflation.

(ii) Closure and post-closure financial assurances. The owner or operator shall establish a closure and a post-closure letter of credit to cover all closure and post-closure expenses, respectively. The owner or operator must designate EFSEC as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure accounts shall cover all costs of closure and post-closure care identified in the closure and post-closure plan. The closure and post-closure cost estimates shall be revised annually to include any changes in the sequestration project and to include cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure accounts is enforceable regardless of whether the requirement is a specific condition of the permit.

(b) The application for approval of a sequestration plan or sequestration program shall include (but is not limited to) the following:

(i) A current site map showing the boundaries of the permanent sequestration project containment system(s) and all areas where greenhouse gases will be stored.

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

(A) The name of the area in which the sequestration will take place;

(B) A description of the facilities and place of greenhouse gases containment system;

(C) A complete site description of the site, including but not limited to the terrain, the geology, the climate (including rain and snowfall expected), any land use restrictions that exist at the time of the application or will be placed upon the site in the future;

(D) The proposed calculated maximum volume of greenhouse gases to be sequestered and areal extent of the location where the greenhouse gases will be stored using a method acceptable to and filed with EFSEC or ecology as appropriate; and

(E) Evaluation of the quantity of sequestered greenhouse gases that may escape from the containment system at the proposed project.

(iii) A public safety and emergency response plan for the proposed project. The plan shall detail the safety procedures concerning the sequestration project containment system and residential, commercial, and public land use within one mile, or as necessary to identify potential impacts, of the outside boundary of the project area.

(iv) A greenhouse gases loss detection and monitoring plan for all parts of the sequestration project. The approved greenhouse gases loss detection and monitoring plan shall address identification of potential release to the atmosphere;

(v) A detailed schedule of annual benchmarks for sequestration of greenhouse gases;

(vi) Any other information that the department deems necessary to make its determination;

(vii) A closure and post-closure plan.

(c) In order to monitor the effectiveness of the implementation of the sequestration plan or sequestration program the owner or operator shall submit a detailed monitoring plan that will ensure detection of failure of the sequestration method to place the greenhouse gases into a sequestered state. The monitoring plan will be sufficient to provide reasonable assurance that the sequestration provided by the project meets the definition of permanent sequestration. The monitoring shall continue for the longer of twenty years beyond the end of placement of the greenhouse gases into sequestration containment system, or twenty years beyond the date upon which it is determined that all of the greenhouse gases have achieved a state at which they are now stably sequestered in that environment.

(d) If the sequestration plan or sequestration program fails to sequester greenhouse gases as provided in the plan or program, the owner or operator of the baseload electric generation facility or unit or baseload electric cogeneration facility or unit is no longer in compliance with the emissions performance standard.

(2) **Public notice and comment.** ESFEC must provide public notice and a public comment period before approving or denying any sequestration plan or sequestration program.

(a) Public notice. Public notice shall be made only after all information required by the permitting authority has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include analyses of the effects on the local, state and global environment in the case of failure of the sequestration plan or sequestration program. The sequestration plan or sequestration program must be available for public inspection in at least one location near the proposed project.

(b) Public comment.

(i) The public comment period must be at least thirty days long or may be longer as specified in the public notice.

(ii) The public comment period must extend through the hearing date.

(iii) EFSEC shall make no final decision on any sequestration plan or sequestration program until the public comment period has ended and any comments received during the public comment period have been considered.

(c) Public hearings.

(i) EFSEC will hold a public hearing within the thirty-day public comment period. EFSEC will determine the location, date, and time of the public hearing.

(ii) EFSEC must provide at least thirty days prior notice of a hearing on a sequestration plan or sequestration program.

NEW SECTION

WAC 463-85-230 Emissions and electrical production monitoring, recordkeeping and reporting requirements. (1) Monitoring and recordkeeping requirements. For all baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 463-85-120, the following parameters shall be monitored and reported as explained below:

(a) Electrical output: Electrical output as measured at the point of connection with the local electrical distribution network or transmission line, as appropriate. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard;

(b) Useful thermal energy output: Quantity of energy supplied to nonelectrical production uses determined by monitoring both the energy supplied and the unused energy returned by the thermal energy user or uses. The required monitoring can be accomplished through:

(i) Measurement of the mass, pressure, and temperature of the supply and return streams of the steam or thermal fluid; or

(ii) Use of thermodynamic calculations as approved by ecology.

(iii) Measurements will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard; and

(c) Regulated greenhouse gases emissions.

(i) The regulated greenhouse gases emissions are the emissions of regulated greenhouse gases from the main plant exhaust stack and any bypass stacks or flares. For baseload electric generation facilities or units and baseload electric cogeneration facilities or units utilizing CO_2 controls and sequestration to comply with the greenhouse gases emissions performance standard, direct and fugitive CO_2 emissions from the CO_2 separation and compression process are included.

(ii) Carbon dioxide (CO_2).

(A) For baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 463-85-120, producing 350 MW or more of electricity, CO_2 emissions will be monitored by a continuous emission monitoring system meeting the requirements of 40 CFR Sections 75.10 and 75.13 and 40 CFR Part 75 Appendix F. If allowed by the requirements of 40 CFR Part 72, a facility may estimate CO_2 emissions through fuel carbon content monitoring and methods meeting the requirements of 40 CFR Sections 75.10 and 75.13 and 40 CFR Part 75 Appendix G.

(B) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 CFR Part 75, the baseload electric generation facility operator or operator will substitute data according to the process in 40 CFR Part 75.

(C) Continuous emission monitors for CO_2 will be installed at a location meeting the requirements of 40 CFR Part 75, Appendix A. The CO_2 and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 CFR Part 75, Appendix B.

(iii) Nitrous oxide (N_2O). For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 463-85-120 producing 350 MW or more of electricity, N_2O emissions shall be determined as follows:

(A) For the first year of operation, N_2O emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(B) For succeeding years, N_2O emissions will be estimated through use of generating unit specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing N_2O emissions from the stack at varying loads and through at least four separate test periods spaced evenly throughout the first year of commercial operation.

(iv) Methane (CH_4). For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing 350 MW or more of electricity, CH_4 emissions shall be determined as follows:

(A) For the first year of operation, CH_4 emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(B) For succeeding years, CH_4 emissions will be estimated through use of plant specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing CH_4 emissions from the stack at varying loads and through at least four separate test periods spaced evenly through the first year of commercial operation.

(d) Fuel usage and heat content information.

(i) Fossil fuel usage will be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(ii) Renewable energy fuel usage will be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(iii) Heat content of fossil fuels shall be tested at least once per calendar year. The owner or operator of the baseload electric generation facility or unit shall submit a proposed fuel content monitoring program to EFSEC for EFSEC's approval. Upon request and submission of appropriate documentation of fuel heat content variability, EFSEC may allow a source to:

(A) Test the heat content of the fossil fuel less often than once per year; or

(B) Utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(iv) Renewable energy fuel heat content will be tested monthly or with a different frequency approved by EFSEC. A different frequency will be based on the variability of the heat content of the renewable energy fuel.

(A) If the baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 463-85-120 using a mixture of renewable and fossil fuels do not adjust their greenhouse gases emissions by accounting for the heat input from renewable energy fuels, monitoring of the heat content of the renewable energy fuels is not required.

(B) Upon request and with appropriate documentation, EFSEC may allow a source to utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(2) Reporting requirements. The results of the monitoring required by this section shall be reported to EFSEC and ecology annually.

(a) Facilities or units subject to the reporting requirements of 40 CFR Part 75. Annual emissions of CO_2, N_2O and CH_4 will be reported to ecology and EFSEC by January 31 of each calendar year for emissions that occurred in the previous calendar year. The report may be an Excel™ or CSV format copy of the report submitted to EPA per 40 CFR Part 75 with the emissions for N_2O and CH_4 appended to the report.

(b) For facilities or units not subject to the reporting requirements of 40 CFR Part 75, annual emissions of CO_2, N_2O and CH_4 and supporting information will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year.

NEW SECTION

WAC 463-85-240 Enforcement of the emissions performance standard on schedule. Any power plant subject to WAC 463-85-120 that does not meet the emissions performance standard on schedule shall be subject to enforcement under chapter 80.50 RCW.

(1) Penalties can include:

(a) Financial penalties, which shall be assessed after any year of failure to meet a sequestration benchmark established in the sequestration plan or sequestration program. Each pound of greenhouse gases above the emissions performance standard will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of approval to construct the source or to operate the source.

(2) If a new, modified or upgraded baseload electric generation facility or unit or baseload electric cogeneration facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program will be required to be submitted no later than one hundred fifty calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program is to be submitted to EFSEC, as appropriate, for approval.

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility operated under an approved sequestration plan or sequestration program shall have the burden of proving to EFSEC in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration shall be a condition to obtaining relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark shall be reported by January 31 of the year following the year during which the event occurred or as part of the routine sequestration monitoring reports. Upon request by EFSEC the owner(s) or operator(s) of the sequestration project source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that the failure to meet a sequestration benchmark could not have been prevented through careful planning and design and if a bypass of equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) Maintenance. Failure to meet a sequestration benchmark due to scheduled maintenance shall be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations. Enforcement of any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.150.

NEW SECTION

WAC 463-85-400 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.

WSR 08-14-073
PERMANENT RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed June 26, 2008, 12:35 p.m., effective August 1, 2008]

Effective Date of Rule: August 1, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

Purpose: To establish an annual tariff for pilotage services in the Grays Harbor pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-185.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 08-10-008 on April 24, 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 1, 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 12, 2008.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 07-14-014, filed 6/22/07, effective 8/1/07)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours August 1, ((~~2007~~)) 2008, through 2400 hours July 31, ((~~2008~~)) 2009.

CLASSIFICATION	RATE
((~~Fees~~)) Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:	
Draft and Tonnage ((~~Fees~~)) Charges:	
Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.	
Draft	$((~~95.48~~)) 97.20 per meter or $((~~29.10~~)) 29.62 per foot
Tonnage	$((~~0.274~~)) 0.279 per net registered ton
Minimum Net Registered Tonnage	$((~~958.00~~)) 975.00
Extra Vessel (in case of tow)	$((~~536.00~~)) 546.00
Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged $((~~5,305.00~~)) 5,400.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage ((~~fees~~)) charges listed above.	
Boarding ((~~Fee~~)) Charge:	
Per each boarding/deboarding from a boat or helicopter	$1,030.00
Harbor Shifts:	
For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	$((~~667.00~~)) 679.00
Delays per hour	$159.00
Cancellation charge (pilot only)	$266.00
Cancellation charge (boat or helicopter only)	$798.00
Pension Charge:	
Charge per pilotage assignment, including cancellations	$((~~174.00~~)) 197.00
Travel Allowance:	
Transportation ((~~fee~~)) charge per assignment	$((~~55.00~~)) 100.00

CLASSIFICATION	RATE

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid $931.00 for each day or fraction thereof, and the travel expense incurred.

Bridge Transit:

Charge for each bridge transited	$292.00
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam	$809.00

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

WSR 08-14-074
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 26, 2008, 2:36 p.m., effective July 27, 2008]

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

Purpose: This chapter defines the regulatory standards for dental X-ray radiation safety. It specific [specifies] requirements to improve operator and patient safety, including quality assurance requirements for X-ray film processing and a prohibition of older low kVp X-ray machines.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-225-110.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080.

Adopted under notice filed as WSR 08-01-135 on December 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: For clarity, proposed WAC 246-225A-030 has been removed and the text moved to WAC 246-225A-060 General requirements for all dental X-ray systems. Also, the effective dates for discontinuing use of low kVp dental X-ray machines, and implementing image processing quality assurance were changed from January 1, 2009, to January 1, 2010, to allow licensees more time to comply.

A final cost-benefit analysis is available by contacting Phyllis Hurtado, DOH X-Ray Program, P.O. Box 47827, Olympia, WA 98504-7827, phone (360) 236-3239, fax (360) 236-2266, e-mail phyllis.hurtado@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 12, Amended 0, Repealed 1.

Number of Sections Adopted on the Agency's Own Initiative: New 12, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 0, Repealed 1.

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 12, Amended 0, Repealed 1.

Date Adopted: June 26, 2008.

Mary C. Selecky
Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-225-110	Intraoral dental radiographic systems.

Chapter 246-225A WAC

RADIATION SAFETY AND DIAGNOSTIC IMAGE QUALITY STANDARDS FOR DENTAL FACILITIES

NEW SECTION

WAC 246-225A-001 Purpose and scope. This chapter establishes facility design and operation requirements for the use of dental X-ray equipment according to chapter 70.98 RCW. The scope of this chapter pertains to dental intra-oral and extra-oral radiography and establishes radiation safety requirements for patients, dental employees, and the public; and establishes optimal diagnostic image processing requirements.

NEW SECTION

WAC 246-225A-010 Definitions. As used in this chapter, the following definitions apply:

"Barrier" (see "protective barrier").

"Beam" (see "X ray").

"Beam-limiting device," sometimes called a collimator or cone, means a device that controls the size of the X-ray field.

"Cephalometric" means X-ray imaging specific to the human head and jaw.

"Computed radiography (CR)" means creating an X-ray image using plates consisting of a special phosphor that when exposed to radiation and then processed by a scanner, provides the information to a computer for display and manipulation.

"Computed tomography (CT)" means creating a cross-sectional X-ray image generated by an X-ray source and detector moving around the patient's body.

"Control panel" means the part of the X-ray system where the switches, knobs, pushbuttons, and other hardware necessary to operate the X-ray system are located.

"Dead-man switch or button" means a switch designed so that it can only be operated by continuous pressure on the switch by the operator, and when released before the preset exposure time will stop the exposure.

"Department" means the department of health, which is the state radiation control agency under chapter 70.98 RCW.

"Detector" means a device capable of receiving and recording an X-ray image.

"Direct digital radiography (DR)" means creating an X-ray image by sending signals directly from a solid state detector to a computer for display and manipulation.

"Diagnostic source assembly" means the combination of the tube housing assembly and the collimator.

"Direct scattered radiation" means radiation discharged in a straight line from the object being radiographed.

"Exposure," as the context implies, means:

(a) The number of electrons, measured in coulombs per kilogram of air, released through the ionization of air molecules by electromagnetic radiation; and

(b) An occupational worker or patient being subjected to radiation either directly or indirectly.

"Extra-oral radiography" means creating a film or digital X-ray image on an image receptor placed outside the mouth. Examples include panoramic and cephalometric X rays.

"Filter" means material, such as copper or aluminum, placed in the useful beam of the X ray to block selected energies, and in a safelight to block light that could fog the X-ray film.

"Focal spot" means the area on the anode end of the X-ray tube bombarded by the electrons accelerated from the cathode and from which the useful X-ray beam begins.

"Grid" means a device placed between the patient and the image receptor in extra-oral radiography that reduces scattered radiation that would decrease the quality of the image being created.

"Half-value layer (HVL)" means the thickness of material that reduces the intensity of radiation to one-half of its original value.

"Healing arts screening" means using X-ray equipment without an order by a licensed practitioner on an individual who does not have a known or diagnosed disease or symptom to learn if the individual may have an indication of ill health.

"Image receptor" means a device that transforms an X-ray beam into a visible film or digital image.

"Intra-oral radiography" means creating a film or digital X-ray image on an image receptor placed inside the mouth.

"Kilovolt (kV)" means the unit used to measure electrical energy.

"Kilovolts peak (kVp)" means the highest possible voltage across the X-ray tube during an exposure (see also "peak tube potential").

"Leakage radiation" means radiation coming from the X-ray tube, other than the main X-ray beam.

"Leakage technique factors" means the technique factors associated with the tube housing assembly that are used to measure leakage radiation. They are defined as the maximum rated peak tube potential and the maximum rated continuous tube current at the maximum peak tube potential.

"Licensed practitioner" means an individual who holds a license to practice dentistry under chapter 18.32 RCW.

"Milliampere (mA)" means the unit used to measure electrical current in an X-ray tube.

"Milliampere second (mAs)" means the product of the electrical current in the X-ray tube in milliamperes and the time of exposure in seconds.

"Mobile equipment" (see "X-ray system").

"Operator" means a person working under the direction of a licensed practitioner to operate X-ray equipment and who has been properly trained according to WAC 246-225A-020.

"Operatory" means a room in which dental health care procedures are performed.

"Peak tube potential" means the maximum voltage in the X-ray tube during an exposure.

"Portable equipment" (see "X-ray equipment").

"Position-indicating device" means a device on X-ray equipment that shows where the X-ray beam will be directed and establishes the distance from the X-ray tube to the patient's body. The device may or may not incorporate or serve as a beam-limiting device.

"Primary beam" (see "useful beam").

"Primary protective barrier" means the material placed in the useful beam, beyond the patient and image receptor, to reduce remnant primary beam exposure.

"Protected area" means a space for X-ray equipment operators that is shielded so that X-ray exposures are reduced enough to meet the exposure limits of WAC 246-221-010 (Occupational dose limits for adults) and WAC 246-220-007 (Statement of philosophy). In addition, the space must have no exposure to direct scattered radiation.

"Protective apron" means a garment made of radiation absorbing materials used to reduce a person's radiation exposure.

"Protective barrier" means a structure made of radiation absorbing material used to reduce radiation exposure.

"Quality assurance" means a program designed to produce high quality X-ray images at minimal cost and with minimal patient exposure to radiation.

"Quality control" means the regular testing of X-ray equipment and associated equipment, such as processors, to verify that the equipment is working properly. Controls include performing routine tests of the diagnostic X-ray imaging system such as X-ray beam output, viewing X-ray test images, and continually adjusting the performance of the X-ray equipment and processor to an optimal and consistent level.

"Radiation safety" means ways to protect patients and staff from unnecessary radiation exposure. Safety measures may include patient exposure reduction, image quality improvement, diagnostic imaging system quality assurance, radiation measurements, dose evaluations, compliance with state and federal regulations, and related issues.

"Radiographic" means the production of an image created when an X-ray pattern exits an X-rayed object.

"Radiography" means a way of creating a permanent film or digital image using X rays.

"Recording" means creating a permanent image, on film or in a computer, from an X-ray exposure.

"Registrant" means the owner or controller of the radiation equipment who is responsible for the safe operation of the radiation equipment in accordance with this chapter and chapter 70.98 RCW.

"Registration" means providing required information and continuing contact with the department.

"Remnant primary beam" means the part of the useful beam that completely passes through the patient and image receptor.

"Safelight" means a lamp with a filter that is used in an X-ray darkroom to provide enough light to see, but not enough to over-expose the film.

"Scattered radiation" means radiation that has changed direction as it passes through matter (see also "direct scattered radiation").

"Secondary protective barrier" means an object or material sufficient to reduce stray radiation to the required degree as stated in chapter 246-221 WAC (Radiation protection standards).

"Source-to-image-receptor distance (SID)" means the distance from the focal spot in the X-ray tube to the center of the surface of the image receptor.

"Source" means the focal spot of the X-ray tube.

"Source-to-skin distance (SSD)" means the distance between the focal spot of the X-ray tube and the nearest point on the patient's skin where the primary beam enters.

"Stationary equipment" (see "X-ray system").

"Stray radiation" means the sum of leakage and scattered radiation.

"Technique chart" means a written instruction or guide that X-ray equipment operators use to determine which radiation technique factors to select for each type of radiographic examination.

"Technique factors" means the X-ray system settings selected for a given radiographic examination. They are specified as the peak tube potential in kilovolts and either:

(a) Tube current measured in milliamperes and exposure time in seconds or pulses; or

(b) The product of tube current and exposure time expressed in milliampere seconds.

"Tube" means a glass tube that produces an X ray when high-voltage electricity is passed between the cathode at one end and the anode at the other.

"Tube housing assembly" means the X-ray tube and its housing. It includes high-voltage and/or filament transformers and other appropriate elements when they are contained within the tube housing.

"Tube housing port" means the portion of the tube housing assembly that the X rays pass through.

"Useful beam" means the radiation that passes through the tube housing port and the opening of the beam-limiting device.

"Variance" means a department-authorized alternative to a requirement of this chapter.

"X ray" means a beam of ionizing radiation produced by a machine.

"X-ray control" means a device that controls how much electricity enters the X-ray high-voltage generator and/or the X-ray tube. It includes equipment that controls the technique factors for an exposure.

"X-ray equipment" means the entire X-ray system or parts of the system.

"X-ray exposure switch or button" means the part of the X-ray system that when engaged generates the production of an X ray. (See also "dead-man switch or button.")

"X-ray high-voltage generator" means a device that supplies electrical energy to the X-ray tube to create an X-ray beam.

"X-ray system" means all of the components of a machine used for the controlled production of X rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system, such as the image receptor, are considered integral parts of the system. Types of X-ray systems are:

(a) "Mobile" means X-ray equipment mounted on a permanent base with wheels and/or casters for moving the X-ray equipment fully assembled. It is intended to be taken from one geographical location to another or from one room to another.

(b) "Portable" means X-ray equipment designed to be hand-carried, but not hand-held during use.

(c) "Stationary" means X-ray equipment that is installed in a fixed location, such as bolted to a floor or wall.

"X-ray tube" means any electron tube which is designed to be used primarily for the production of X rays.

NEW SECTION

WAC 246-225A-020 General requirements and administrative controls. The registrant is responsible for directing the operation of the X-ray system and assuring the provisions of WAC 246-222 (Radiation protection—Worker rights) are met. In addition, the registrant shall:

(1) Verify that any operator of the X-ray equipment is trained and able to show that he or she can correctly and safely operate the X-ray equipment used by the registrant. The department may determine compliance by observation, interview, and/or testing in these subject areas:

(a) Knowledge of the X-ray system controls and their function;

(b) Knowledge of radiation safety and shielding methods for both operators and patients;

(c) Proper image processing.

(2) Post a technique chart at each X-ray system's control panel that specifies the following information for the examinations being performed by that system:

(a) Patient's teeth, jaw, or head anatomy versus technique factors to be used;

(b) If applicable, settings for automatic exposure devices; and

(c) The type and size of screen-film combination or other imaging system to be used.

(3) Require that all individuals, other than the patient being examined:

(a) Be positioned so that no part of the body, including the extremities, will be struck by the useful beam;

(b) Be protected from stray radiation by wearing protective aprons or by being positioned behind protective barriers of not less than 0.25 millimeters lead equivalent; and

(c) Not be present in the room during the X-ray exposure, except as described in subsection (4)(b) of this section.

(4) Use mechanical holding devices when a patient, film, or image receptor needs to be supported during an X-ray exposure when the technique permits.

(a) No individual shall be allowed to routinely hold a patient, film, or image receptor; and

(b) Holding a patient, film, or image receptor shall only be allowed in very unusual and rare situations. In these cases the patient's name, the date, and the name of the person holding the patient must be recorded in writing and maintained by the registrant for at least five years.

(5) Comply with the occupational exposure limits and the requirements for the determination of prior occupational dose stated under WAC 246-221-020 (Determination of prior occupational dose) for all individuals associated with the operation of the registrant's X-ray system. In addition, when protective clothing or devices are worn on portions of the body and a dosimeter is required, at least one dosimeter shall be used and documented as follows:

(a) When an apron is worn, the dosimeter shall be worn at the collar outside the apron;

(b) The dose to the whole body based on the maximum dose attributed to the most critical organ must be recorded on the reports required under WAC 246-221-230 (Records important to radiation safety). If more than one dosimeter is worn, each dose must be identified with the area where the dosimeter was worn on the body.

(6) Require personnel dosimetry monitoring of an operator when:

(a) Mobile or portable X-ray systems are used, i.e., when X-ray exposure buttons or X-ray exposure switch cords are used that allow the operator to stand in an unprotected area during exposures; or

(b) Measurements by the department show ten percent of the exposure limits as specified under WAC 246-221-010 (Occupational dose limits for adults) are exceeded.

(7) Use only X-ray equipment, and the accessories used in connection with making X rays, that meet the requirements of this chapter.

(8) Not allow anyone in the dental office to operate X-ray equipment for diagnostic purposes when the X-ray equipment:

(a) Does not meet the provisions of this chapter; or

(b) Is malfunctioning or threatens the health or safety of a patient, dental employee, or the public.

(9) Not allow patients to be exposed to the useful X-ray beam except for healing arts purposes. Only a licensed practitioner may authorize an exposure to the useful beam. Deliberate exposure of an individual for the following purposes is prohibited:

(a) Training, demonstration, or other purposes unless there are also healing arts requirements and proper prescription provided; or

(b) Except for exposure required under Medicare provisions, any exposure for which the sole purpose is satisfying a third party's prerequisite for reimbursement under any health care plan.

NEW SECTION

WAC 246-225A-025 X-ray system radiation safety procedure. If required by the department, the registrant shall adopt a written X-ray system radiation safety procedure.

(1) The department may require an X-ray system radiation safety procedure if there is reason to believe the registrant needs increased attention because of:

(a) Poor operator staff training;

(b) Extremely high workload;

(c) Increased risk of exposure due to staff supporting patients during radiography;

(d) Increased risk of exposure to scattered radiation;

(e) Unnecessarily high patient exposure values; or

(f) Other similar conditions.

(2) The X-ray system radiation safety procedures shall:

(a) Address patient and occupationally exposed personnel safety; and

(b) Define any restrictions of the operating technique required for safe operation of the X-ray system.

NEW SECTION

WAC 246-225A-026 Healing arts screening program. Any individual proposing to conduct a healing arts screening program shall obtain approval from the state health officer as required in WAC 246-225-99930 before conducting the screening program.

NEW SECTION

WAC 246-225A-040 Dental X-ray rule variance request. A registrant may submit a written request to the department for a variance from the applicable regulations. The registrant shall not use X-ray equipment on patients until the department approves the variance request.

(1) The written request shall be addressed to: X-ray Supervisor, Office of Radiation Protection, Department of Health, P.O. Box 47827, Olympia, Washington 98504-7827, and must include:

(a) The specific WAC reference or references of the rule for which the variance is requested;

(b) An explanation of the circumstances involved, and the reason why the rule cannot be followed;

(c) A description of how the proposed alternative meets the intent of the rule and how the registrant shall protect patients, dental employees, and the public;

(d) A description of the X-ray system to be used with supporting pictures or documents; and

(e) The time period for which the variance is requested.

(2) The department may impose conditions that may be necessary to protect human health and safety during the term of the variance.

(3) If necessary, the department may require the registrant to submit additional information.

(4) The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary.

(5) As determined by the department, variances can be permanent or temporary.

(6) The department may at any time revoke a variance if it is determined that the conditions of the variance are not being followed.

NEW SECTION

WAC 246-225A-050 Dental X-ray facility design. All registrants proposing to use X-ray equipment designed to produce computed tomography images using a "ring detector" type CT, or where medical X-ray systems are used for dental imaging, shall submit shielding and floor plans to the department for review. The submittal shall be based on the criteria and methods found in National Council on Radiation Protection and Measurements (NCRP) report #147, issued November 19, 2004. The intent of this requirement is to assure protection of patients, dental employees, and the public. A copy of this report is available for review at Department of Health, Office of Radiation Protection, 111 Israel Road S.E., Tumwater, Washington. Shielding and floor plans shall meet the following requirements:

(1) Each X-ray exposure switch or button shall be located to meet the following criteria:

(a) For stationary X-ray systems, the X-ray exposure switch or button shall be permanently mounted in a protected area (such as a corridor outside the room) so that the operator can make an exposure only from the protected area; and

(b) Mobile X-ray systems shall have an X-ray exposure switch or button located at the end of a cord at least twelve feet (3.7 meters) long.

(2) Shielding for cephalometric X ray shall meet the following criteria:

(a) Be at least one foot (30.5 centimeters) larger, in both the horizontal and vertical directions, than the area of the primary beam where it strikes the nearest wall; and

(b) Shielding between the nearest wall struck by the primary beam and the next occupied area shall have two-pound lead or equivalent installed in the wall (based on 20 films per week). Exterior walls or concrete block walls need no additional shielding.

(3) Acceptable shielding materials for dental X-ray facilities are as follows:

(a) The minimum shielding for intra-oral stray radiation protection is standard gypsum wallboard/sheetrock construction (two layers each of five-eighths inch thickness).

(b) Where windows are provided to observe patients during radiography, the windows are at least one-half inch plate glass, or equivalent ability to reduce exposure.

(c) All other materials used for shielding between operatories and for operator protection areas are equivalent to 0.2 millimeters of lead.

(4) Barriers between dental X-ray rooms and dental operatories where intra-oral X-ray equipment is installed shall meet the following criteria:

(a) Be at least six feet (1.83 meters) high and composed of materials capable of reducing scattered radiation as required under subsection (3) of this section;

(b) There shall be no line of sight between workers or patients in one operatory and the X-ray tube housing assembly in the next operatory when that X-ray tube housing assembly is in its operating position;

(c) X-ray tube housing assemblies shall not be mounted between operatories on top of barriers less than six feet (1.83 meters) high, unless those barriers are at the foot end of the patient couches, and there is no line of sight between operatories.

NEW SECTION

WAC 246-225A-060 General requirements for all dental X-ray systems. Registrants shall use only dental X-ray systems and medical X-ray systems for dental imaging that meet the following requirements:

(1) The leakage radiation from the tube housing assembly, measured at a distance of one meter in any direction from the source, shall not exceed 100 milliroentgens in one hour when the X-ray tube is operated at its leakage technique factors. The department will determine compliance by measuring leakage averaged over an area of 100 square centimeters with no dimension of that area greater than 20 centimeters.

(2) The half-value layer of the useful beam for a given X-ray tube potential shall not be less than the values shown in Table 1 of this section. To determine a half-value layer at an X-ray tube potential which is not listed in Table 1 of this section, linear interpolation or extrapolation may be made.

Table 1

Design operating range (kilovolts peak)	Measured potential (kilovolts peak)	Half-value layer (millimeters of aluminum equivalent)
70 and below	70 and below	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7

(3) If two or more X-ray tubes are controlled by one X-ray exposure switch or button, the tube or tubes in operation shall be clearly marked before an exposure, on both the X-ray control panel and near or on the selected tube housing assembly.

(4) The tube housing assembly supports shall be adjusted so that the tube housing assembly remains stable and does not drift during an exposure unless the tube housing movement during exposure is a designed function of the X-ray system. The X-ray system and/or tube housing assembly shall not be hand-held during exposure.

(5) Each X-ray control shall have a dead-man switch or button.

(6) Technique indicators shall be set as follows:

(a) All exposure technique factors shall be set on the control panel before the exposure begins, except when automatic exposure controls are used. When automatic exposure

controls are used, any preselected settings for each exposure shall be indicated.

(b) On equipment having fixed technique factors, the requirement in (a) of this subsection may be met by permanent markings or labels.

(7) Linearity shall be measured as follows:

(a) The difference between the ratio of milliroentgens (mR) exposure to milliampere second (mAs) at one milliampere (mA) or mAs setting and the ratio of mR exposure to milliampere second (mAs) at another milliampere (mA) or mAs setting must not exceed 0.1 times the sum of the ratios. This is written as:

$$X_1 - X_2 \leq 0.10 (X_1 + X_2)$$

Where X1 and X2 are the ratios (mR/mAs) for each mA or mAs setting.

(b) The measurement shall be performed at any selection of mA or mAs without regard to focal spot size, provided neither focal spot size is less than 0.45 millimeters.

(8) When four exposures are made at identical operating settings, the difference between the maximum exposure (Emax) and the minimum exposure (Emin) must be less than or equal to ten percent of the average exposure (E). This is written as:

$$(Emax - Emin) \leq 0.1E$$

(9) The difference between the kVp indicated on an X-ray system and the measured kVp shall not be greater than ten percent of the indicated kVp.

(10) Timers shall be able to:

(a) Stop the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor; and

(b) Reset automatically to the initial setting or to zero when the exposure is stopped.

(11) X-ray equipment shall not be operated when the timer is set to the zero or off position if either position is provided.

(12) Each X-ray control shall have a visual indicator (such as a light) or audible signal so that the operator knows that X rays are being produced or the exposure is occurring or has ended.

(13) Registrants shall not use dental fluoroscopy without electronic amplification.

NEW SECTION

WAC 246-225A-070 Special requirements for dental extra-oral radiography. Registrants shall use X-ray systems for extra-oral radiography that meet the following requirements for:

(1) Beam limitation.

(a) X-ray equipment designed for only one image receptor size at a fixed source-to-image-receptor distance (SID) shall be able to limit the size of the beam at the plane of the image receptor to no larger than the image receptor, and to align the center of the X-ray beam with the center of the image receptor to within two percent of the SID. In the case of extra-oral imaging systems where the image receptor can be turned vertically or horizontally, the beam-limiting device must also be able to be turned so that the dimensions of the beam match the image receptor dimensions at the image receptor plane.

(b) Intra-oral radiography systems used to perform cephalometric projections, including trans-cranial exams, must be equipped with a stable means to:

(i) Set the source-to-skin distance;

(ii) Comply with the beam size dimensions in subsection (1)(a) of this section; and

(iii) Center the beam to the image receptor as required in subsection (1)(a) of this section.

(c) General purpose medical X-ray equipment used to perform cephalometric exams must:

(i) Have stepless adjustment of the dimensions of the X-ray beam so that the width and height of the X-ray beam are independently adjustable. The minimum beam size at a SID of 100 centimeters must be equal to or less than 10 by 10 centimeters.

(ii) Have a means for operators to visually set the width and height of the X-ray beam. The misalignment of the edges of the visually set light field with the respective edges of the X-ray beam along either the length or width of the visually set light field must not be more than two percent of the distance from the source to the center of the visually defined light field when the surface upon which it appears is perpendicular (at a 90 degree angle) to the central axis of the X-ray beam.

(iii) Have a way to indicate on the X-ray equipment when the axis of the X-ray beam is perpendicular to the plane of the image receptor and to align the center of the X-ray beam to the center of the image receptor to within two percent of the SID (five percent for equipment manufactured before August 1974). Dental lateral jaw examinations are excluded from this requirement.

(iv) Have a beam-limiting device that shows the X-ray beam size in centimeters or inches at the plane of the image receptor to which the beam-limiting device is adjusted.

(v) Have beam size dimension settings that are able to produce X-ray beam dimensions at the plane of the image receptor to within two percent of the SID when the beam axis is perpendicular to the plane of the image receptor.

(vi) Have SID displayed in inches and/or centimeters.

(2) Source-to-skin distance.

(a) Dental extra-oral radiography systems must have a durable, securely fastened means to limit the source-to-skin distance to not less than 23 centimeters. The requirement may be met when the beam-limiting device provides the required limits.

(b) Dental extra-oral radiography systems in which the SID is not fixed must have a device or reference that will indicate the actual SID distance to within two percent of the indicated SID.

(3) Viewing device.

Dental extra-oral radiography installations must provide a viewing device (mirror or glass window or video designed to reduce exposure) so that operators of the X-ray equipment may observe the patient during the exposure without being exposed to the primary beam or stray radiation.

(4) Scattered radiation suppressing grids.

When using scattered radiation suppressing grids, the grids shall be:

(a) Clearly labeled with the SID for which the grids are designed to be used; and

(b) Used at the proper SID.

NEW SECTION

WAC 246-225A-080 Special requirements for dental intra-oral radiography. (1) Registrants using an X-ray system designed for use with an intra-oral image receptor shall use equipment that:

(a) Limits the source-to-skin distance to not less than 18 centimeters;

(b) Limits the X-ray beam so that the beam diameter at the minimum SSD is no greater than 7 centimeters in diameter;

(c) Has an open-ended position-indicating device; and

(d) Has shielding included in the beam-limiting device or position-indicating device equivalent to that required for the diagnostic source assembly under WAC 246-225A-060(1).

(2) After January 1, 2010, registrants shall not use diagnostic dental X-ray systems with a fixed, nominal kilovolts peak of less than 55.

NEW SECTION

WAC 246-225A-090 X-ray image processing requirements. Standards in this section are designed to assure that optimal X-ray image quality and diagnostic information are produced so that fewer retakes are needed, and associated patient and operator exposure are minimal.

(1) When performing manual film processing, also known as hand tank processing, registrants or an operator working under the registrant's direction shall:

(a) Use appropriate chemicals for manual film processing as indicated in chemical and film manufacturer's labels and recommendations.

(b) Mix chemicals in accordance with the chemical manufacturer's recommendations.

(c) Periodically add film developer/fixer replenisher based on the recommendations of the chemical or film manufacturer. Solution may be removed from the tank to permit the addition of an adequate volume of replenisher.

(d) Completely replace all manual processing chemicals at least every two months, or follow the manufacturer's recommendations for periodic chemistry replenishment and maintenance, whichever is shorter.

(e) Post and keep the most recent twelve months of a log that shows when each chemistry change was done and by whom for department inspection.

(f) Process film to achieve the best image quality by either:

(i) Following the film manufacturer's published temperature and time recommendations for X-ray film development; or

(ii) Developing film according to the temperature-time chart in (g) of this subsection.

(g) For standard developer solution, follow the X-ray film developing time specified for the appropriate developer solution temperature in Table 1 of this section:

Table 1

THERMOMETER READINGS (DEGREES)		MINIMUM DEVELOPING TIMES (MINUTES)
C	F	
27	80	2
	79	2
	78	2 1/2
	77	2 1/2
24	76	3
	75	3
	74	3 1/2
	73	3 1/2
22	72	4
	71	4
	70	4 1/2
	69	4 1/2
20	68	5
	67	5 1/2
	66	5 1/2
	65	6
18	64	6 1/2
	63	7
	62	8
	61	8 1/2
16	60	9 1/2

(h) Use X-ray film developing devices that give:

(i) The actual temperature of the developer solution;

(ii) The developing time in minutes and seconds; and

(iii) An audible or visible signal when developing is complete.

(2) When performing automatic film processing, registrants or an operator working under the registrant's direction shall:

(a) Set up and maintain automatic film processors so that X-ray image density and contrast are optimal;

(b) Follow the film manufacturer's published specifications for time and temperature, and the processor manufacturer's recommendations for type of developer chemistry used. If manufacturer's specifications are not available, the film must be developed using the developer temperatures and immersion times specified in Table 2 of this section:

Table 2

DEVELOPER TEMPERATURE		PROCESSOR DEVELOPER IMMERSION TIME*
°C	°F	Seconds
35	95	20
34.5	94	21
34	93	22

DEVELOPER TEMPERATURE		PROCESSOR DEVELOPER IMMERSION TIME*
33.5	92	23
33	91	24
32	90	25
31.5	89	26
31	88	27
30.5	87	28
30	86	29
29.5	85	30

*Immersion time only, no cross-over time included.

(c) Replenish the developer chemistry to create optimal X-ray images by:

(i) Replacing all automatic processor chemicals at least every month, or follow the manufacturer's recommendations for periodic chemistry replenishment and maintenance, whichever is shorter.

(ii) Posting and maintaining a log that shows when each chemistry change was performed and by whom. The most recent twelve months of the log shall be kept for department inspection.

(iii) Verifying that the processor delivers an adequate rate of developer replenishment; and

(iv) Verifying that standby replenishment, flood replenishment, or prefixed film processing is done periodically as necessary for facilities with a low X-ray workload.

(3) When developing film, registrants or an operator working under the registrant's direction shall:

(a) Set up darkrooms and daylight film loaders so that film being processed, handled, or stored will be exposed only to light passed through a safelight filter. The filter must be of the type specified by the film manufacturer and must not cause excess fog (evidence of light exposure) on X-ray-exposed film. Fog greater than 0.1 optical density is considered unacceptable.

(b) Use bulbs in the darkroom's safelight of fifteen watts or less.

(c) Mount the safelight in the darkroom at least four feet (1.2 meters) above work areas.

(d) Use daylight loaders in darkened areas or where light is dimmed so that the fog standard in (a) of this subsection is met.

(4) When processing digital images, registrants or an operator working under the registrant's direction shall:

(a) Follow the computed radiography (CR) and direct digital radiography (DR) sensor or detector manufacturer's recommendations to achieve adequate diagnostic image quality for the least possible patient exposure.

(b) Process CR phosphor plates using the longest processing time recommended by the manufacturer of the plate processor.

(5) The department may make X-ray film development and darkroom tests as necessary to determine compliance with this section.

NEW SECTION

WAC 246-225A-110 Image processing quality assurance. Beginning January 1, 2010, registrants making images on film shall comply with the following quality assurance requirements for X-ray image processing:

(1) Conduct an acceptable quality assurance program that includes weekly tests of manual and automatic film processing to include:

(a) Density and contrast on test films; and

(b) Action taken when test film density or contrast falls below 15 percent of initial reference levels.

(2) Keep a written or computer log of all periodic quality assurance testing covered in subsection (1) of this section, including test films, from the proceeding twelve months for inspection by the department.

WSR 08-14-075

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed June 26, 2008, 2:38 p.m., effective July 27, 2008]

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

Purpose: The radioactive materials program is a fee-supported program which licenses and inspects approximately 550 facilities in Washington state. This rule change increases licensing fees for those facilities by 30% to meet the anticipated costs. Additionally, the rule revises the medical license fee terminology to reflect current terminology and regulatory references, and combines two health physics fee categories into one.

Citation of Existing Rules Affected by this Order: Amending 5 [WAC 246-254-070, 246-254-080, 246-254-090, 246-254-100, and 246-254-120].

Statutory Authority for Adoption: RCW 70.98.080, 43.20B.020, 43.70.110, 43.70.250.

Adopted under notice filed as WSR 08-09-077 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 5, 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 5, Repealed 0.

Date Adopted: June 23, 2008.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

WAC 246-254-070 Fees for specialized radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following special categories shall forward annual fees to the department as follows:

(a) ((~~$7,050~~)) $9,164 for operation of a single nuclear pharmacy.

(b) ((~~$12,025~~)) $15,628 for operation of a single nuclear laundry.

(c) ((~~$12,025~~)) $15,628 for a license authorizing a single facility to use more than one curie of unsealed radioactive material in the manufacture and distribution of radioactive products or devices containing radioactive material.

(d) ((~~$4,215~~)) $5,476 for a license authorizing a single facility to use less than or equal to one curie of unsealed radioactive material or any quantity of previously sealed sources in the manufacture and distribution of products or devices containing radioactive material.

(e) ((~~$1,085~~)) $1,408 for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.

(f) ((~~$8,065~~)) $10,484 for a license authorizing decontamination services operating from a single facility.

(g) ((~~$3,815~~)) $4,956 for a license authorizing waste brokerage including the possession, temporary storage at a single facility, and over-packing only of radioactive waste.

(h) ((~~$1,700 for a license authorizing equipment servicing involving:~~

~~(i) Incidental use of calibration sources;~~

~~(ii) Maintenance of equipment containing radioactive material; or~~

~~(iii) Possession of sealed sources for purpose of sales demonstration only.~~

~~(i) $3,175~~)) $2,208 for a license authorizing health physics services, leak testing, ((~~or~~)) calibration services, equipment servicing, or possession of sealed sources for purpose of sales demonstration only.

((~~(j) $1,995~~)) (i) $2,592 for a civil defense license.

((~~(k) $600~~)) (j) $780 for a license authorizing possession of special nuclear material as pacemakers or depleted uranium as shielding.

(2) Persons licensed or authorized to possess and use radioactive material in the following broad scope categories shall forward annual fees to the department as follows:

(a) ((~~$23,860~~)) $31,016 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than one curie.

(b) ((~~$11,030~~)) $14,336 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than 0.1 curie but less than or equal to one curie.

(c) ((~~$8,865~~)) $11,520 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession less than or equal to 0.1 curie.

(3) Persons licensed or authorized to possess or use radioactive material which are not covered by any of the annual license fees described in WAC 246-254-070 through 246-254-100, shall pay fees as follows:

(a) An initial application fee of one thousand dollars;

(b) Billing at the rate of ((~~$125~~)) $162 for each hour of direct staff time associated with issuing and maintaining the license and for the inspection of the license; and

(c) Any fees for additional services as described in WAC 246-254-120.

(d) The initial application fee will be considered a credit against billings for direct staff charges but is otherwise nonrefundable.

(4) Persons licensed or authorized to possess or use radioactive material in a facility for radioactive waste processing, including resource recovery, volume reduction, decontamination activities, or other waste treatment, but not permitting commercial on-site disposal, shall pay fees as follows:

(a) A nonrefundable initial application fee for a new license of sixteen thousand dollars which shall be credited to the applicant's quarterly billing described in (b) of this subsection; and

(b) Quarterly billings for actual direct and indirect costs incurred by the department including, but not limited to, license renewal, license amendments, compliance inspections, a resident inspector for time spent on the licensee's premises as deemed necessary by the department, laboratory and other support services, and travel costs associated with staff involved in the foregoing.

AMENDATORY SECTION (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

WAC 246-254-080 Fees for medical and veterinary radioactive material ((~~licenses~~)) use. (1) ((~~Persons licensed or~~)) Licensees authorized ((~~to possess~~)) possession or use of radioactive material in the following medical or veterinary categories shall forward annual fees to the department as follows:

(a) ((~~$5,960~~)) $7,748 for operation of a mobile nuclear medicine program from a single base of operation((~~.~~));

(b) ((~~$4,345~~)) $5,648 for ((~~a license authorizing groups II and III of WAC 246-235-120 for diagnostic nuclear medicine at a single facility.~~)) the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, at a single facility (diagnostic imaging and localization nuclear medicine);

(c) ((~~$3,765~~)) $4,892 for ((~~a license authorizing groups IV and V of WAC 246-235-120 for medical therapy at a single facility.~~)) the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201 at a single facility (radiopharmaceutical therapy);

(d) ((~~$6,000~~)) $7,800 for ((~~a license authorizing groups II or III and groups IV or V of WAC 246-235-120 for full diagnostic and therapy services at a single facility.~~)) the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201, and/or the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (combination diagnostic nuclear medicine and/or

radiopharmaceutical therapy), and/or sealed source (manual or machine) therapy;

(e) ((~~$3,225~~)) $4,192 for ((~~a license authorizing group VI of WAC 246-235-120 for brachytherapy at a single facility.~~)) the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (manual brachytherapy);

(f) ((~~$1,995~~)) $2,592 for ((~~a license authorizing brachytherapy or gamma stereotactic therapy or teletherapy at a single facility.~~)) the use of sealed sources in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit, as defined in WAC 246-240-351, at a single facility (machine brachytherapy);

(g) ((~~$3,030~~)) $3,936 for a license authorizing medical or veterinary possession of greater than two hundred millicuries total possession of radioactive material at a single facility((~~.~~));

(h) ((~~$2,410~~)) $3,132 for a license authorizing medical or veterinary possession of greater than thirty millicuries but less than or equal to two hundred millicuries total possession of radioactive material at a single facility((~~.~~));

(i) ((~~$1,765~~)) $2,292 for a license authorizing medical or veterinary possession of less than or equal to thirty millicuries total possession of radioactive material at a single facility((~~.~~));

(j) ((~~$1,555~~)) $2,020 for ((~~a license authorizing group I as defined in WAC 246-235-120 or in vitro uses of radioactive material at a single facility.~~)) the use of unsealed radioactive material for uptake, dilution and/or excretion studies for which a written directive is not required, as defined in WAC 246-240-151, at a single facility (diagnostic uptake, dilution, and excretion nuclear medicine);

(k) ((~~$970~~)) $1,260 for a license authorizing medical or veterinary possession of a sealed source for diagnostic use at a single facility.

(2) ((~~Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location or base of operation.~~)) The fee for a license authorizing multiple locations shall be increased by fifty percent of the annual fee for each additional location.

AMENDATORY SECTION (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

WAC 246-254-090 Fees for industrial radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following industrial categories shall forward annual fees to the department as follows:

(a) ((~~$7,020~~)) $9,124 for a license authorizing the use of radiographic exposure devices in one or more permanent radiographic vaults in a single facility.

(b) ((~~$9,410~~)) $12,232 for a license authorizing the use of radiographic exposure devices at temporary job sites but operating from a single storage facility.

(c) ((~~$4,610~~)) $5,992 for a license authorizing well-logging activities including the use of radioactive tracers operating from a single storage facility.

(d) ((~~$995~~)) $1,292 for a license authorizing possession of portable sealed sources including moisture/density gauges and excluding radiographic exposure devices operating from a single storage facility.

(e) ((~~$1,085~~)) $1,408 for a license authorizing possession of any nonportable sealed source, including special nuclear material and excluding radioactive material used in a gas chromatograph at a single facility.

(f) ((~~$685~~)) $888 for a license authorizing possession of gas chromatograph units containing radioactive material at a single facility.

(g) ((~~$1,895~~)) $2,460 for a license authorizing possession of any self-shielded or pool type irradiator with sealed source total quantity greater than one hundred curies at a single facility.

(h) ((~~$10,060~~)) $13,076 for a license authorizing possession of sealed sources for a walk-in type irradiator at a single facility.

(i) ((~~$8,760~~)) $11,388 for a license authorizing possession of greater than one gram of unsealed special nuclear material or greater than five hundred kilograms of source material at a single facility.

(j) ((~~$2,805~~)) $3,644 for a license authorizing possession of less than or equal to one gram of unsealed special nuclear material or five hundred kilograms of source material at a single facility.

(k) ((~~$445~~)) $576 for a license authorizing possession of static elimination devices not covered by a general license.

(2) Persons with licenses authorizing multiple locations of permanent storage shall increase the annual fee by fifty percent for each additional location.

(3) Depleted uranium registrants required to file Form RHF-20 shall forward an annual fee of ((~~$90~~)) $116 to the department.

(4) General licensees required to register in accordance with WAC 246-233-020 (3)(k) shall forward an annual fee of ((~~$265~~)) $344 to the department.

AMENDATORY SECTION (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

WAC 246-254-100 Fees for laboratory radioactive material licenses. (1) Persons licensed or authorized to possess or use unsealed radioactive material in the following laboratory categories shall forward annual fees to the department as follows:

(a) ((~~$4,800~~)) $6,240 for a license authorizing possession at a single facility of unsealed sources in amounts greater than:

(i) One millicurie of I-125 or I-131; or

(ii) One hundred millicuries of H-3 or C-14; or

(iii) Ten millicuries of any single isotope.

(b) ((~~$2,370~~)) $3,080 for a license authorizing possession at a single facility of unsealed sources in amounts:

(i) Greater than 0.1 millicurie and less than or equal to one millicurie of I-125 or I-131; or

(ii) Greater than ten millicuries and less than or equal to one hundred millicuries of H-3 or C-14; or

(iii) Greater than one millicurie and less than or equal to ten millicuries of any single isotope.

(c) ((~~$1,995~~)) $2,592 for a license authorizing possession at a single facility of unsealed sources in amounts:

(i) Greater than 0.01 millicurie and less than or equal to 0.1 millicurie of I-125 or I-131; or

(ii) Greater than one millicurie and less than or equal to ten millicuries of H-3 or C-14; or

(iii) Greater than 0.1 millicurie and less than or equal to one millicurie of any other single isotope.

(d) ((~~$685~~)) $888 for a license authorizing possession at a single facility of unsealed or sealed sources in amounts:

(i) Less than or equal to 0.01 millicurie of I-125 or I-131; or

(ii) Less than or equal to one millicurie of H-3 or C-14; or

(iii) Less than or equal to 0.1 millicurie of any other single isotope.

(e) ((~~$920~~)) $1,196 for a license authorizing possession at a single facility of large quantities of naturally occurring radioactive material in total concentration not exceeding 0.002 microcurie per gram.

(2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location.

(3) Persons registered to perform in vitro testing pursuant to Form RHF-15 shall forward an annual fee of ((~~$90~~)) $116 to the department.

AMENDATORY SECTION (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

WAC 246-254-120 Fees for licensing and compliance actions. (1) In addition to the fee for each radioactive material license as described under WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100, a licensee shall pay a service fee for each additional licensing and compliance action as follows:

(a) For a second follow-up inspection, and each follow-up inspection thereafter, a fee of ((~~$125~~)) $162 per hour of direct staff time associated with the follow-up inspection, not to exceed ((~~$1,250~~)) $1,625 per follow-up inspection. Hours are calculated in half-hour increments.

(b) For each environmental cleanup monitoring visit, a fee of ((~~$125~~)) $162 per hour of direct staff time associated with the environmental cleanup monitoring visit, not to exceed ((~~$3,125~~)) $4,063 per visit. Hours are calculated in half-hour increments.

(c) For each new license application, the fee of ((~~$200~~)) $260 in addition to the required annual fee.

(d) For each sealed source and device evaluation, a fee of ((~~$125~~)) $162 per hour of direct staff time associated with each sealed source and device evaluation, not to exceed ((~~$3,750~~)) $4,875 per evaluation.

(e) For review of air emission and environmental programs and data collection and analysis of samples, and review of decommissioning activities by qualified staff in those work units, a fee of ((~~$125~~)) $162 per hour of direct staff time associated with the review. The fee does not apply to reviews conducted by the radioactive materials section staff and does not apply unless the review time would result in a special service charge exceeding ten percent of the licensee's annual fee.

(f) For expedited licensing review, a fee of ((~~$125~~)) $162 per hour of direct staff time associated with the review. This fee only applies when, by the mutual consent of licensee and affected staff, a licensing request is taken out of date order and processed by staff during nonwork hours and for which staff is paid overtime.

(2) The licensee or applicant shall pay any additional service fees at the time of application for a new license or within thirty days of the date of the billing for all other licensing and compliance actions.

(3) The department shall process an application only upon receipt of the new application fee and the annual fee.

(4) The department may take action to modify, suspend, or terminate the license or sealed source and device registration if the licensee fails to pay the fee for additional licensing and compliance actions billed by the department.

WSR 08-14-079
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
(Mental Health Division)

[Filed June 26, 2008, 3:48 p.m., effective July 27, 2008]

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

Purpose: The 2007 legislature passed a provision (SSB 5533) requiring the department to certify crisis stabilization units that meet minimum standards.

Statutory Authority for Adoption: RCW 71.05.020 and 71.24.035.

Other Authority: Chapter 375, Laws of 2007 (SSB 5533).

Adopted under notice filed as WSR 08-10-067 on May 5, 2008.

A final cost-benefit analysis is available by contacting Tony O'Leary, P.O. Box 45320, Olympia, WA 98504-5320, phone (360) 902-0787, fax (360) 902-7691, e-mail o'leaap@dshs.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 8, 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 8, Amended 0, Repealed 0.

Date Adopted: June 26, 2008.

Robin Arnold-Williams
Secretary

NEW SECTION

WAC 388-865-0750 Crisis stabilization unit certification. (1) To obtain and maintain certification as a crisis stabilization unit (defined in RCW 71.05.020) under chapter 71.05 RCW, a facility must:

(a) Be licensed by the department of health;

(b) Ensure that the unit and its services are accessible to all persons, pursuant to federal, state, and local laws; and

(c) Successfully complete a provisional and annual on-site review by the mental health division to determine facility compliance with the minimum standards of this section and chapter 71.05 RCW.

(2) If a crisis stabilization unit is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:

(a) Out of sight and sound of the general population at all times;

(b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and

(c) Has a secured entrance and exit between the unit and the rest of the facility.

NEW SECTION

WAC 388-865-0755 Standards for administration The crisis stabilization unit must ensure that the following standards for administration are met:

(1) A description of the program, including age of persons to be served, length of stay, and services to be provided.

(2) An organizational structure that demonstrates clear lines of authority for administrative oversight and clinical supervision.

(3) The professional person in charge of administration of the unit is a mental health professional.

(4) A management plan to monitor, collect data and develop improvements to meet the requirements of this chapter.

(5) A policy management structure that establishes:

(a) Procedures for maintaining and protecting personal medical/clinical records consistent with chapter 70.02 WAC, "Medical Records Health Care Information Access and Disclosure," and the Health Insurance Portability and Accountability Act (HIPAA);

(b) Procedures for managing human resources to ensure that persons receive individualized evaluation and crisis stabilization services by adequate numbers of staff who are qualified and competent to carry out their assigned responsibilities;

(c) Procedures for ensuring a secure environment appropriate to the legal status of the person(s), and necessary to protect the public safety. "Secure" means having:

(i) All doors and windows leading to the outside locked at all times;

(ii) Visual monitoring, either by line-of-sight or camera as appropriate to the individual;

(iii) Adequate space to segregate violent or potentially violent persons from others;

(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(v) Adequate numbers of staff present at all times that are trained in facility security measures.

(d) Procedures for admitting persons needing crisis stabilization services seven days a week, twenty-four hours a day;

(e) Procedures to ensure that for persons who have been brought to the unit involuntarily by police, the stay is limited to twelve hours unless the individual has signed voluntarily into treatment.

(f) Procedures to ensure that within twelve hours of the time of arrival to the crisis stabilization unit, individuals who have been detained by a designated mental health professional or designated crisis responder under chapter 71.05 or 70.96B RCW are transferred to a certified evaluation and treatment facility.

(g) Procedures to assure appropriate and safe transportation of persons who are not approved for admission or detained for transfer to an evaluation and treatment facility, and if not in police custody, to their respective residence or other appropriate place;

(h) Procedures to detain arrested persons who are not otherwise detained and transferred to an evaluation and treatment facility for a period of up to eight hours in order to enable law enforcement to return to the facility and take the person back into custody;

(i) Procedures to ensure access to emergency life-sustaining treatment, necessary medical treatment, and medication;

(j) Procedures to ensure the protection of personal and familial rights as described in WAC 388-865-0561 and chapter 71.05 RCW;

(k) Procedures to inventory and safeguard the personal property of the persons being detained;

(l) Procedures to ensure that a mental health professional (as defined in chapter 388-865 WAC) is on-site twenty-four hours a day, seven days a week;

(m) Procedures to ensure that a licensed physician is available for consultation to direct care staff and patients twenty-four hours a day, seven days a week;

(n) Procedures to provide warning to an identified individual and law enforcement when an individual has made a threat against an identified victim, in accordance with RCW 71.05.390(10);

(o) Procedures to ensure the rights of persons to make mental health advance directives; and

(p) Procedures to establish unit protocols for responding to the provisions of the advanced directives consistent with RCW 71.32.150.

NEW SECTION

WAC 388-865-0760 Admission and intake evaluation. (1) For persons who have been brought to the unit involuntarily by police:

(a) The clinical record must contain:

(i) A statement of the circumstances under which the person was brought to the unit;

(ii) The admission date and time; and

(iii) The date and time when the twelve hour involuntary detention period ends.

(b) The evaluation required in subsection (2)(c) of this section must be performed within three hours of arrival at the facility.

(2) The facility must document that each person has received timely evaluations to determine the nature of the disorder and the services necessary, including at a minimum:

(a) A health screening by an authorized healthcare provider as defined in WAC 246-337-005(22) to determine the healthcare needs of a person.

(b) An assessment for chemical dependency and/or a co-occurring mental health and substance abuse disorder, utilizing the Global Appraisal of Individual Needs - Short Screener (GAIN-SS) or its successor.

(c) An evaluation by a mental health professional to include at a minimum:

(i) Mental status examination;

(ii) Assessment of risk of harm to self, others, or property;

(iii) Determination of whether to refer to a designated mental health professional (DMHP) or designated crisis responder (DCR) to initiate civil commitment proceedings.

(d) Documentation that an evaluation by a DMHP/DCR was performed within the required time period, the results of the evaluation, and the disposition of the person.

(e) Review of the person's current crisis plan, if applicable and available.

(f) The admission diagnosis and what information the determination was based upon.

(3) If the mental health professional determines that the needs of a person would be better served by placement in a chemical dependency treatment facility then the person must be referred to an approved treatment program defined under chapter 70.96A RCW.

NEW SECTION

WAC 388-865-0765 Use of seclusion and restraint procedures within the crisis stabilization unit. (1) Persons have the right to be free from seclusion and restraint, including chemical restraint within the crisis stabilization unit.

(2) The use of restraints or seclusion must occur only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the person or others from harm. The reasons for the determination must be clearly documented in the clinical record.

(3) The crisis stabilization unit must develop policies and procedures to assure that restraint and seclusion are utilized only to the extent necessary to ensure the safety of patients and others, and in accordance with WAC 246-337-110, 246-322-180, 246-320-745(6), and 388-865-0545.

NEW SECTION

WAC 388-865-0770 Assessment and stabilization services - Documentation requirements. (1) For all persons admitted to the crisis stabilization unit, the clinical record must contain documentation of:

(a) Assessment and stabilization services provided by the appropriate staff;

(b) Coordination with the person's current treatment provider, if applicable;

(c) A plan for discharge, including a plan for follow up that includes:

(i) The name, address, and telephone number of the provider of follow-up services; and

(ii) The follow-up appointment date and time, if known.

(2) For persons admitted to the crisis stabilization unit on a voluntary basis, a crisis stabilization plan developed collaboratively with the person within twenty-four hours of admission that includes:

(a) Strategies and interventions to resolve the crisis in the least restrictive manner possible;

(b) Language that is understandable to the person and/or members of the person's support system; and

(c) Measurable goals for progress toward resolving the crisis and returning to an optimal level of functioning.

NEW SECTION

WAC 388-865-0775 Qualification requirements for staff. The provider is responsible to ensure that staff and clinical supervisors are qualified for the positions they hold at the crisis stabilization unit.

(1) The provider must document that all staff have:

(a) A current job description.

(b) A current Washington state department of health license or registration as may be required for his/her position.

(c) Washington State Patrol background checks for employees in contact with persons consistent with RCW 43.43.830.

(d) An annual performance evaluation.

(e) An individualized annual training plan, to include at minimum:

(i) The skills he or she needs for his/her job description and the population served;

(ii) Training regarding the least restrictive alternative options available in the community and how to access them;

(iii) Methods of person care;

(iv) Management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and/or restraint procedures;

(v) Methods to ensure appropriate security of the facility; and

(vi) Requirements of chapters 71.05 and 71.34 RCW, this chapter, and protocols developed by the mental health division.

(vii) If contract staff is providing direct services, the facility must ensure compliance with the training requirements outlined in subsection (1)(i) through (vii) in this section.

(2) Clinical supervisors must meet the qualifications of mental health professionals as defined in WAC 388-865-0150.

NEW SECTION

WAC 388-865-0780 Posting of rights. The rights outlined in WAC 388-865-0561 must be prominently posted

within the crisis stabilization unit and provided in writing to the person.

NEW SECTION

WAC 388-865-0785 Rights related to antipsychotic medications. All persons have a right to make an informed decision regarding the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The crisis stabilization unit must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including the following requirements:

(1) The clinical record must document:

(a) The physician's attempt to obtain informed consent for antipsychotic medication;

(b) The reasons why any antipsychotic medication is administered over the person's objection or lack of consent.

(2) The physician may administer antipsychotic medications over a person's objections or lack of consent only when:

(a) An emergency exists. An emergency exists if:

(i) The person presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the physician, the person's condition constitutes an emergency requiring that treatment be instituted before obtaining a concurring opinion by a second physician.

(b) There is a concurring opinion by a second physician for treatment up to thirty days.

WSR 08-14-080
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
(Mental Health Division)

[Filed June 26, 2008, 3:50 p.m., effective July 27, 2008]

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

Purpose: The 2007 legislature passed a provision (EHB 1217, chapter 414, Laws of 2007) requiring the department to certify "clubhouses" that meet minimum standards. Clubhouses are community-based programs that provide rehabilitative mental health services.

Statutory Authority for Adoption: RCW 71.24.025 and 71.24.035.

Other Authority: Chapter 414, Laws of 2007 (EHB 1217).

Adopted under notice filed as WSR 08-10-066 on May 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-865-0705 Definitions.** The following definitions apply to clubhouse certification rules:

"Absentee coverage" - The clubhouse provides a temporary replacement for the clubhouse member who is currently employed in a time-limited, part-time community job managed by the clubhouse.

~~**"Supported employment"** - A full or part time competitive job developed in partnership with the member, the clubhouse, and the employer.~~

~~**"Transitional employment"** - A time limited, part time community job managed by the clubhouse with absentee coverage provided. Absentee coverage means the clubhouse provides a temporary replacement for the clubhouse member who is currently employed in a transitional employment position.~~

"Work-ordered day" - A model used to organize clubhouse activities during the clubhouse's normal working hours. Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse. Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning. Members and staff work side-by-side as colleagues. Members participate as they feel ready and according to their individual interests. While intended to provide members with working experience, work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards. Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

WAC 388-865-0710 Required clubhouse components. Required clubhouse components include all of the following:

(3) Activities, including:

(h) An active employment program that assists members to gain and maintain employment~~, including transitional and supported employment services~~ in:

(i) Full- or part-time competitive jobs in integrated settings developed in partnership with the member, the clubhouse, and the employer; and

(ii) Time-limited, part-time community jobs managed by the clubhouse with absentee coverage provided.

A final cost-benefit analysis is available by contacting Frank Jose, P.O. Box 45320, Olympia, WA 98504-5320, phone (360) 902-0873, fax (360) 902-7691, e-mail Josef@dshs.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 6, Amended 0, Repealed 0.

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

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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 6, Amended 0, Repealed 0.

Date Adopted: June 26, 2008.

Robin Arnold-Williams
Secretary

NEW SECTION

WAC 388-865-0700 Clubhouse certification. The mental health division certifies clubhouses under the provision of RCW 71.24.035. International center for clubhouse development certification is not a substitute for certification by the state of Washington.

NEW SECTION

WAC 388-865-0705 Definitions. The following definitions apply to clubhouse certification rules:

"Absentee coverage" - The clubhouse provides a temporary replacement for the clubhouse member who is currently employed in a time-limited, part-time community job managed by the clubhouse.

"Certification" - Official acknowledgement from the mental health division that an organization meets all state standards to operate as a clubhouse, and demonstrates that those standards have been implemented.

"Clubhouse" - A community-based, recovery-focused program designed to support individuals living with the effects of mental illness, through employment, shared contributions, and relationship building. A clubhouse operates under the fundamental principle that everyone has the potential to make productive contributions by focusing on the strengths, talents, and abilities of all members and fostering a sense of community and partnership.

"Recovery" - The process in which people are able to live, work, learn, and participate fully in their communities (RCW 71.24.025).

"Work-ordered day" - A model used to organize clubhouse activities during the clubhouse's normal working hours. Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse. Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning. Members and staff work side-by-side as colleagues. Members participate as they feel ready and according to their individual interests. While intended to provide members with working experience, work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards. Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

NEW SECTION

WAC 388-865-0710 Required clubhouse components. Required clubhouse components include all of the following:

(1) Voluntary member participation. Clubhouse members choose the way they use the clubhouse and the staff with whom they work. There are no agreements, contracts, schedules, or rules intended to enforce participation of members. All member participation is voluntary. Clubhouse policy and procedures must describe how members will have the opportunity to participate, based on their preferences, in the clubhouse.

(2) The work-ordered day.

(3) Activities, including:

(a) Personal advocacy;

(b) Help with securing entitlements;

(c) Information on safe, appropriate, and affordable housing;

(d) Information related to accessing medical, psychological, pharmacological and substance abuse services in the community;

(e) Outreach to members during periods of absence from the clubhouse and maintaining contact during periods of inpatient treatment;

(f) In-house educational programs that use the teaching and tutoring skills of members;

(g) Connecting members with adult education opportunities in the community;

(h) An active employment program that assists members to gain and maintain employment in:

(i) Full- or part-time competitive jobs in integrated settings developed in partnership with the member, the clubhouse, and the employer; and

(ii) Time-limited, part-time community jobs managed by the clubhouse with absentee coverage provided.

(i) An array of social and recreational opportunities.

(4) Operating at least thirty hours per week on a schedule that accommodates the needs of the members.

NEW SECTION

WAC 388-865-0715 Management and operational requirements. The requirements for managing and operating a clubhouse include all of the following:

(1) Members, staff, and ultimately the clubhouse director, are responsible for the operation of the clubhouse. The director must ensure opportunities for members and staff to be included in all aspects of clubhouse operation, including setting the direction of the clubhouse.

(2) Location in an area, when possible, where there is access to local transportation and, when access to public transportation is limited, facilitate alternatives.

(3) A distinct identity, including its own name, mailing address, and phone number.

(4) A separate entrance and appropriate signage that make the clubhouse clearly distinct, when co-located with another community agency.

(5) An independent board of directors capable of fulfilling the responsibilities of a not-for-profit board of directors, when free-standing.

(6) An administrative structure with sufficient authority to protect the autonomy and integrity of the clubhouse, when under the auspice of another agency.

(7) Services are timely, appropriate, accessible, and sensitive to all members.

(8) Members are not discriminated against on the basis of any status or individual characteristic that is protected by federal, state, or local law.

(9) Written proof of a current fire/safety inspection:

(a) Conducted of all premises owned, leased or rented by the clubhouse; and

(b) Performed by all required external authorities (e.g., State Fire Marshall, liability insurance carrier).

(10) All applicable state, county, and city business licenses.

(11) All required and current general liability, board and officers liability, and vehicle insurance.

(12) An identifiable clubhouse budget that includes:

(a) Tracking all income and expenditures for the clubhouse by revenue source;

(b) Quarterly reconciliation of accounts; and

(c) Compliance with all generally accepted accounting principles.

(13) Track member participation and daily attendance.

(14) Assist member in developing, documenting, and maintaining the member's recovery goals and providing monthly documentation of progress toward reaching them.

(a) Both member and staff must sign all such plans and documentation; or

(b) If a member does not sign, staff must document the reason.

(15) A mechanism to identify and implement needed changes to the clubhouse operations, performance, and administration, and to document the involvement of members in all aspects of the operation of the clubhouse.

(16) Evaluate staff performance by:

(a) Ensuring that paid employees:

(i) Are qualified for the position they hold, including any licenses or certifications; and

(ii) Have the education, experience and/or skills to perform the job requirements.

(b) Maintaining documentation that paid clubhouse staff:

(i) Have a completed Washington state patrol background check on file; and

(ii) Receive regular supervision and an annual performance evaluation.

NEW SECTION

WAC 388-0865-0720 Certification process. The mental health division (MHD) grants certification based on compliance with the minimum standards set forth in this chapter.

(1) To be certified to provide clubhouse services, an organization must comply with the following:

(a) Meet all requirements for applicable city, county and state licenses and inspections.

(b) Complete and submit an application for certification to MHD.

(c) Successfully complete an on-site certification review by MHD to determine compliance with the minimum clubhouse standards, as set forth in this chapter.

(d) Initial applicants that can show that they have all organizational structures and written policies in place, but lack the performance history to demonstrate that they meet minimum standards, may be granted initial certification for up to one year. Successful completion of an on-site certification review is required prior to the expiration of initial certification.

(2) Upon certification, clubhouses will undergo periodic on-site certification reviews.

(a) The frequency of certification reviews is determined by the on-site review score as follows:

(i) A compliance score of ninety percent or above results in the next certification review occurring in three years;

(ii) A compliance score of eighty percent to eighty-nine percent results in the next certification review occurring in two years;

(iii) A compliance score of seventy percent to seventy-nine percent results in the next certification review occurring in one year; or

(iv) A compliance score below seventy percent results in a probationary certification.

(b) Any facet of an on-site review resulting in a compliance score below ninety percent requires a corrective action plan approved by MHD.

(3) Probationary certification may be issued by MHD if:

(a) A clubhouse fails to conform to applicable law, rules, regulations, or state minimum standards; or

(b) There is imminent risk to consumer health and safety;

(4) MHD may suspend or revoke a clubhouse's certification, or refuse to grant or renew a clubhouse's certification if a clubhouse fails to correct deficiencies as mutually agreed to in the corrective action plan with MHD.

(5) A clubhouse may appeal a certification decision by MHD.

(a) To appeal a decision, the clubhouse must submit a written application asking for an administrative hearing. An application must be submitted through a method that shows written proof of receipt to: Office of Administrative Hearings, P.O. Box 42489, Olympia, WA 98504-2489. An application must be received within twenty-eight calendar days of the date of the contested decision, and must include:

(i) The issue to be reviewed and the date the decision was made;

(ii) A specific statement of the issue and regulation involved;

(iii) The grounds for contesting the decision;

(iv) A copy of MHD's decision that is being contested; and

(v) The name, signature, and address of the clubhouse director.

(b) The hearing decision will be made according to the provisions of chapter 34.05 RCW and chapter 388-02 WAC.

NEW SECTION

WAC 388-865-0725 Employment-related services—Requirements. The following employment support activities must be offered to clubhouse members:

(1) Collaboration on creating, revising, and meeting individualized job and career goals.

(2) Information about how employment will affect income and benefits.

(3) Information on other rehabilitation and employment services, including but not limited to:

(a) The division of vocational rehabilitation;

(b) The state employment services;

(c) The business community;

(d) Job placement services within the community; and

(e) Community mental health agency-sponsored supported employment services.

(4) Assistance in locating employment opportunities which are consistent with the member's skills, goals, and interests.

(5) Assistance in developing a resume, conducting a job search, and interviewing.

(6) Assistance in:

(a) Applying for school and financial aid; and

(b) Tutoring and completing course work.

(7) Information regarding protections against employment discrimination provided by federal, state, and local laws and regulations, and assistance with asserting these rights, including securing professional advocacy.

WSR 08-14-083
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 26, 2008, 4:24 p.m., effective July 27, 2008]

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

Purpose: WAC 458-20-27702 Taxpayer relief—Sourcing compliance—One thousand dollar credit and certified service provider compensation for small businesses (Rule 27702), is a new rule explaining certain small business relief provided to eligible taxpayers implementing new local retail sale[s] tax sourcing requirements under RCW 82.32.730 and 82.32.490. An "eligible taxpayer" is a taxpayer that:

(a) Immediately before July 1, 2008, was registered with the department and engaged in making sales of tangible personal property that the taxpayer delivered to physical locations away from its place of business; and

(b) During the calendar year 2008:

(i) Has a physical presence in Washington;

(ii) Has gross income of the business of less than five hundred thousand dollars;

(iii) Has at least five percent of its gross income from sales subject to sales tax derived from sales of tangible personal property delivered to physical locations away from its place of business; and

(iv) Has at least one percent of its gross income from sales subject to sales tax derived from deliveries of tangible personal property to destinations in local jurisdictions imposing sales tax other than the one to which the taxpayer reported the most local sales tax.

This rule explains the one thousand dollar tax credit and the subsidized certified service provider option available to eligible taxpayers who must implement destination based local sourcing under RCW 82.32.730 and 82.14.490 beginning July 1, 2008. This rule also establishes the compensation rate for these certified service providers providing services to eligible taxpayers under RCW 82.32.760.

Statutory Authority for Adoption: RCW 82.32.300, 82.32.760, and 82.01.060(2).

Adopted under notice filed as WSR 08-09-156 on April 23, 2008.

A final cost-benefit analysis is available by contacting Tim Jennrich, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6136, fax (360) 586-0127, e-mail TimJe@dor.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 1, Repealed 0.

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

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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 26, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

NEW SECTION

WAC 458-20-27702 Taxpayer relief—Sourcing compliance—One thousand dollar credit and certified service provider compensation for small businesses. (1) **Introduction.** RCW 82.32.760 provides sourcing compliance relief to certain eligible taxpayers impacted by RCW 82.14.490 and 82.32.730. RCW 82.14.490 and 82.32.730 govern where the local retail sales taxes attributable to the sale of tangible personal property, retail services, extended warranties, and the lease of tangible personal property are sourced. "Sourced" and "sourcing" refer to the location (as in a local taxing district, jurisdiction, or authority) where a sale or lease is deemed to occur and is subject to tax. Effective July 1, 2008, RCW 82.14.490 and 82.32.730 will change the way in which many sellers collect Washington's local retail sales taxes, resulting in some added transitional costs to these sellers. This section gives information about the relief provided in RCW 82.32.760 related to these new sourcing provisions.

In subsection (3)(c) of this section, the department of revenue (department) provides an example that identifies facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined separately after a review of all of the facts and circumstances.

(2) **Commonly used terms.**

(a) **What is a certified service provider (CSP)?** A CSP is an agent of the seller certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to perform all of that seller's retail sales and use tax functions, other than the seller's obligation to remit retail sales and use taxes on its own purchases. For a list of current CSPs visit the SSUTA web site located at: http://www.streamlinedsalestax.org. This web site is not maintained by the state of Washington or the department. The web site is current as of the date of adop-

tion of this section, but may change in future periods by action of the owner of the web site without notice.

(b) **Who is an eligible taxpayer?** You will be an eligible taxpayer if you meet all of the following conditions:

(i) You are registered with the department and are engaged in making sales of tangible personal property delivered to physical locations away from your place of business on June 30, 2008; and

(ii) You meet all of the following requirements for the 2008 calendar year:

(A) You have a physical presence in Washington;

(B) You have annual gross income of the business in an amount less than five hundred thousand dollars;

(C) You have at least five percent of your annual gross income from sales subject to sales tax in Washington derived from sales of tangible personal property delivered to physical locations away from your place of business; and

(D) You have at least one percent of your annual gross income from sales subject to sales tax in Washington derived from deliveries of tangible personal property to destinations in local Washington jurisdictions other than the one to which you reported the most local sales tax.

"Gross income of the business" for the purpose of applying (b) of this subsection means gross income of the business as defined under chapter 82.04 RCW that is subject to tax in Washington. The requirements under (b)(ii) of this subsection apply only to the 2008 calendar year. This means for instance that an eligible taxpayer may earn over five hundred thousand dollars in gross income of the business for the calendar years 2009 and 2010 respectively and not lose eligibility under this section.

(c) **What are eligible costs?** Eligible costs represent those goods and services purchased and labor costs incurred for the purpose of complying with local sales and use tax sourcing rules under RCW 82.14.490 and 82.32.730. Examples of eligible costs include but are not limited to the purchase of new software or modification of existing software used to implement the new local sourcing rules; the hiring of professionals such as accountants, consultants, or attorneys to implement the new local sourcing rules; the costs for the purchase or modification of equipment used to implement the new local sourcing rules (including but not limited to cash registers and similar items); and payroll expenses associated with the implementation of the new local sourcing rules. These costs must be actually incurred between July 1, 2007, and June 30, 2009, to be eligible.

(3) **What relief does Washington provide?** If you are an eligible taxpayer, you are entitled either to take up to a one thousand dollar credit for your eligible costs, or you may use the services of a CSP subsidized by Washington for a period of up to two years. You may choose either the credit or the CSP services option, but not both. You will not need to apply in order to take advantage of these options, but you must keep records sufficient to allow the department to determine eligibility.

(a) **How does the one thousand dollar credit option work?** You may take a tax credit of up to one thousand dollars for your eligible costs (see subsection (2)(c) of this section). You must take this credit against Washington state retail sales taxes imposed by RCW 82.08.020(1) that you collect or your business and occupation taxes imposed under chapter 82.04 RCW. The credit may not be taken against the local sales taxes you collect. The amount of your credit is equal to the sum of your eligible costs. You may take the credit only for costs actually incurred from July 1, 2007, through June 30, 2009.

You must first make a claim for the credit during those tax reporting periods that fall between July 1, 2008, and June 30, 2009. Thus, you must make a claim for the credit within the applicable deadline associated with the filing of your returns for that one-year period. However, this does not affect your ability to take unused credit after June 30, 2009, for costs actually incurred before that date until your credit is used. You may not obtain a refund instead of the credit.

(b) **How does the CSP services option work?** You may use the services of a CSP for up to a two-year period starting July 1, 2008, and ending June 30, 2010. Washington will compensate your CSP for its services in collecting and remitting sales and use taxes for Washington on your behalf. Washington will not compensate the CSP unless it is performing for you the full services contractually required of a CSP under the CSP description provided in subsection (2)(a) of this section. If the CSP is providing a lesser level of service, Washington will not compensate the CSP for any of that service. However, you may be able to claim the credit of up to one thousand dollars for what the CSP charges you in such instances.

Washington will not compensate a CSP for services provided to you prior to July 1, 2008, or after June 30, 2010. If you use a CSP under this section, you will generally not be liable to Washington for sales or use taxes due on transactions processed and paid to the state of Washington by your CSP unless you misrepresent the type of items you sell or you commit fraud. CSP compensation will not be funded from any portion of the local retail taxes that are collected and reported. These local retail sales taxes must be remitted to the department in full. This option is not available to model 1 volunteer sellers using the services of a CSP as described in WAC 458-20-277.

(c) **CSPs: Filing returns, remitting taxes, and compensation.**

(i) **How do CSPs file tax returns and remit retail sales taxes under this section?** CSPs must file retail sales and use excise tax returns for eligible taxpayers electronically. CSPs must pay retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fedwire Funds Transfer System.

(ii) **How do CSPs determine their compensation under this section?** A CSP computes its compensation by multiplying the amount of Washington state and local retail sales and use taxes collected and reported by the CSP on behalf of an eligible taxpayer (taxes due) for each applicable calendar year by the established CSP compensation rate.

The compensation rates established for CSPs are provided in Table A below. The applicable calendar years during which a CSP may compute compensation are as follows: Calendar year 2008 (computed from July 1, 2008, through December 31, 2008), calendar year 2009 (computed from January 1, 2009, through December 31, 2009), and calendar

2010 (computed from January 1, 2010, through June 30, 2010).

(iii) **What are the CSP compensation rates?** The CSP compensation rates are contained in Table A below.

Table A

Taxes Due	Compensation Rate:
$0.00 - $5,000.00	4%
$5,000.01 - $20,000.00	3.7%
$20,000.01 - $50,000.00	3.3%
$50,000.01 - $100,000.00	3%
$100,000.01 - $200,000.00	2.7%
$200,000.01 - $500,000.00	2.3%
Over $500,000.01	2%

• The compensation rate in Table A is graduated. For example, the highest rate (4%) applies to the first five thousand dollars of taxes due, and the next highest rate (3.7%) applies to the next fifteen thousand dollars of taxes due.

• The compensation rate in Table A resets each calendar year. For example, the highest rate (4%) applies to the first five thousand dollars of taxes due for each applicable calendar year that the CSP provides CSP services to an eligible taxpayer, with the next highest rate (3.7%) applying to the next fifteen thousand dollars of taxes due for the applicable calendar year.

(iv) **Example - Determining CSP compensation.** Widgets is an eligible taxpayer that does not claim the $1,000 credit described in (a) of this subsection. Widgets retains a CSP, Easysoft, to perform all of its retail sales and use tax functions other than the obligation to remit retail sales and use taxes on its own purchases. Easysoft files Widgets' Washington state excise tax returns and remits the related taxes due electronically.

(A) **First year - Calendar year 2008.** From July 1, 2008, through December 31, 2008, Easysoft collects and reports $5,000 in taxes due for Widgets. Easysoft may retain $200 of the taxes due as compensation, which is computed as follows:

• 4% of the first $5,000 of taxes due = $200

(B) **Second year - Calendar year 2009.** From January 1, 2009, through December 31, 2009, Easysoft collects and reports $200,000 in taxes due for Widgets. Easysoft may retain $5,945 of the taxes due as compensation ($200 + $555 + $990 + $1,500 +$2,700), which is computed as follows:

• 4% of the first $5,000 of taxes due = $200
• 3.7% of the next $15,000 of taxes due = $555
• 3.3% of the next $30,000 of taxes due = $990
• 3% of the next $50,000 in taxes due = $1,500
• 2.7% of the next $100,000 in taxes due = $2,700

(C) **Third year - Calendar year 2010.** From January 1, 2010, through June 30, 2010, Easysoft collects and reports $120,000 in taxes due for Widgets for this period. Easysoft may retain $3,785 of the taxes due as compensation ($200 + $555 + $990 +$1,500 + $540), which is computed as follows:

• 4% of the first $5,000 of taxes due = $200
• 3.7% of the next $15,000 of taxes due = $555
• 3.3% of the next $30,000 of taxes due = $990
• 3% of the next $50,000 in taxes due = $1,500
• 2.7% of the next $20,000 in taxes due = $540

(d) **Taxpayer liability.**

(i) **What happens if I incorrectly claim the one thousand dollar credit option under (a) of this subsection?** If you take a credit under (a) of this subsection and are not an eligible taxpayer, you are immediately liable to the department for the amount of the credit erroneously claimed. If any amounts due under this subsection are not paid by the due date of any notice informing you of such liability, the department shall apply interest, but not penalties, to amounts remaining due.

(ii) **What happens if I incorrectly claim the CSP services option under (b) of this subsection?** If you use a CSP and the CSP retains compensation under (b) of this subsection and you are not an eligible taxpayer, you are immediately liable to the department for the compensation retained by the CSP. If any amounts due under this subsection are not paid by the due date of any notice informing you of such liability, the department shall apply interest, but not penalties, to amounts remaining due.

WSR 08-14-085
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 27, 2008, 8:13 a.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: The stumpage value rule is required by statute (RCW 84.33.091) to be effective on July 1, 2008.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Other Authority: RCW 84.33.091.

Adopted under notice filed as WSR 08-10-083 on May 6, 2008.

A final cost-benefit analysis is available by contacting Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6133, fax (360) 586-0127, e-mail markbohe @dor.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.

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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 27, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 08-02-064, filed 12/28/07, effective 1/1/08)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((~~January~~)) July 1 through ((~~June 30~~)) December 31, 2008:

((**~~TABLE 1 Proposed Stumpage Value Table~~**
~~Stumpage Value Area 1~~
~~January 1 through June 30, 2008~~

~~Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)~~

~~Species Name~~	~~Species Code~~	~~Timber Quality Code Number~~	~~Hauling Distance Zone Number~~				
			~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
~~Douglas-Fir~~	~~DF~~	~~1~~	~~$481~~	~~$474~~	~~$467~~	~~$460~~	~~$453~~
		~~2~~	~~413~~	~~406~~	~~399~~	~~392~~	~~385~~
		~~3~~	~~400~~	~~393~~	~~386~~	~~379~~	~~372~~
		~~4~~	~~350~~	~~343~~	~~336~~	~~329~~	~~322~~
~~Western Redcedar(2)~~	~~RC~~	~~1~~	~~736~~	~~729~~	~~722~~	~~715~~	~~708~~
~~Western Hemlock(3)~~	~~WH~~	~~1~~	~~300~~	~~293~~	~~286~~	~~279~~	~~272~~
		~~2~~	~~300~~	~~293~~	~~286~~	~~279~~	~~272~~
		~~3~~	~~295~~	~~288~~	~~281~~	~~274~~	~~267~~
		~~4~~	~~295~~	~~288~~	~~281~~	~~274~~	~~267~~
~~Red Alder~~	~~RA~~	~~1~~	~~719~~	~~712~~	~~705~~	~~698~~	~~691~~
		~~2~~	~~647~~	~~640~~	~~633~~	~~626~~	~~619~~
~~Black Cottonwood~~	~~BC~~	~~1~~	~~57~~	~~50~~	~~43~~	~~36~~	~~29~~
~~Other Hardwood~~	~~OH~~	~~1~~	~~181~~	~~174~~	~~167~~	~~160~~	~~153~~
~~Douglas-Fir Poles & Piles~~	~~DFL~~	~~1~~	~~774~~	~~767~~	~~760~~	~~753~~	~~746~~
~~Western Redcedar Poles~~	~~RCL~~	~~1~~	~~1384~~	~~1377~~	~~1370~~	~~1363~~	~~1356~~

((**~~TABLE 1 Proposed Stumpage Value Table~~**
~~Stumpage Value Area 1~~
~~January 1 through June 30, 2008~~

~~Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)~~

~~Species Name~~	~~Species Code~~	~~Timber Quality Code Number~~	~~Hauling Distance Zone Number~~				
			~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
~~Chipwood(4)~~	~~CHW~~	~~1~~	~~12~~	~~11~~	~~10~~	~~9~~	~~8~~
~~RC Shake & Shingle Blocks(5)~~	~~RCS~~	~~1~~	~~279~~	~~272~~	~~265~~	~~258~~	~~251~~
~~RC & Other Posts(6)~~	~~RCP~~	~~1~~	~~0.45~~	~~0.45~~	~~0.45~~	~~0.45~~	~~0.45~~
~~DF Christmas Trees(7)~~	~~DFX~~	~~1~~	~~0.25~~	~~0.25~~	~~0.25~~	~~0.25~~	~~0.25~~
~~Other Christmas Trees(7)~~	~~TFX~~	~~1~~	~~0.50~~	~~0.50~~	~~0.50~~	~~0.50~~	~~0.50~~

(1) ~~Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.~~

(2) ~~Includes Alaska-Cedar.~~

(3) ~~Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.~~

(4) ~~Stumpage value per ton.~~

(5) ~~Stumpage value per cord.~~

(6) ~~Stumpage value per 8 lineal feet or portion thereof.~~

(7) ~~Stumpage value per lineal foot.~~

~~TABLE 2 Proposed Stumpage Value Table~~
~~Stumpage Value Area 2~~
~~January 1 through June 30, 2008~~

~~Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)~~

~~Species Name~~	~~Species Code~~	~~Timber Quality Code Number~~	~~Hauling Distance Zone Number~~				
			~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
~~Douglas-Fir~~	~~DF~~	~~1~~	~~$562~~	~~$555~~	~~$548~~	~~$541~~	~~$534~~
		~~2~~	~~428~~	~~421~~	~~414~~	~~407~~	~~400~~
		~~3~~	~~427~~	~~420~~	~~413~~	~~406~~	~~399~~
		~~4~~	~~398~~	~~391~~	~~384~~	~~377~~	~~370~~
~~Western Redcedar(2)~~	~~RC~~	~~1~~	~~736~~	~~729~~	~~722~~	~~715~~	~~708~~
~~Western Hemlock(3)~~	~~WH~~	~~1~~	~~346~~	~~339~~	~~332~~	~~325~~	~~318~~
		~~2~~	~~346~~	~~339~~	~~332~~	~~325~~	~~318~~
		~~3~~	~~312~~	~~305~~	~~298~~	~~291~~	~~284~~
		~~4~~	~~312~~	~~305~~	~~298~~	~~291~~	~~284~~
~~Red Alder~~	~~RA~~	~~1~~	~~719~~	~~712~~	~~705~~	~~698~~	~~691~~
		~~2~~	~~647~~	~~640~~	~~633~~	~~626~~	~~619~~
~~Black Cottonwood~~	~~BC~~	~~1~~	~~57~~	~~50~~	~~43~~	~~36~~	~~29~~
~~Other Hardwood~~	~~OH~~	~~1~~	~~181~~	~~174~~	~~167~~	~~160~~	~~153~~

TABLE 2 Proposed Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood(4)	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks(5)	RCS	1	279	272	265	258	251
RC & Other Posts(6)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(7)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(7)	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Alaska-Cedar.
(3) Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
(4) Stumpage value per ton.
(5) Stumpage value per cord.
(6) Stumpage value per 8 lineal feet or portion thereof.
(7) Stumpage value per lineal foot.

TABLE 3 Proposed Stumpage Value Table
Stumpage Value Area 3
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood(5)	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks(6)	RCS	1	279	272	265	258	251
RC & Other Posts(7)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(8)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(8)	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
(2) Includes Western Larch.
(3) Includes Alaska-Cedar.
(4) Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
(5) Stumpage value per ton.
(6) Stumpage value per cord.
(7) Stumpage value per 8 lineal feet or portion thereof.
(8) Stumpage value per lineal foot.

TABLE 3 Proposed Stumpage Value Table
Stumpage Value Area 3
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir(2)	DF	1	$461	$454	$447	$440	$433
		2	444	437	430	423	416
		3	443	436	429	422	415
		4	371	364	357	350	343
Western Redcedar(3)	RC	1	736	729	722	715	708
Western Hemlock(4)	WH	1	346	339	332	325	318
		2	346	339	332	325	318
		3	288	281	274	267	260
		4	274	267	260	253	246
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619

TABLE 4 Proposed Stumpage Value Table
Stumpage Value Area 4
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir(2)	DF	1	$589	$582	$575	$568	$561
		2	462	455	448	441	434
		3	443	436	429	422	415
		4	327	320	313	306	299
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170

TABLE 4 Proposed Stumpage Value Table
Stumpage Value Area 4
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Western Redcedar[3]	RC	1	736	729	722	715	708
Western Hemlock[4]	WH	1	338	331	324	317	310
		2	338	331	324	317	310
		3	338	331	324	317	310
		4	338	331	324	317	310
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood[5]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[6]	RCS	1	279	272	265	258	251
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot.

TABLE 5 Proposed Stumpage Value Table
Stumpage Value Area 5
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$616	$609	$602	$595	$588
		2	444	437	430	423	416
		3	374	367	360	353	346
		4	371	364	357	350	343
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar[3]	RC	1	736	729	722	715	708
Western Hemlock[4]	WH	1	290	283	276	269	262
		2	290	283	276	269	262
		3	290	283	276	269	262
		4	290	283	276	269	262
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood[5]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[6]	RCS	1	279	272	265	258	251
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot.

TABLE 6 Proposed Stumpage Value Table
Stumpage Value Area 6
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$296	$289	$282	$275	$268
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar[3]	RC	1	596	589	582	575	568
True Firs and Spruce[4]	WH	1	230	223	216	209	202
Western White Pine	WP	1	252	245	238	231	224
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs[5]	SML	1	32	31	30	29	28
Chipwood[5]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[6]	RCF	1	76	69	62	55	48
LP & Other Posts[7]	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees[8]	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[9]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[9] Stumpage value per lineal foot.

TABLE 7 Proposed Stumpage Value Table
Stumpage Value Area 7
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$296	$289	$282	$275	$268
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar[3]	RC	1	596	589	582	575	568
True Firs and Spruce[4]	WH	1	230	223	216	209	202
Western White Pine	WP	1	252	245	238	231	224
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs[5]	SML	1	32	31	30	29	28
Chipwood[5]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[6]	RCF	1	76	69	62	55	48
LP & Other Posts[7]	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees[8]	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[9]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[9] Stumpage value per lineal foot.

~~**TABLE 8—Proposed Stumpage Value Table**~~
~~**Stumpage Value Area 10**~~
~~January 1 through June 30, 2008~~

~~Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)~~

~~Species Name~~	~~Species Code~~	~~Timber Quality Code Number~~	~~Hauling Distance Zone Number~~				
			~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
~~Douglas-Fir(2)~~	~~DF~~	~~1~~	~~$575~~	~~$568~~	~~$561~~	~~$554~~	~~$547~~
		~~2~~	~~448~~	~~441~~	~~434~~	~~427~~	~~420~~
		~~3~~	~~429~~	~~422~~	~~415~~	~~408~~	~~401~~
		~~4~~	~~313~~	~~306~~	~~299~~	~~292~~	~~285~~
~~Lodgepole Pine~~	~~LP~~	~~1~~	~~238~~	~~231~~	~~224~~	~~217~~	~~210~~
~~Ponderosa Pine~~	~~PP~~	~~1~~	~~285~~	~~278~~	~~271~~	~~264~~	~~257~~
		~~2~~	~~198~~	~~191~~	~~184~~	~~177~~	~~170~~
~~Western Redcedar(3)~~	~~RC~~	~~1~~	~~722~~	~~715~~	~~708~~	~~701~~	~~694~~
~~Western Hemlock(4)~~	~~WH~~	~~1~~	~~324~~	~~317~~	~~310~~	~~303~~	~~296~~
		~~2~~	~~324~~	~~317~~	~~310~~	~~303~~	~~296~~
		~~3~~	~~324~~	~~317~~	~~310~~	~~303~~	~~296~~
		~~4~~	~~324~~	~~317~~	~~310~~	~~303~~	~~296~~
~~Red Alder~~	~~RA~~	~~1~~	~~705~~	~~698~~	~~691~~	~~684~~	~~677~~
		~~2~~	~~633~~	~~626~~	~~619~~	~~612~~	~~605~~
~~Black Cottonwood~~	~~BC~~	~~1~~	~~43~~	~~36~~	~~29~~	~~22~~	~~15~~
~~Other Hardwood~~	~~OH~~	~~1~~	~~167~~	~~160~~	~~153~~	~~146~~	~~139~~
~~Douglas-Fir Poles & Piles~~	~~DFL~~	~~1~~	~~760~~	~~753~~	~~746~~	~~739~~	~~732~~
~~Western Redcedar Poles~~	~~RCL~~	~~1~~	~~1370~~	~~1363~~	~~1356~~	~~1349~~	~~1342~~
~~Chipwood(5)~~	~~CHW~~	~~1~~	~~12~~	~~11~~	~~10~~	~~9~~	~~8~~
~~RC Shake & Shingle Blocks(6)~~	~~RCS~~	~~1~~	~~279~~	~~272~~	~~265~~	~~258~~	~~251~~
~~RC & Other Posts(7)~~	~~RCP~~	~~1~~	~~0.45~~	~~0.45~~	~~0.45~~	~~0.45~~	~~0.45~~
~~DF Christmas Trees(8)~~	~~DFX~~	~~1~~	~~0.25~~	~~0.25~~	~~0.25~~	~~0.25~~	~~0.25~~
~~Other Christmas Trees(8)~~	~~TFX~~	~~1~~	~~0.50~~	~~0.50~~	~~0.50~~	~~0.50~~	~~0.50~~

~~(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.~~

~~(2) Includes Western Larch.~~

~~(3) Includes Alaska-Cedar.~~

~~(4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.~~

~~(5) Stumpage value per ton.~~

~~(6) Stumpage value per cord.~~

~~(7) Stumpage value per 8 lineal feet or portion thereof.~~

~~(8) Stumpage value per lineal foot.~~))

TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	$504	$497	$490	$483	$476
		2	330	323	316	309	302
		3	330	323	316	309	302
		4	316	309	302	295	288
Western Redcedar(2)	RC	1	676	669	662	655	648
Western Hemlock(3)	WH	1	265	258	251	244	237
		2	265	258	251	244	237
		3	265	258	251	244	237
		4	265	258	251	244	237
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood(4)	CHW	1	8	7	6	5	4
RC Shake & Shingle Blocks(5)	RCS	1	279	272	265	258	251
RC & Other Posts(6)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(7)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(7)	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Alaska-Cedar.

(3) Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

(4) Stumpage value per ton.

(5) Stumpage value per cord.

(6) Stumpage value per 8 lineal feet or portion thereof.

(7) Stumpage value per lineal foot.

TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir	DF	1	$568	$561	$554	$547	$540
		2	383	376	369	362	355
		3	374	367	360	353	346
		4	285	278	271	264	257
Western Redcedar[2]	RC	1	676	669	662	655	648
Western Hemlock[3]	WH	1	311	304	297	290	283
		2	311	304	297	290	283
		3	286	279	272	265	258
		4	286	279	272	265	258
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood[4]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[5]	RCS	1	279	272	265	258	251
RC & Other Posts[6]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[7]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[7]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Alaska-Cedar.
[3] Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
[4] Stumpage value per ton.
[5] Stumpage value per cord.
[6] Stumpage value per 8 lineal feet or portion thereof.
[7] Stumpage value per lineal foot.

TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$528	$521	$514	$507	$500
		2	418	411	404	397	390
		3	418	411	404	397	390
		4	294	287	280	273	266
Western Redcedar[3]	RC	1	676	669	662	655	648
Western Hemlock[4]	WH	1	291	284	277	270	263
		2	291	284	277	270	263
		3	277	270	263	256	249
		4	277	270	263	256	249
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood[5]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[6]	RCS	1	279	272	265	258	251
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot.

TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$450	$443	$436	$429	$422
		2	423	416	409	402	395
		3	423	416	409	402	395
		4	295	288	281	274	267
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar[3]	RC	1	676	669	662	655	648
Western Hemlock[4]	WH	1	299	292	285	278	271
		2	299	292	285	278	271
		3	299	292	285	278	271
		4	299	292	285	278	271
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood[5]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[6]	RCS	1	279	272	265	258	251
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot.

TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$668	$661	$654	$647	$640
		2	384	377	370	363	356
		3	383	376	369	362	355
		4	294	287	280	273	266
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar[3]	RC	1	676	669	662	655	648
Western Hemlock[4]	WH	1	286	279	272	265	258
		2	286	279	272	265	258
		3	268	261	254	247	240
		4	268	261	254	247	240
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood[5]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[6]	RCS	1	279	272	265	258	251
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot.

TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$224	$217	$210	$203	$196
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar[3]	RC	1	664	657	650	643	636
True Firs and Spruce[4]	WH	1	196	189	182	175	168
Western White Pine	WP	1	239	232	225	218	211
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	664	657	650	643	636
Small Logs[5]	SML	1	30	29	28	27	26
Chipwood[5]	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks[6]	RCF	1	76	69	62	55	48
LP & Other Posts[7]	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees[8]	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[9]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[9] Stumpage value per lineal foot.

TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$224	$217	$210	$203	$196
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar[3]	RC	1	664	657	650	643	636
True Firs and Spruce[4]	WH	1	196	189	182	175	168
Western White Pine	WP	1	239	232	225	218	211
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	664	657	650	643	636
Small Logs[5]	SML	1	30	29	28	27	26
Chipwood[5]	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks[6]	RCF	1	76	69	62	55	48
LP & Other Posts[7]	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees[8]	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[9]	DFX	1	0.25	0.25	0.25	0.25	0.25

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
[2] Includes Western Larch.
[3] Includes Alaska-Cedar.
[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
[5] Stumpage value per ton.
[6] Stumpage value per cord.
[7] Stumpage value per 8 lineal feet or portion thereof.
[8] Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
[9] Stumpage value per lineal foot.

TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number 1	2	3	4	5
Douglas-Fir[2]	DF	1	$436	$429	$422	$415	$408
		2	409	402	395	388	381
		3	409	402	395	388	381
		4	281	274	267	260	253
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar[3]	RC	1	662	655	648	641	634
Western Hemlock[4]	WH	1	285	278	271	264	257
		2	285	278	271	264	257
		3	285	278	271	264	257
		4	285	278	271	264	257
Red Alder	RA	1	692	685	678	671	664
		2	623	616	609	602	595
Black Cottonwood	BC	1	15	8	1	1	1
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	684	677	670	663	656
Western Redcedar Poles	RCL	1	1339	1332	1325	1318	1311
Chipwood[5]	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks[6]	RCS	1	279	272	265	258	251
RC & Other Posts[7]	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees[8]	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees[8]	TFX	1	0.50	0.50	0.50	0.50	0.50

[1] Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

[2] Includes Western Larch.

[3] Includes Alaska-Cedar.

[4] Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

[5] Stumpage value per ton.

[6] Stumpage value per cord.

[7] Stumpage value per 8 lineal feet or portion thereof.

[8] Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber—**Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber—**Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((~~January~~)) July 1 through ((~~June 30~~)) December 31, 2008:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
((~~January~~)) July 1 through ((~~June 30~~)) December 31, 2008

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1	Harvest of 30 thousand board feet or more per acre.	$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- $15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- $35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- $((~~30.00~~)) 50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- $145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- $50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
((~~January~~)) July 1 through ((~~June 30~~)) December 31, 2008

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	- $8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	- $((~~20.00~~)) 50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	- $((~~30.00~~)) 75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- $145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	- $50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	$0.00
Class 2:	SVA 7	$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

WSR 08-14-105
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 30, 2008, 9:49 a.m., effective August 1, 2008]

Effective Date of Rule: August 1, 2008.

Purpose: The department is amending WAC 388-418-0007 When do I have to report changes in my circumstances?, 388-454-0015 Temporary absence from the home, and 388-505-0220 Family medical eligibility. The rules are being amended in order to extend the definition of "temporary absence" from ninety to one hundred eighty days for the temporary assistance for needy families (TANF) and state family assistance (SFA) programs. The department is also amending rules to provide concurrent TANF/SFA payments for the child, only when the children's administration has placed the child in the temporary care of an unlicensed relative caregiver or other caregiver and expects the child to be returned home to the primary caregiver in one hundred eighty days. The department changes references from "ninety" to "one hundred eighty" in WAC 388-418-0007 and 388-505-0220 in order to support the policy changes.

Citation of Existing Rules Affected by this Order: Amending WAC 388-418-0007, 388-454-0015, and 388-505-0220.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Adopted under notice filed as WSR 08-11-087 on May 20, 2008.

Changes Other than Editing from Proposed to Adopted Version: Changes were made to WAC 388-454-0015 in order to clarify the intent of the policy or to help with the flow of the WAC. Most of the changes were editorial in nature and intended to help make the WAC read more clearly. Changes included:

WAC 388-454-0015:

- Subsections (1)(a), (1)(c), and (4)(c), added the words "caregiver" or "child" to clarify who the temporary absence polity is referring to.
- Subsection (1)(b), added the words "out-of-home" to help with the flow of the WAC.
- Subsection (2)(a), added the words "of removal" to clarify that one hundred eighty days refers to the number of days the child is out of the home.
- Subsection (2)(a), added a sentence about authorizing assistance if DCFS determines that the child will be in the care of the applying adult with thirty days, even if the child has been out of the home for over one hundred eighty days. This is similar language that was in the original WAC; but was removed in the text of the proposed rule, when new language was added. It was determined that this language is needed for clarification purposes.
- Subsection (4)(a), changed "adult" to "caregiver" for clarification purposes.
- Additional changes were made throughout WAC 388-454-0015 for purposes of "plain talk." Changes included making words contractions and removing unnecessary words.

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 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: June 26, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-043, filed 6/15/06, effective 7/17/06)

WAC 388-418-0007 When do I have to report changes in my circumstances? (1) If your household has a change of circumstances you are **not required to report** under WAC 388-418-0005, then you do not need to contact us about this change. If you tell us about this change, we take action based on the new information. This includes:

(a) Asking for more information we need to determine your eligibility and benefits under WAC 388-490-0005;

(b) Increasing your benefits when we have proof of a change that makes you eligible for more benefits; or

(c) Reducing or stopping your benefits based on the change.

(2) If you **are applying for** benefits and have had a change:

(a) After the date you applied but before your interview, you must report the change during your interview; or

(b) After you have been interviewed, you must report changes that we require someone who receives benefits to report as described under WAC 388-418-0005. You must report this change by the tenth day of the month following the month the change happened.

(3) If you **receive** cash assistance, medical, or Basic Food, you must report changes required under WAC 388-418-0005 by the tenth day of the month following the month the change happened.

(4) For a change in income, the date a change happened is the date you receive income based on this change. For example, the date of your first paycheck for a new job, or the date of a paycheck showing a change in your wage or salary.

(5) If we require you to complete a mid-certification review, you must complete the review to inform us of your circumstances as described under WAC 388-418-0011 in order to keep receiving benefits.

(6) If you receive TANF/SFA, and you learn that a child in your assistance unit (AU) will be gone from your home

longer than ((~~ninety~~)) one hundred eighty days, you must tell us about this within five calendar days from the date you learn this information.

(a) If you do not report this within five days, the child's caretaker is not eligible for cash benefits for one month; and

(b) We continue to budget the ineligible person's countable income as described in WAC 388-450-0162 to determine the benefits for the people still in the AU.

(7) If you report changes late, you may receive the wrong amount or wrong type of benefits. If you receive more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-454-0015 Temporary absence from the home. ((~~The child or the caretaker is temporarily absent from the home as long as the caretaker continues to be responsible for the care and control of the child. Temporary absences cannot exceed ninety days except as described below. A caretaker must report a child's absence in excess of ninety days as required under WAC 388-418-0005. Temporary absences include:~~

~~(1) Receiving care in a hospital or public or private institution. If the temporary care exceeds ninety days, the assistance payment for the person is reduced to the CPI amount specified under chapter 388-478 WAC.~~

~~(2) Receiving care in a substance abuse treatment facility. If the care exceeds ninety days, the assistance payment for the person is reduced to the CPI amount specified under chapter 388-478 WAC.~~

~~(3) Visits in which the child or parent will be away for ninety days or less, including visits of a child to a parent who does not reside in the child's home.~~

~~(4) Placement of a child in foster care when the child's caretaker is receiving care in a residential treatment facility or for other reasons as determined by the division of children and family services (DCFS). DCFS must determine that the child is expected to return to the home within ninety days of the foster care placement.~~

~~(5) Placement of a child in foster care or in the temporary care of a relative, when:~~

~~(a) A parent or other relative applies for TANF or SFA on behalf of the child;~~

~~(b) DCFS has determined the child will be placed in the care of the applying relative within thirty days following the authorization of assistance; and~~

~~(c) No concurrent TANF or SFA payments are made for the child while in the temporary care of a relative.~~

~~(6) The child or caretaker is attending school or training as described in WAC 388-454-0020~~)) The temporary absence policy described in this WAC applies to the temporary assistance for needy families (TANF) and state family assistance (SFA) programs. In some situations, a child receiving TANF/SFA can continue to be eligible for TANF/SFA cash assistance when there is a temporary separation of the child and the child's caregiver. There must be a clear expectation the absence is temporary and the child is expected to be reunited with the family. Temporary absences can't exceed one hundred eighty days except as described in (1)(a).

(1) For recipients, temporary absences include, but are not limited to:

(a) A caregiver receiving care in a hospital, substance abuse treatment facility, or other medical institution. If the temporary care exceeds one hundred eighty days, the assistance payment for the person is reduced to the CPI amount specified under chapter 388-478 WAC.

(b) Out-of-home visits less than one hundred eighty days, when the caregiver is still responsible for the support and care of the child.

(c) A caregiver or child attending school or training as described in WAC 388-454-0020.

(d) Placement of a child in foster care or in the care of a relative or other adult, including when the child's primary caregiver is in a residential treatment facility. The division of children and family services (DCFS) must place the child and determine the child is expected to return to the primary caregiver within one hundred eighty days of the placement.

(2) For applicants, temporary absences include:

(a) When the child is placed in unlicensed foster care or in the care of a relative or other adult and DCFS expects the child will return to the home within one hundred eighty days of removal. Benefits can also be approved for an applicant if DCFS determines that the child will be in the care of the applying adult within thirty days of authorizing assistance even if the child has been out of the home for over one hundred eighty days.

(b) When the child is out of the home because of illness or hospitalization and the absence isn't expected to exceed one hundred eighty days.

(3) For situations described in (1)(d) and (2)(a) of this WAC, concurrent TANF or SFA cash assistance can be made for the child, only when DCFS places the child in the temporary care of an unlicensed-relative, other caregiver, or in foster care. DCFS must expect the child return to the home of the primary caregiver in one hundred eighty days.

(a) When the child goes into licensed foster care, the TANF/SFA grant to the parent continues.

(b) When the child goes into unlicensed care, whether with a relative or other caregiver, the TANF grant to the parent continues and the caregiver can also get a TANF grant.

(4) Situations that do not meet the criteria of a temporary absence include, but aren't limited to:

(a) The caregiver or child is incarcerated for any length of time.

(b) The child ran away and there is no clear expectation of when the child will be returning home.

(c) A caregiver or child is away attending school and doesn't meet the criteria outlined in WAC 388-454-0020.

(5) A caregiver must report within five days of learning that a child's absence is going to be greater than one hundred eighty days as required under WAC 388-418-0005 and 388-418-0007.

AMENDATORY SECTION (Amending WSR 05-16-127, filed 8/3/05, effective 9/3/05)

WAC 388-505-0220 Family medical eligibility. (1) A person is eligible for categorically needy (CN) medical assistance when they are:

(a) Receiving temporary assistance for needy families (TANF) cash benefits;

(b) Receiving Tribal TANF;

(c) Receiving cash diversion assistance, except SFA relatable families, described in chapter 388-222 WAC;

(d) Eligible for TANF cash benefits but choose not to receive; or

(e) Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:

(i) Earned income is treated as described in WAC 388-450-0210; and

(ii) Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.

(2) An adult cannot receive a family Medicaid program unless the household includes a child who is eligible for:

(a) Family Medicaid;

(b) SSI; or

(c) Children's Medicaid.

(3) A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:

(a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;

(b) Failed to meet the school attendance requirement in chapter 388-400 WAC;

(c) Is an unmarried minor parent who is not in a department-approved living situation;

(d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed ((~~ninety~~)) one hundred eighty days;

(e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;

(f) Was convicted of a drug related felony;

(g) Was convicted of receiving benefits unlawfully;

(h) Was convicted of misrepresenting residence to obtain assistance in two or more states;

(i) Has gross earnings exceeding the TANF gross income level; or

(j) Is not cooperating with WorkFirst requirements.

(4) An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.

(5) Except for a client described in WAC 388-505-0210 (4)(c)(i) and (ii), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

WSR 08-14-114
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed June 30, 2008, 11:45 a.m., effective July 31, 2008]

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

Purpose: The proposed rule amendments are necessary so the rules do not contravene I-960.

Citation of Existing Rules Affected by this Order: Amending WAC 208-660-550(1).

Statutory Authority for Adoption: Chapters 43.320, 19.146 RCW.

Adopted under notice filed as WSR 08-09-139 on April 23, 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 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 1, Repealed 0.

Date Adopted: June 30, 2008.

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-550 Department fees and costs. (1) ((~~The department intends to increase its fees and costs each year for several bienniums. The department intends to initiate rule making each biennium for this purpose. This rule provides for an automatic annual increase in the rate of fees and costs each fiscal year during the 2007-2009 biennium.~~

~~(a) On July 1, 2007, and July 1, 2008, these fees and costs, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.~~

~~(b) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.~~

~~(c) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.~~

~~(2)~~)) **Mortgage broker licenses.**

Mortgage broker - license application fee	$371.00

Mortgage broker - annual assessment (due upon initial licensing, then an annual renewal fee, per location)	$530.00
Mortgage broker late renewal assessment (fifty percent of annual assessment)	$265.00
Mortgage broker branch office - license application fee	$185.00
Mortgage broker branch office - annual assessment (annual renewal fee, per location)	$530.00
Mortgage broker - license amendment	No fee
Mortgage broker - change of designated broker	$25.00

(((~~(3)~~))) (2) **Loan originator licenses.**

Loan originator - license application fee	$125.00
Loan originator - annual assessment (not due until first renewal; then an annual renewal fee)	$125.00
Loan originator late renewal assessment (fifty percent of annual assessment)	$62.50
Loan originator - cancel association with any mortgage broker	No fee
Loan originator - license amendment - add a mortgage broker relationship	$50.00
Loan originator - license amendment - other	No fee

When the realignment of license expiration or renewal dates results in a partial year of licensing, the department will impose a proportionate fee structure to accommodate that realignment.

(((~~(4)~~))) (3) **Examinations.**

(a) In Washington. The department does not charge a licensee located in Washington for the costs of an examination.

(b) Outside of Washington. The department will charge the licensee for travel costs.

(c) If the department hires professionals, specialists, or both to examine an out-of-state licensee, the professional, specialist, or both will be considered examiners for the purpose of billing the licensee for travel costs.

(((~~(5)~~))) (4) **Investigations.**

(a) The department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

(b) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals or specialists retained by the director to aid in the investigation.

(((~~(6)~~))) (5) **Travel costs.** If the mortgage business is out-of-state, the department will charge the business the travel costs associated with an examination or investigation. Travel costs include, but are not limited to, transportation costs (airfare, rental cars), meals, and lodging.

(((~~(7)~~))) (6) **How is the annual assessment calculated?** The assessment is a flat rate per license.

(((~~(8)~~))) (7) **How does the department use license application fees?** The fees collected by the department are used to pay the costs of administering the act.

WSR 08-14-116
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 30, 2008, 1:54 p.m., effective August 1, 2008]

Effective Date of Rule: August 1, 2008.

Purpose: The department is amending WAC 388-424-0001 Citizenship and alien status—Definitions, 388-424-0010 Citizenship and alien status—Eligibility restrictions for the temporary assistance for needy families program and medical benefits, including nonemergency medicaid and the state children's health insurance program (SCHIP), 388-424-0020 How does my alien status impact my eligibility for the federally funded Washington Basic Food program benefits, 388-466-0005 Immigration status requirements for refugee assistance, 388-466-0120 Refugee cash assistance, and 388-466-0130, Refugee medical assistance.

These rules are being amended to allow special immigrants from Iraq and Afghanistan, and family members of victims of trafficking to be eligible for refugee cash assistance (RCA), refugee medical assistance (RMA), services and other entitlement benefits as allowed under federal law. When effective, this permanent rule supersedes emergency rule filed as WSR 08-09-052.

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0001, 388-424-0010, 388-424-0020, 388-466-0005, 388-466-0120, and 388-466-0130.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, and 74.08.090.

Other Authority: Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement.

Adopted under notice filed as WSR 08-11-086 on May 20, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 6, 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 6, Repealed 0.

Date Adopted: June 27, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-15-004, filed 7/7/04, effective 8/7/04)

WAC 388-424-0001 Citizenship and alien status—Definitions. "American Indians" born outside the United States. American Indians born outside the U.S. are eligible for benefits without regard to immigration status or date of entry if:

(1) They were born in Canada and are of fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(2) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

"Hmong or Highland Lao." These are members of the Hmong or Highland Laotian tribe, which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the United States. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribe members.

"Nonimmigrants." These individuals are allowed to enter the U.S. for a specific purpose, usually for a limited time. Examples include:

(1) Tourists,

(2) Students,

(3) Business visitors.

"PRUCOL" (Permanently residing under color of law) aliens. These are individuals who:

(1) Are not "qualified aliens" as described below; and

(2) Intend to reside indefinitely in the U.S.; and

(3) United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or INS) knows are residing in the U.S. and is not taking steps to enforce their departure.

"Special Immigrants from Iraq and Afghanistan." According to federal law, special immigrants are Iraqi and Afghan aliens granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA).

"Qualified aliens." Federal law defines the following groups as "qualified aliens." All those not listed below are considered "nonqualified":

(1) **Abused spouses or children,** parents of abused children, or children of abused spouses, who have either:

(a) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried son or daughter of a Lawful Permanent Resident (LPR) - see definition of LPR below; or

(b) A notice of "prima facie" approval of a pending self-petition under the Violence Against Women Act (VAWA); or

(c) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA; and

(d) The alien no longer resides with the person who committed the abuse.

(e) Children of an abused spouse do not need their own separate pending or approved petition but are included in their parent's petition if it was filed before they turned age twenty-one. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn age twenty-one.

(f) An abused person who has initiated a self-petition under VAWA but has not received notice of prima facie approval is not a "qualified alien" but is considered PRUCOL. An abused person who continues to reside with the person who committed the domestic violence is also PRUCOL. For a definition of PRUCOL, see above.

(2) **Amerasians** who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam war.

(3) Individuals who have been granted **asylum** under Section 208 of the Immigration and Nationality Act (INA).

(4) Individuals who were admitted to the U.S. as **conditional entrants** under Section 203 (a)(7) of the INA prior to April 1, 1980.

(5) **Cuban/Haitian entrants.** These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(6) Individuals who are **lawful permanent residents** (LPRs) under the INA.

(7) Persons who have been granted **parole** into the U.S. for at least a period of one year (or indefinitely) under Section 212 (d)(5) of the INA, including "public interest" parolees.

(8) Individuals who are admitted to the U.S. as **refugees** under Section 207 of the INA.

(9) Persons granted **withholding of deportation or removal** under Sections 243(h) (dated 1995) or 241 (b)(3) (dated 2003) of the INA.

"Undocumented aliens." These are persons who either:

(1) Entered the U.S. without inspection at the border, or

(2) Were lawfully admitted but have lost their status.

"U.S. citizens."

(1) The following individuals are considered to be citizens of the U.S.:

(a) Persons born in the U.S. or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens); or

(b) Legal immigrants who have naturalized after immigrating to the U.S.

(2) Persons born abroad to at least one U.S. citizen parent may be U.S. citizens under certain conditions.

(3) Individuals under the age of eighteen automatically become citizens when they meet the following three conditions on or after February 27, 2001:

(a) The child is a lawful permanent resident (LPR);

(b) At least one of the parents is a U.S. citizen by birth or naturalization; and

(c) The child resides in the U.S. in the legal and physical custody of the citizen parent.

(4) For those individuals who turned eighteen before February 27, 2001, the child would automatically be a citizen if still under eighteen when he or she began lawful permanent residence in the U.S. and both parents had naturalized. Such a child could have derived citizenship when only one parent had naturalized if the other parent were dead, a U.S. citizen by birth, or the parents were legally separated and the naturalizing parent had custody.

"U.S. nationals." A U.S. national is a person who owes permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(1) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(2) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

"Victims of trafficking." According to federal law, victims of trafficking have been subject to one of the following:

(1) Sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) Under federal law, persons who have been certified or approved as victims of trafficking by the federal Office of Refugee Resettlement (ORR) are to be treated the same as refugees in their eligibility for public assistance.

(4) Immediate family members of victims are also eligible for public assistance benefits as refugees. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

WAC 388-424-0010 Citizenship and alien status—Eligibility restrictions for the temporary assistance for needy families program and medical benefits, including nonemergency Medicaid and the ((~~state~~)) children's ((~~health insurance~~)) healthcare programs (((~~SCHIP~~))). (1) To receive TANF or medical benefits you must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A U.S. citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; ((~~or~~))

(f) A Hmong or Highland Lao;

(g) A Special Immigrant from Iraq eligible for eight months of federally-funded assistance from your date of entry into the United States or from the date you received Special Immigrant status; or

(h) A Special Immigrant from Afghanistan eligible for six months of federally funded assistance from your date of entry into the United States or from the date you received Special Immigrant status.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, nonemergency Medicaid, and SCHIP benefits.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, nonemergency Medicaid, or SCHIP for five years after obtaining status as a qualified alien unless he or she is an alien as described under WAC 388-424-0006(4).

(4) An alien who is ineligible for TANF, nonemergency Medicaid, or SCHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien emergency medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (SFA, GA and ADATSA) and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits as described in WAC 388-462-0015; or

(d) Children's health program as described in WAC 388-505-0210.

AMENDATORY SECTION (Amending WSR 04-15-004, filed 7/7/04, effective 8/7/04)

WAC 388-424-0020 How does my alien status impact my eligibility for the federally funded Washington Basic Food program benefits? (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a), ((~~or~~)) (b), (c) or (d) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of "qualified aliens" or similarly defined lawful immigrants as defined in WAC 388-424-0001:

(i) Amerasian;

(ii) Asylee;

(iii) Cuban or Haitian entrant;

(iv) Deportation or removal withheld;

(v) Refugee;

(vi) Victim of trafficking;

(vii) Noncitizen American Indian; or

(viii) Hmong or Highland Lao tribal member.

(b)(i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

(A) Conditional entrant;

(B) Lawful permanent resident (LPR);

(C) Paroled for one year or more; or

(D) Victim of domestic violence or parent or child of a victim.

(ii) And, one of the following also applies to you:

(A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007(1);

(C) You receive cash or medical benefits based on Supplemental Security Income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age eighteen; or

(F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

(c) You are a Special Immigrant from Iraq eligible for eight months of federally-funded assistance from the date of your entry into the United States or from the date you received Special Immigrant status if this occurred after your U.S. entry.

(d) You are a Special Immigrant from Afghanistan eligible for six months of federally-funded assistance from the date of your entry into the United States or from the date you received Special Immigrant status if this occurred after your U.S. entry.

(3) If you are ineligible for federal Basic Food benefits due to your alien status, you may be eligible for state Basic Food benefits (see WAC 388-424-0025).

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-466-0005 Immigration status requirement for refugee assistance. (1) ((~~To~~)) You may be eligible for refugee cash assistance (RCA) and refugee medical assistance (RMA), ((~~a person must prove, by providing~~)) if you can provide documentation issued by the ((~~Immigration and Naturalization Service (INS)~~)) U.S. Citizenship and Immigration Services (USCIS), that ((~~he or she was~~)) you are:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the U.S. as a refugee or asylee under section 212 (d)(5) of the INA;

(c) Granted conditional entry under section 203 (a)(7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;

(g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;

(i) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a)(27) of the INA.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsections (1)(a) through ((~~(f)~~)) (g) of this section.

AMENDATORY SECTION (Amending WSR 02-04-057, filed 1/30/02, effective 2/1/02)

WAC 388-466-0120 Refugee cash assistance (RCA). (1) **Who can apply for ((~~refuge~~)) refugee cash assistance (RCA)?**

((~~Any individual~~)) Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) **How do I know if I qualify for RCA?**

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) **What are the other reasons for not being eligible for RCA?**

((~~Even if you meet the eligibility requirements named in subsection (2) above~~)) You may ((~~be~~)) not ((~~eligible~~)) get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or Supplemental Security Income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

(4) **If I am an asylee, what date will be used as an entry date?**

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) **If I am a victim of human trafficking, ((~~can I~~)) what kind of documentation do I need to provide to be eligible for RCA?**

You are eligible for RCA to the same extent as a refugee if you are:

(a) ((~~If you are~~)) An adult victim, eighteen years of age or older, you ((~~are eligible for RCA to the same extent as a refugee, if you~~)) provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c)

and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter((-));

(b) ((~~If you are~~)) A child victim under the age of eighteen ((~~years old~~)), in which case you ((~~are eligible for benefits to the same extent as a refugees and~~)) do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) **Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?**

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) **What is the effective date of my eligibility for RCA?**

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) **When does my RCA end?**

(a) Your RCA ends on the last day of the eighth month starting ((~~from~~)) with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

(b) If you are from Afghanistan and were granted Special Immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), your RCA ends on the last day of the sixth month starting from the month of your arrival to the United States or from the month you received Special Immigrant status if this occurred after your entry.

(c) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA. Your medical coverage may continue for up to eight months from your month of arrival in the United States (WAC 388-466-0130).

(9) **Are there other reasons why RCA may end?**

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) **Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?**

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States. Spouses from Afghanistan who have been granted Special Immigrant status under section 101 (a)(27) of the INA, are eligible for RCA for up to six months from the date of their entry into the United States or from the month they received Special Immigrant status if this occurred after their U.S. entry.

(b) If you live together you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on your and your spouse's combined income and resources (WAC 388-466-0140).

(11) **Can I get additional money in an emergency?**

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) **What can I do if I disagree with a decision or action that has been taken by DSHS on my case?**

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or a fair hearing (WAC 388-02-0090). Your request must be made within ninety days of the decision or action.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-466-0130 Refugee medical assistance (RMA). (1) **Who can apply for refugee medical assistance?**

((~~Any individual~~)) Anyone can apply for refugee medical assistance (RMA) and have eligibility determined by the department of social and health services (DSHS).

(2) **Who is eligible for refugee medical assistance?**

(a) You are eligible for RMA if you meet all of the following conditions:

(i) Immigration status requirements of WAC 388-466-0005;

(ii) Income and resource requirements of WAC 388-466-0140;

(iii) Monthly income standards up to two hundred percent of the federal poverty level (FPL). Spenddown is available for applicants whose income exceeds two hundred percent of FPL (see WAC 388-519-0110); and

(iv) Provide the name of the voluntary agency (VOLAG) which helped bring you to this country, so that DSHS can promptly notify the agency (or sponsor) about your application for RMA.

(b) You are eligible for RMA if you ((~~meet one of the following conditions~~)):

(i) Receive refugee cash assistance (RCA) and are not eligible for Medicaid or children's ((~~health insurance~~)) healthcare programs (((~~CHIP~~))) as described in WAC 388-505-0210; or

(ii) Choose not to apply for or receive RCA and are not eligible for Medicaid or ((~~CHIP~~)) children's healthcare programs as described in WAC 388-505-0210, but still meet RMA eligibility requirements.

(3) **Who is not eligible for refugee medical assistance?**

You are not eligible to receive RMA if you are:

(a) Already eligible for Medicaid or ((~~CHIP~~)) children's healthcare programs as described in WAC 388-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a department-approved individual responsibility plan (IRP);

(c) A nonrefugee spouse of a refugee.

(4) **If I have already received a cash assistance grant from voluntary agency (VOLAG), will it affect my eligibility for RMA?**

No. A cash assistance payment provided to you by your VOLAG is not counted in determining eligibility for RMA.

(5) **If I get a job after I have applied but before I have been approved for RMA, will my new income be counted in determining my eligibility?**

No. Your RMA eligibility is determined on the basis of your income and resources on the date of the application.

(6) **Will my sponsor's income and resources be considered in determining my eligibility for RMA?**

Your sponsor's income and resources are not considered in determining your eligibility for RMA unless your sponsor is a member of your assistance unit.

(7) **How do I find out if I am eligible for RMA?**

DSHS will send you a letter in both English and your primary language informing you about your eligibility. DSHS will also let you know in writing every time there are any changes or actions taken on your case.

(8) **Will RMA cover my medical expenses that occurred after I arrived in the U.S. but before I applied for RMA?**

You may be eligible for RMA coverage of your medical expenses for three months prior to the first day of the month of your application. Eligibility determination will be made according to Medicaid rules.

(9) **If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RMA?**

You are eligible for RMA to the same extent as a refugee, if you are:

(a) An adult victim, eighteen years of age or older, and you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS). You also have to meet eligibility requirements in subsections (2)(a) and (b) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter.

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements.

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet eligibility requirements in subsections (2)(a) and (b) of this section.

(10) **If I am an asylee, what date will be used as an entry date?**

If you are an asylee, your entry date will be the date that your asylum status is granted. For example, if you entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and granted asylum on September 1, 2000, your date of entry is September 1, 2000. On September 1, 2000 you may be eligible for refugee medical assistance.

((~~(10)~~)) (11) **When does my RMA end?**

(a) Your refugee medical assistance will end on the last day of the eighth month from the month of your entry into the United States. Start counting the eight months ((~~from~~)) with the first day of the month of your entry into the U.S. For example, if you entered the U.S. on May 28, 2000, your last month is December 2000.

(b) If you are from Afghanistan and were granted Special Immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), your RMA ends on the last day of the sixth month starting with the month of your arrival to the United States or from the month you received Special Immigrant status if this occurred after your U.S. entry.

((~~(11)~~)) (12) **What happens if my earned income goes above the income standards?**

(a) If you are getting RMA, your medical eligibility will not be affected by the amount of your earnings;

(b) If you were getting Medicaid and it was terminated because of your earnings, we will transfer you to RMA for the rest of your RMA eligibility period. You will not need to apply.

((~~(12)~~)) (13) **Will my spouse also be eligible for RMA, if he/she arrives into the U.S. after me?**

When your spouse arrives in the U.S., we will determine his/her eligibility for Medicaid and other medical programs.

(a) Your spouse may be eligible for RMA; if so, he/she would have a maximum of eight months of RMA starting on the first day of the month of his/her arrival.

(b) Spouses from Afghanistan who have been granted Special Immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), are eligible for RMA for a maximum of six months from the date of entry into the United States or from the month they received Special Immigrant status if this occurred after their U.S. entry.

((~~(13)~~)) (14) **What do I do if I disagree with a decision or action that has been taken by DSHS on my case?**

If you disagree with the decision or action taken on your case by department you have the right to request a review of your case or request a fair hearing (see WAC 388-02-0090). Your request must be made within ninety days of the decision or action).

((~~(14)~~)) (15) **What happens to my medical coverage after my eligibility period is over?**

We will determine your eligibility for other medical programs. You may have to complete an application for another program.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 08-14-118
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 30, 2008, 6:08 p.m., effective July 31, 2008]

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

Purpose: RCW 43.20B.020, 43.70.110, and 43.70.250 authorizes the department of health (department) to charge registration fees to businesses operating X-ray machines that

are sufficient to cover the full cost of administering the program. The fee is based on the cost to the department of regulating the activity, including the costs of inspections.

Citation of Existing Rules Affected by this Order: Amending WAC 246-254-053 Radiation machine facility registration fees.

Statutory Authority for Adoption: RCW 70.98.080, 43.20B.020, 43.70.250, and 43.70.110.

Adopted under notice filed as WSR 08-09-078 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 30, 2008.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-053 Radiation machine facility registration fees. (1) Radiation machine facility fees apply to each person or facility owning, leasing or using radiation-producing machines. The annual facility fee consists of the base registration fee and a per tube charge, where applicable.

(a) **Radiation Machine Facility Fees**			
	Type of Facility	**Facility Base Fee**	**Added Fee per Tube**
(i)	Dental, podiatric, veterinary uses	$((~~102~~)) 134	See following table
(ii)	Hospital, medical, chiropractic uses	$((~~158~~)) 207	See following table
(iii)	Industrial, research, educational, security, or other facilities	$((~~140~~)) 184	See following table
(iv)	Mammography only	$((~~68~~)) 89	N/A
(v)	Bone densitometry only	$((~~68~~)) 89	N/A
(vi)	Electron microscopes only	$((~~68~~)) 89	N/A
(vii)	Bomb squad only	$((~~68~~)) 89	N/A
(viii)	Radiation safety program as specified in subsection (3) of this section	$((~~4,441~~)) 5,827	N/A

(b) **Radiation Machine Tube Fees**		
	Type of Tube	**Added Fee per Tube**
(i)	Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)	$((~~35~~)) 46
(ii)	Veterinary (radiographic, fluoroscopic, portable, mobile)	$((~~35~~)) 46
(iii)	Podiatric uses (radiographic, fluoroscopic)	$((~~35~~)) 46
(iv)	Mammography	N/A
(v)	Bone densitometry	N/A
(vi)	Electron microscope	N/A
(vii)	Bomb squad	N/A
(viii)	Medical radiographic (includes R/F combinations, fixed, portable, mobile)	$((~~100~~)) 131
(ix)	Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)	$((~~100~~)) 131
(x)	Therapy (Grenz Ray, Orthovoltage, nonaccelerator)	$((~~100~~)) 131
(xi)	Accelerators (therapy, other medical uses)	$((~~100~~)) 131
(xii)	Computer tomography (CT, CAT scanner)	$((~~100~~)) 131
(xiii)	Stereotactic (mammography)	$((~~100~~)) 131
(xiv)	Industrial radiographic	$((~~35~~)) 46
(xv)	Analytical, X-ray fluorescence	$((~~35~~)) 46
(xvi)	Industrial accelerators	$((~~35~~)) 46
(xvii)	Airport baggage	$((~~35~~)) 46
(xviii)	Cabinet (industrial, security, mail, other)	$((~~35~~)) 46
(xiv)	Other industrial uses (includes industrial fluoroscopic uses)	$((~~35~~)) 46

(2) **X-ray shielding fees.**

(a) Facilities regulated under the shielding plan requirements of WAC 246-225-030 or 246-227-150 are subject to a $((~~255~~)) 344 X-ray shielding review fee for each X-ray room plan submitted((~~.~~)); or

(b) A registrant may request an expedited plan review for ((~~an additional $500~~)) $1000 for each X-ray room plan. Expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

(((~~b~~))) (c) If a facility regulated under WAC 246-225-030 or 246-227-150 operates without submittal and departmental ((~~approval~~)) review of X-ray shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of $((~~500~~)) 656.

(3) **Radiation safety fee.** If a facility or group of facilities under one administrative control employs two or more full-time individuals whose positions are entirely devoted to in-house radiation safety, the facility shall pay a flat, annual fee as specified in subsection (1)(a)(viii) of this section.

(4) **Consolidation of registration.** Facilities may consolidate X-ray machine registrations into a single registration after notifying the department in writing and documenting that a single business license applies to all buildings, structures and operations on one contiguous site using or identified by one physical address location designation.

(5) **Inspection fees.**

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under the base fee and tube registration fees as described in subsection (1) of this section.

(b) Facilities requiring follow-up inspections due to uncorrected noncompliances must pay an inspection follow-up fee of $((~~90~~)) 118 for each reinspection required.

(6) A facility's annual registration fee is valid for a specific geographical location and person only. It is not transferable to another geographical location or owner or user.

WSR 08-14-137
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed July 1, 2008, 12:22 p.m., effective August 1, 2008]

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

Purpose: The adopted rules amend the procedural rules for adjudicative proceedings conducted by the department of health and its affiliated health profession boards and commissions. These rules reconcile the procedural rules with case law.

Citation of Existing Rules Affected by this Order: Amending WAC 246-10-606 and 246-11-520.

Statutory Authority for Adoption: RCW 18.130.050 and 34.05.220.

Adopted under notice filed as WSR 08-08-089 on April 1, 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 2, 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 25, 2008.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending Order 369, filed 6/3/93, effective 7/4/93)

WAC 246-10-606 Standard of proof. (1) The order shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(2) In all cases involving an application for license the burden shall be on the applicant to establish that the application meets all applicable criteria. In all other cases the burden is on the department to prove the alleged factual basis set forth in the initiating document.

(3) Except as otherwise ((~~provided~~)) required by ((~~statute~~)) law, the burden in all cases is a preponderance of the evidence.

AMENDATORY SECTION (Amending Order 347, filed 3/24/93, effective 4/24/93)

WAC 246-11-520 Standard of proof. (1) The order shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(2) In all cases involving an application for license the burden shall be on the applicant to establish that the application meets all applicable criteria. In all other cases the burden is on the department to prove the alleged factual basis set forth in the initiating document.

(3) Except as otherwise ((~~provided~~)) required by ((~~statute~~)) law, the burden in all cases is a preponderance of the evidence.

WSR 08-14-152
PERMANENT RULES
BOARD OF ACCOUNTANCY

[Filed July 1, 2008, 3:46 p.m., effective August 1, 2008]

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

Purpose: To increase the section fees charged to candidates applying to take the uniform certified public accountant (CPA) examination and remove all references to "practice privilege" to conform the rule to the Public Accountancy Act, chapter 18.04 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-530 Fees.

Statutory Authority for Adoption: RCW 18.04.065, 18.04.105(3).

Adopted under notice filed as WSR 08-11-022 on May 12, 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 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, 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 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 1, Repealed 0.

Date Adopted: July 1, 2008.

Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 07-14-035, filed 6/26/07, effective 8/1/07)

WAC 4-25-530 Fees. The board shall charge the following fees:

(1)	Initial application for individual license, ((~~practice privilege,~~)) individual license through reciprocity, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner	$330
(2)	Renewal of individual license, CPA-Inactive certificate, ((~~practice privilege,~~)) CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner	$230
(3)	Application for CPA-Inactive certificateholder to convert to a license	$0
(4)	Application for reinstatement of license, ((~~practice privilege,~~)) CPA-Inactive certificate, or registration as a resident nonlicensee owner	$480
(5)	Quality assurance review (QAR) program fee (includes monitoring reviews for up to two years)	
	Firm submits reports for review	$400
	Firm submits a peer review report for review	$60
	Firm is exempted from the QAR program because the firm did not issue attest reports	$0
(6)	Late fee	$100
(7)	Amendment to firm license except for a change of firm address (there is no fee for filing a change of address)	$35
(8)	Copies of records, per page exceeding fifty pages	$0.15
(9)	Computer diskette listing of licensees, CPA-Inactive certificateholders, ((~~grants of practice privilege,~~)) or registered resident nonlicensee firm owners((~~, or firms~~))	$75
(10)	Replacement CPA wall document	$50
(11)	Dishonored check fee (including, but not limited to, insufficient funds or closed accounts)	$35
(12)	CPA examination. Exam fees are comprised of section fees plus administrative fees. **The total fee is contingent upon which section(s) is/are being applied for and the number of sections being applied for at the same time.** The total fee is the section fee(s) for each section(s) applied for added to the administrative fee for the number of section(s) applied for.	
(a)	Section fees:	
(i)	Auditing and attestation	$((~~209.33~~)) 226.28
(ii)	Financial accounting and reporting	$((~~197.40~~)) 214.35
(iii)	Regulation	$((~~173.55~~)) 190.50
(iv)	Business environment and concepts	$((~~161.63~~)) 178.58

(b)	Administrative fees:	**1/1/04 -12/31/06**	**After 1/1/07**
(i)	First-time candidate - Four sections	$124.50	$132.95
(ii)	First-time candidate - Three sections	$111.00	$119.10
(iii)	First-time candidate - Two sections	$97.00	$104.70

(iv)	First-time candidate - One section	$83.00	$90.30
(v)	Reexam candidate - Four sections	$122.50	$130.75
(vi)	Reexam candidate - Three sections	$104.00	$111.40
(vii)	Reexam candidate - Two sections	$85.00	$91.50
(viii)	Reexam candidate - One section	$66.00	$71.60
	National Association of State Boards of Accountancy candidate data base investigation fee for exam applications submitted without the applicant's Social Security number	$70	$70

Note: The board may waive late filing fees for individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

WSR 08-14-157
PERMANENT RULES
THE EVERGREEN STATE COLLEGE
[Filed July 1, 2008, 4:46 p.m., effective August 1, 2008]

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

Purpose: Revise the library circulation rules to eliminate obsolete and redundant language. Remove the schedule of library fines from the WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 174-168-040, 174-168-050 and 174-168-060; and amending WAC 174-168-020, 174-168-030, 174-168-070, and 174-168-080.

Statutory Authority for Adoption: RCW 28B.14.120.

Adopted under notice filed as WSR 08-09-036 on April 9, 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 4, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 3.

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 30, 2008.

J. P. Carmichael
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-13-028, filed 6/12/90, effective 7/13/90)

WAC 174-168-020 Loan periods and fines. (1) **General use library resources (print and nonprint).**

(a) Polices for handling requests for library resources, including a schedule of fines and charges, will be published on the college web site. Requests for library resources will be handled according to college policies and any licensing or contractual agreements to which the college is a party.

(b) Due dates will not exceed one academic quarter. ((~~Requests for extended loan periods should be cleared through the head of circulation. Renewals should be requested~~)) Users should request renewals before due date.

(((~~(b)~~))) (c) Users are guaranteed the use of the material for ((~~ten days~~)) a period defined by policy, after which ((~~it~~)) the material may be recalled to meet the needs of another user. ((~~A five dollar service charge will be levied if the recall due date is not honored. If an item is not returned within sixty days, a replacement charge and processing fee will be levied.~~

~~(2) Limited use library resources.~~

~~(a) Limited use library resources (e.g., video tapes) will only be loaned for specific periods.~~

~~(b) Slides are checked out for showings only.~~

~~(c) 16mm films and video cassettes will be checked out for showings only and are circulated through the services of the Washington state film library.~~

~~(d)~~))) The library will levy a fine if the user fails to return material by the recall date. In addition, if material is not returned within a specified period after the due date, the library will levy an additional fine.

(d) Special collections (print and nonprint) include, but are not limited to the following materials: Rare books, 16mm, reference, archives, DVD, and videotapes. These materials either do not circulate or are available for shorter loan periods. Some materials may require special permission or training before access is granted. If a special collection item is released for circulation and the item is not returned within a specified period after the due date, the library will levy a fine.

(2) Media services resources.

(((~~(i)~~))) (a) The Evergreen State College will adopt policies for handling requests for media services and resources and will publish those policies, including a schedule of fines or service charges, on the college web site. Requests for media resources and services will be handled according to college policies.

(b) Media services resources may be borrowed by members of the college community. The first priority for use of media services resources is for coordinated and contracted studies and evening and weekend studies. ((~~Resource requests will be handled by and administered in accordance with policy formulated by the coordinator of media services.~~

~~(ii) Charges consistent with current commercial rates will be made to users outside The Evergreen State College community and to nonacademic~~)) (c) Media services may be provided to persons outside the college community. Charges for such services will reflect the cost to the college and the price of such services in the private marketplace. Reduced charges will apply for college-sponsored nonacademic pro-

grams, workshops, ((~~seminars, conferences~~)) auxiliary services or self-sustaining programs.

(((~~(e) Portable media loan equipment. Media loan circulates audio/visual equipment to students, staff, and faculty of the college to support academic work and college business. The first priority for use of media loan resources is for coordinated and contracted studies. Borrowers are liable for loss or damage of equipment and any associated processing fees.~~

~~(i) Media loan reserves the right to deny privileges if a borrower is in violation of state operating procedures (see media loan policy statement). Campus security may be asked to contact the borrower in cases where equipment is more than two weeks overdue.~~

~~(ii) To assure borrowers that equipment will be available for reservations, overdue fines will be assessed for late equipment. Fines are uniform regardless of the kind of equipment. A three dollar charge per transaction will be levied when equipment is one day overdue. A five dollar additional charge will be levied once a week for the next two weeks. If equipment is more than two weeks overdue, the borrower may lose privileges and twenty dollars weekly fines (up to the cost of the items) will be assessed until the equipment is returned.~~

~~(iii) If the borrower keeps equipment out over the end of the academic quarter, the replacement cost and a two dollar service fee will be charged to his or her account. This replacement fee will be rescinded when the equipment is returned, but accumulated overdue fees and service fees will be not rescinded.~~

~~(iv) When equipment is returned and all fees and charges have been paid, a borrower may make an appointment with the head of media loan to review policies and procedures in order to determine if borrowing privileges may be restored.~~

~~(v) Late fees, replacement charges and service fees are deposited in a library account for replacement of media loan equipment.~~

~~(vi) Charges will be made to funded workshops, seminars, conferences or self-sustaining programs. Charges will be consistent with current commercial rates.~~

~~(vii) Borrowers may be required to carry insurance for large packages of equipment (the college has no insurance). Insurance is a requirement if equipment is to leave the country.~~

~~(f) Other library resources can circulate by special arrangement with the head of circulation or appropriate account manager and are subject to recall and replacement charges.~~)) (d) Borrowers may be required to carry insurance for high demand or high cost equipment for an extended loan period, or if the equipment is taken outside the country.

(e) College policies will specify overdue fines and will be published on the college's web site. After an initial overdue fine is levied, additional, daily fines may be levied if the equipment is not returned. Daily fines may accumulate up to the replacement value of the item(s).

(f) Media loan reserves the right to deny privileges if a borrower is in violation of any media loan policy. Borrowers are liable for loss or damage of equipment and any associated overdue fines. The library may ask campus police to contact borrowers in cases when equipment is overdue.

(g) When equipment is returned and all fines have been paid, a borrower may request reinstatement of borrowing privileges.

(3) Borrowers who repeatedly ignore the rights of other borrowers or abuse the responsibilities inherent in sharing library resources with the rest of the Evergreen community((~~, shall be denied the privilege of borrowing those resources for the remainder of the quarter~~)) may be denied the privilege of borrowing media and library resources for a period of time determined by the circulation manager or media services manager or their designees. Appeals of decisions by the circulation manager or media services manager or their designees must be made in writing within twenty calendar days to the dean of library and media services.

AMENDATORY SECTION (Amending WSR 90-13-028, filed 6/12/90, effective 7/13/90)

WAC 174-168-030 Lost and damaged library resources. (1) The borrower is responsible for ((~~loss.~~

~~(2) The borrower is responsible for damage.~~

~~(3)~~)) lost or damaged resources.

(2) The borrower is responsible for the proper operation of media loan equipment.

(((~~(4) It is the borrower's responsibility to pay for lost resources before the end of the quarter. The cost of lost resources shall be their replacement value and a processing fee (twelve dollars for library books).~~)) (3) When a borrower reports an item as lost or fails to return an item within a specified time, or when a borrowed item must be replaced due to damage, the borrower will be charged the full replacement value of the item. The method of determining the replacement value of items is established by college policy and published on the college web site.

AMENDATORY SECTION (Amending WSR 90-13-028, filed 6/12/90, effective 7/13/90)

WAC 174-168-070 Circulation records. ((~~In order to prevent an unreasonable invasion of personal privacy (including but not limited to RCW 42.17.260 and 42.17.310) all records relating to the registration of patrons and their requests for use and subsequent circulation of materials by The Evergreen State College library are hereby deemed confidential, regardless of the source of inquiry or request for information.~~)) Unless otherwise required by law, all library records that contain information about individual users of library services are confidential as provided in RCW 42.56.-310.

AMENDATORY SECTION (Amending WSR 90-13-028, filed 6/12/90, effective 7/13/90)

WAC 174-168-080 Selection of resources and services. It is the policy of The Evergreen State College to select for its library the best and most suitable library materials, library equipment, and library services. The college expressly rejects any form of selection based on censorship of materials or prejudicial considerations based upon race, color, religion, creed, national origin, sex, ((~~national origin, or political view point~~)) sexual orientation, gender identity, gender expression,

marital status, age, disability, pregnancy, or status as a disabled veteran, a Vietnam era veteran or other covered veteran.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 174-168-040	Reserve.
WAC 174-168-050	Charging out library resources.
WAC 174-168-060	Interlibrary loan.

WSR 08-14-169
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-04—Filed July 2, 2008, 11:35 a.m., effective August 2, 2008]

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

Purpose: These new rules increase Washington state's compliance with the standards for licensing and regulating insurance producers, including surplus lines [line] brokers, aligning the state's requirements for holding a surplus line broker's license with national standards. The new rules clarify the requirements for resident and nonresident surplus line brokers.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-15-100; and amending WAC 284-15-010, 284-15-020, 284-15-040, 284-15-050, and 284-15-080.

Statutory Authority for Adoption: RCW 48.02.060, 48.15.040(4), 48.15.073(2), and 48.15.160(2).

Adopted under notice filed as WSR 08-10-097 on May 7, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-15-020 (2)(a) the word "presumed" was changed to "deemed."

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail KacyS@oic.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 5, Repealed 1.

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 5, Repealed 1.

Date Adopted: July 2, 2008.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 81-1, filed 1/21/81)

WAC 284-15-010 Brokers—Surplus line—Qualifications and examination. (1) Each applicant for ((~~initial~~)) a resident surplus line broker's license ((~~as a surplus line broker shall, prior to issuance of any such license,~~)) must take and pass ((~~to the satisfaction of the commissioner an~~)) the required examination ((~~given by the commissioner. It shall be a test of his or her~~)) and pay the required fee prior to acting as a surplus line broker. The examination will test an applicant's qualifications and competence in all areas of surplus line insurance. ((~~The examination shall be given in the same manner and under the same conditions as are prescribed for brokers in chapter 48.17 RCW, except that such surplus line examination will generally be given twice each year at times set by the commissioner.~~

~~(2) Minimum requirements to be met by an applicant before he or she will be permitted to take the examination are:~~

~~(a) An applicant must have been licensed as a casualty-property broker in accordance with RCW 48.17.150 for not less than five years preceding the date of the application, or have received the chartered property casualty underwriter (CPCU) designation with not less than five years' experience in the insurance industry preceding the date of the application, or have not less than ten years' experience as an insurance company employee, or an employee of an insurance broker's office or other related insurance industry experience preceding the date of the application, or have other equivalent experience acceptable to the insurance commissioner.~~

~~(b) Such applicants shall complete application forms supplied by the commissioner.~~

~~(3) For the purpose of this regulation "applicant" and "surplus line broker" are defined to include any individual who is to be empowered and designated in the license as authorized to exercise the powers conferred thereby.~~

~~(4) The applicant, and each surplus line broker while so licensed, must be a resident of the state of Washington.~~)) Current information about testing procedures and examination dates is available on the commissioner's web site at: www.insurance.wa.gov.

(2) Before the commissioner can issue a surplus line broker's license, the applicant must be licensed in this state as an agent or broker with both property and casualty lines of authority. This requirement may be satisfied if the licenses are issued simultaneously.

(3) The commissioner deems that a nonresident person holding a surplus line broker's license, or the equivalent, in the applicant's home state is qualified, competent and trustworthy and, therefore, meets the minimum standards of this state for holding a surplus line broker's license. For that reason, the commissioner will waive the Washington surplus line broker's examination for a person who has and maintains

a current resident surplus line broker's license, or the equivalent, in the applicant's home state.

AMENDATORY SECTION (Amending Order R 81-1, filed 1/21/81)

WAC 284-15-020 Surplus line broker—Solvent insurer required. (1) A surplus line broker ((~~shall~~)) must not knowingly place surplus line insurance with financially unsound insurers. Foreign and alien insurers must meet or exceed the minimum financial conditions required by RCW 48.15.090 and WAC 284-15-090.

(2) A surplus line broker ((~~shall ascertain~~)) must substantiate the financial condition of ((~~the~~)) an unauthorized insurer ((~~and maintain written evidence thereof~~)) before placing insurance ((~~therewith~~)) with the insurer. The broker must also maintain evidence of the financial condition of the insurer for at least five years.

(a) ((~~When the~~)) If a surplus line broker ((~~uses~~)) places insurance with an alien unauthorized insurer shown on the National Association of Insurance Commissioners (NAIC) Quarterly Listing of Alien Insurers dated within three months ((~~of the~~)) after placement of the risk, it ((~~shall~~)) will be deemed that the insurer meets the financial requirements of RCW 48.15.090 and WAC 284-15-090 and that ((~~its~~)) the financial condition of the insurer is adequately documented.

(b) ((~~When the~~)) If a surplus line broker ((~~uses~~)) places insurance with an alien unauthorized insurer that is not shown on the NAIC Quarterly Listing of Alien Insurers, ((~~there must be documentation in the broker's files demonstrating~~)) the broker must maintain information for at least five years adequate to show that the requirements of subsection (1) of this section ((~~are~~)) have been met or exceeded. This documentation shall include at least the following:

(i) A copy of the unauthorized insurer's most recent available annual financial statement((~~. This shall include an~~)), in English ((~~version~~)) with United States dollar equivalents; ((~~and~~))

(ii) Any other information obtained by the broker that verifies the financial condition of the alien ((~~company. (c)~~)) unauthorized insurer; and

(iii) The ((~~surplus line broker must have at least the~~)) current NAIC annual statement or its equivalent on file for any ((~~foreign~~)) alien unauthorized insurer used.

AMENDATORY SECTION (Amending Matter No. R 2006-04, filed 6/6/06, effective 7/7/06)

WAC 284-15-040 Form for surplus line insurer to designate person to receive legal process. (1) RCW 48.15.-150 permits service of legal process against an unauthorized insurer ((~~that is sued upon any cause of action arising in this state under any contract issued by it as a surplus line contract~~)) to be made upon the ((~~insurance~~)) commissioner. The commissioner will mail the documents of process to the insurer at its principal place of business last known to the commissioner, or to a person designated by the insurer for that purpose in the most recent document filed with the commissioner on a form prescribed by the commissioner. If ((~~such~~)) an unauthorized insurer elects to designate a person to receive ((~~such~~)) legal process from the commissioner, the designation ((~~shall be~~)) must be in writing and filed with the commissioner in substantially the form set forth ((~~in subsection (2) of this section~~)) on the commissioner's web site at: www.insurance.wa.gov.

(((~~(2) DESIGNATION OF PERSON TO WHOM COMMISSIONER SHALL FORWARD LEGAL PROCESS.~~

~~To the Insurance Commissioner of the state of Washington:~~

~~Pursuant to RCW 48.15.150, the undersigned Insurer hereby designates:~~

~~Name . . . . . .~~

~~Address . . . . . .~~

~~. . . . . .~~

~~as the person to whom the Insurance Commissioner shall forward legal process against the Insurer. This designation supersedes any similar designation heretofore made by this Insurer.~~

~~Executed at . . . . . , this . . . . day of . . . . . , 20. . .~~

~~. . . . . .~~

~~(Insurer)~~

~~By . . . . . .~~

~~. . . . . .~~

~~(Title)~~

~~(3)~~)) (2) The ((")person((") designated by the insurer to receive legal process may be an individual, firm or corporation.

(((~~(4)~~))) (3) The ((~~commissioner shall forward~~)) process documents will be forwarded by the commissioner to the person designated in the most recent ((~~document~~)) notice filed with ((~~him~~)) the commissioner.

(((~~(5) Pursuant to~~))) (4) As specified in RCW 48.15.150, each policy issued by an unauthorized insurer as a surplus line contract must ((~~contain a provision designating~~)) designate the commissioner as the person upon whom service of process may be made.

AMENDATORY SECTION (Amending Order R 89-2, filed 1/17/89)

WAC 284-15-050 Surplus line—Waiver of financial requirements. The commissioner may waive the financial requirements specified in RCW 48.15.090 and WAC 284-15-090 in circumstances where insurance cannot be otherwise procured on risks located in this state. Except as set forth in subsection (((~~(6)~~))) (5) of this section, at least the following information ((~~shall~~)) must be submitted when a surplus line broker ((~~makes a~~)) requests ((~~for~~)) the commissioner to waive the financial requirements:

(1) A detailed letter ((~~of explanation for~~)) explaining the need to waive the financial requirements;

(2) Documentation of the financial condition of the proposed insurer as reported in its annual statement as of the end of the preceding calendar year ((~~next preceding~~));

(3) Summary information showing the number of years the company has been writing the specific ((~~class~~)) line of insurance;

(4) ((~~The reinsurance agreements backing up the class of coverage or the company;~~

(~~5~~))) A written acknowledgement signed by the proposed insured ((~~to the effect that~~)) confirming all of the following:

(a) The insured ((~~is~~)) has been informed that the coverage ((~~is to~~)) will be issued by an insurer (or insurers) ((~~which~~)) that is not an authorized insurer in the state of Washington((~~,~~));

(b) The insured understands that financial requirements for surplus line insurers ((~~otherwise applicable have been~~)) must be waived by all parties concerned to enable this coverage to be obtained((~~,~~)); and

(c) The insured understands that there is no protection for the insured under the Washington Insurance Guaranty Association because the coverage will be issued by an unauthorized insurer;

(((~~6~~))) (5) For ((~~jumbo~~)) accounts requiring a multiplicity of insurers, in lieu of the requirements in subsections (2) and (3) of this section, the commissioner may((~~, in lieu of the requirements in subsections (2), (3), and (4) of this section,~~)) accept certification from ((~~an experienced~~)) a surplus line((~~s~~)) broker that the broker has investigated the financial condition of the prospective insurers and is satisfied that they are capable of underwriting the ((~~attendant~~)) specified risks. Records and documents supporting the broker's certification must be maintained by the broker for the ((~~life~~)) term of the policies and as long thereafter as a claim may be litigated, but in no case less than five years after completion of the transaction.

AMENDATORY SECTION (Amending Order R 91-7, filed 11/13/91, effective 1/1/92)

WAC 284-15-080 Relationship between surplus line broker and insurance agent. When a surplus line broker accepts surplus line business from an ((~~insurance~~)) agent, as permitted by RCW 48.15.080, ((~~such agent does not thereby~~)) acceptance of the business does not mean that the agent has become the representative of the insured with respect to ((~~such~~)) that business. In ((~~accord therewith~~)) this circumstance:

(1) Return premiums or claim payments ((~~delivered by the surplus line broker to the insurance agent shall~~)) will not be deemed to have been paid to the insured or claimant until ((~~such~~)) the payments are actually received by the insured or claimant.

(2) Delivery of notices involving the insurance, such as cancellation or renewal notices, ((~~shall~~)) will not be deemed to have been made until actually received by the insured. ((~~Notice to the agent is not notice to the insured. However, the agent may act on behalf of the broker in giving proper notices to the insured.~~))

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-15-100	Surplus lines limited broker.

WSR 08-14-170
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-10—Filed July 2, 2008, 11:39 a.m., effective August 2, 2008]

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

Purpose: These new rules amend chapter 284-02 WAC to more completely state the types of hearings conducted by the commissioner. A new section was added to explain how the office of the insurance commissioner will accept materials required to be "sent" or "delivered."

Citation of Existing Rules Affected by this Order: Amending WAC 284-02-070.

Statutory Authority for Adoption: RCW 48.02.060 and 34.05.220.

Adopted under notice filed as WSR 08-09-133 on April 23, 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 1, 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 1, Amended 1, Repealed 0.

Date Adopted: July 2, 2008.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-070 How does the OIC conduct hearings? (1) **Generally.**

(a) Hearings of the OIC are conducted according to chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). In addition to general hearings conducted pursuant to RCW 48.04.010, two specific types of hearings are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings or contested case hearings. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand or request a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) Hearings can be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) Requests for hearings must be in writing and delivered to the Tumwater office of the OIC. The request must specify how the person making the demand has been aggrieved by the commissioner, and must specify the grounds to be relied upon as the basis for the relief sought.

(c) Accommodation will be made for persons needing assistance, for example, where English is not their primary language, or for hearing impaired persons.

(2) **Proceedings for contested cases or adjudicative hearings.**

(a) Provisions specifically relating to disciplinary action taken against persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. Provisions applicable to other adjudicative proceedings are contained in chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The uniform rules of practice and procedure appear in Title 10 of the Washington Administrative Code. The grounds for disciplinary action against insurance agents, brokers, solicitors, and adjusters are contained in RCW 48.17.530; grounds for similar action against insurance companies are contained in RCW 48.05.140; grounds for actions against fraternal benefit societies are found at RCW 48.36A.300 (domestic) and RCW 48.36A.310 (foreign); grounds for actions against viatical settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; and grounds for action against health maintenance organizations are contained in RCW 48.46.130. Grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses.

(b) The insurance commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

(c) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a presiding officer; or may use the services of an administrative law judge in accordance with chapter 34.12 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464).

(ii) The hearing will be recorded by any method chosen by the presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court.

(iii) The insurance commissioner or the presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry.

(iv) Unless a person aggrieved by an order of the insurance commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived (RCW 48.04.010(3)).

(v) Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the presiding officer.

(3) **Rule-making hearings.** Rule-making hearings are conducted based on requirements found in the Administrative Procedure Act (chapter 34.05 RCW) and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept comments on proposed rules by mail, electronic telefacsimile transmission, or electronic mail but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-02-105 What does "sending" or "delivery" include? Throughout Title 284 WAC, whenever written notice is required to be sent or delivered to the commissioner, "sending" or "delivery" includes transmitting the required information in writing and, where appropriate, on forms designated by the commissioner for that purpose via first class mail, commercial parcel delivery company, electronic telefacsimile, or e-mail, unless the relevant requirement specifies sending the written notice in some specific manner, such as via first class mail, postage prepaid.